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# THE VIRGINIA REGISTER INFORMATION PAGE

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**THE VIRGINIA REGISTER** is an official state publication issued every other week throughout the year. Indexes are published quarterly, and the last index of the year is cumulative. **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 OF REGULATIONS**. In addition, **THE VIRGINIA REGISTER** is a source of other information about state government, including all emergency regulations and executive orders issued by the Governor, the Virginia Tax Bulletin issued periodically by the Department of Taxation, and notices of public hearings and open meetings of state agencies.

## ADOPTION, AMENDMENT, AND REPEAL OF REGULATIONS

An agency wishing to adopt, amend, or repeal regulations must first publish 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 proposal 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 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 appropriate standing committee of each branch 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 committee, 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 standing committees 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 changes made to the proposed regulation 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*.

The agency shall suspend the regulatory process for 30 days when it receives requests from 25 or more individuals to solicit additional public comment, 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 extension 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.

Proposed regulatory action may be withdrawn by the promulgating agency at any time before the regulation becomes final.

## EMERGENCY REGULATIONS

If an agency demonstrates that (i) there is an immediate threat to the public's health or safety; or (ii) Virginia statutory law, the appropriation act, federal law, or federal regulation requires a regulation to take effect no later than (a) 280 days from the enactment in the case of Virginia or federal law or the appropriation act, or (b) 280 days from the effective date of a federal regulation, it then requests the Governor's approval to adopt an emergency regulation. The emergency regulation becomes operative upon its adoption and filing with the Registrar of Regulations, unless a later date is specified. Emergency regulations are limited to addressing specifically defined situations and may not exceed 12 months in duration. Emergency regulations are published as soon as possible in the *Register*.

During the time the emergency status is in effect, the agency may proceed with the adoption of permanent regulations through the usual procedures. To begin promulgating the replacement regulation, the agency must (i) file the Notice of Intended Regulatory Action with the Registrar within 60 days of the effective date of the emergency regulation; and (ii) file the proposed regulation with the Registrar within 180 days of the effective date of the emergency regulation. 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 (§ 9-6.14:7.1 et seq.) of Chapter 1.1:1 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. **12:8 VA.R. 1096-1106 January 8, 1996**, refers to Volume 12, Issue 8, pages 1096 through 1106 of the *Virginia Register* issued on January 8, 1996.

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Members of the Virginia Code Commission: **Jay W. DeBoer**, Chairman; **Robert L. Calhoun**; **Bernard S. Cohen**; **Frank S. Ferguson**; **J. Randy Forbes**; **James E. Kulp**; **E.M. Miller, Jr.**; **James B. Wilkinson.**

Staff of the Virginia Register: **Jane D. Chaffin**, Registrar of Regulations.

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# PUBLICATION SCHEDULE AND DEADLINES

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This schedule is available on the *Register's* Internet home page (<http://legis.state.va.us/codecomm/register/regindex.htm>).

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## January 2000 through December 2000

<u>Volume:Issue</u>	<u>Material Submitted By Noon*</u>	<u>Will Be Published On</u>
16:9	December 28, 1999 ( <b>Tuesday</b> )	January 17, 2000
16:10	January 12, 2000	January 31, 2000
16:11	January 26, 2000	February 14, 2000
16:12	February 9, 2000	February 28, 2000
16:13	February 23, 2000	March 13, 2000
16:14	March 8, 2000	March 27, 2000
<b>INDEX 2 - Volume 16</b>		<b>April 2000</b>
16:15	March 22, 2000	April 10, 2000
16:16	April 5, 2000	April 24, 2000
16:17	April 19, 2000	May 8, 2000
16:18	May 3, 2000	May 22, 2000
16:19	May 17, 2000	June 5, 2000
16:20	May 31, 2000	June 19, 2000
<b>INDEX 3 - Volume 16</b>		<b>July 2000</b>
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16:22	June 28, 2000	July 17, 2000
16:23	July 12, 2000	July 31, 2000
16:24	July 26, 2000	August 14, 2000
16:25	August 9, 2000	August 28, 2000
16:26	August 23, 2000	September 11, 2000
<b>FINAL INDEX - Volume 16</b>		<b>October 2000</b>
17:1	September 6, 2000	September 25, 2000
17:2	September 20, 2000	October 9, 2000
17:3	October 4, 2000	October 23, 2000
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17:5	November 1, 2000	November 20, 2000
17:6	November 14, 2000 ( <b>Tuesday</b> )	December 4, 2000
17:7	November 29, 2000	December 18, 2000
<b>INDEX 1 - Volume 17</b>		<b>January 2001</b>

\*Filing deadlines are Wednesdays unless otherwise specified.

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The table printed below lists regulation sections, by Virginia Administrative Code (VAC) title, that have been amended, added or repealed in the *Virginia Register* since the regulations were originally published or last supplemented in VAC (the Fall 1999 VAC Supplement includes final regulations published through *Virginia Register* Volume 15, Issue 23, dated August 2, 1999). Emergency regulations, if any, are listed, followed by the designation "emer," and errata pertaining to final regulations are listed. Proposed regulations are not listed here. The table lists the sections in numerical order and shows action taken, the volume, issue and page number where the section appeared, and the effective date of the section.

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
<b>Title 2. Agriculture</b>			
2 VAC 15-20-70	Amended	15:26 VA.R. 3436	Pending
2 VAC 15-20-80	Amended	15:26 VA.R. 3445	8/17/99
2 VAC 15-20-80	Repealed	15:26 VA.R. 3438	Pending
2 VAC 15-20-81	Added	15:26 VA.R. 3442	Pending
<b>Title 4. Conservation and Natural Resources</b>			
4 VAC 20-270-50	Amended	16:7 VA.R. 804	1/1/00
4 VAC 20-333-10 through 4 VAC 20-333-40	Added	15:24 VA.R. 3035-3037	7/6/99
4 VAC 20-595-10 emer	Added	15:25 VA.R. 3366	8/15/99-8/31/99
4 VAC 20-595-20 emer	Added	15:25 VA.R. 3366	8/15/99-8/31/99
4 VAC 20-620-30	Amended	16:5 VA.R. 580	11/1/99
4 VAC 20-620-40	Amended	16:5 VA.R. 580	11/1/99
4 VAC 20-700-20	Amended	16:7 VA.R. 804	1/1/00
4 VAC 20-720-20	Amended	16:3 VA.R. 292	10/1/99
4 VAC 20-720-35	Added	16:3 VA.R. 292	10/1/99
4 VAC 20-720-40	Amended	16:3 VA.R. 292	10/1/99
4 VAC 20-720-50	Amended	16:3 VA.R. 293	10/1/99
4 VAC 20-720-60	Amended	16:3 VA.R. 293	10/1/99
4 VAC 20-720-70	Amended	16:3 VA.R. 294	10/1/99
4 VAC 20-720-80	Amended	16:3 VA.R. 294	10/1/99
4 VAC 20-720-105	Repealed	16:3 VA.R. 294	10/1/99
4 VAC 20-890-10	Amended	16:7 VA.R. 804	1/1/00
4 VAC 20-890-25	Added	16:7 VA.R. 805	1/1/00
4 VAC 20-890-35	Amended	16:7 VA.R. 805	1/1/00
<b>Title 6. Criminal Justice and Corrections</b>			
6 VAC 20-170-10 et seq.	Repealed	16:8 VA.R. 945	2/2/00
6 VAC 20-171-10 through 6 VAC 20-171-560	Added	16:8 VA.R. 945-974	2/2/00
<b>Title 7. Economic Development</b>			
7 VAC 10-20-10	Amended	15:25 VA.R. 3348	9/29/99
7 VAC 10-20-30	Amended	15:25 VA.R. 3350	9/29/99
7 VAC 10-20-50	Amended	15:25 VA.R. 3350	9/29/99
<b>Title 9. Environment</b>			
9 VAC 5-80-1400 through 9 VAC 5-80-1590	Added	16:7 VA.R. 806-819	2/1/00
9 VAC 25-151 (Forms)	Amended	15:24 VA.R. 3251	--
<b>Title 11. Gaming</b>			
11 VAC 10-130-10	Amended	15:26 VA.R. 3449	8/25/99
11 VAC 10-130-20	Amended	15:26 VA.R. 3449	8/25/99
11 VAC 10-130-40	Amended	15:26 VA.R. 3451	8/25/99
11 VAC 10-130-51	Amended	15:26 VA.R. 3451	8/25/99
11 VAC 10-130-60	Amended	15:26 VA.R. 3452	8/25/99
11 VAC 10-130-76	Amended	15:26 VA.R. 3452	8/25/99
11 VAC 10-130-77	Amended	15:26 VA.R. 3452	8/25/99
<b>Title 12. Health</b>			
12 VAC 5-371-40 emer	Amended	16:7 VA.R. 896	12/31/99-12/30/00
12 VAC 5-408-10 through 12 VAC 5-408-370	Added	16:7 VA.R. 819-837	1/20/00

## Cumulative Table of VAC Sections Adopted, Amended, or Repealed

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
12 VAC 5-410-70 emer	Amended	16:7 VA.R. 897	12/31/99-12/30/00
12 VAC 5-610-10*	Repealed	15:24 VA.R. 3188	*
12 VAC 5-610-20*	Amended	15:24 VA.R. 3188	*
12 VAC 5-610-30*	Amended	15:24 VA.R. 3188	*
12 VAC 5-610-40*	Amended	15:24 VA.R. 3188	*
12 VAC 5-610-50*	Amended	15:24 VA.R. 3188	*
12 VAC 5-610-70*	Amended	15:24 VA.R. 3189	*
12 VAC 5-610-75*	Added	15:24 VA.R. 3190	*
12 VAC 5-610-80*	Amended	15:24 VA.R. 3190	*
12 VAC 5-610-90*	Repealed	15:24 VA.R. 3190	*
12 VAC 5-610-100*	Amended	15:24 VA.R. 3190	*
12 VAC 5-610-110*	Repealed	15:24 VA.R. 3190	*
12 VAC 5-610-120*	Amended	15:24 VA.R. 3190	*
12 VAC 5-610-130*	Amended	15:24 VA.R. 3192	*
12 VAC 5-610-140*	Repealed	15:24 VA.R. 3192	*
12 VAC 5-610-150*	Repealed	15:24 VA.R. 3192	*
12 VAC 5-610-170*	Amended	15:24 VA.R. 3192	*
12 VAC 5-610-180*	Repealed	15:24 VA.R. 3193	*
12 VAC 5-610-190*	Amended	15:24 VA.R. 3193	*
12 VAC 5-610-200*	Amended	15:24 VA.R. 3194	*
12 VAC 5-610-230*	Amended	15:24 VA.R. 3195	*
12 VAC 5-610-250*	Amended	15:24 VA.R. 3195	*
12 VAC 5-610-255*	Added	15:24 VA.R. 3198	*
12 VAC 5-610-260*	Amended	15:24 VA.R. 3198	*
12 VAC 5-610-270*	Amended	15:24 VA.R. 3198	*
12 VAC 5-610-280*	Amended	15:24 VA.R. 3198	*
12 VAC 5-610-290*	Amended	15:24 VA.R. 3199	*
12 VAC 5-610-300*	Amended	15:24 VA.R. 3199	*
12 VAC 5-610-330*	Amended	15:24 VA.R. 3199	*
12 VAC 5-610-340*	Amended	15:24 VA.R. 3199	*
12 VAC 5-610-360*	Amended	15:24 VA.R. 3200	*
12 VAC 5-610-370*	Repealed	15:24 VA.R. 3200	*
12 VAC 5-610-380*	Amended	15:24 VA.R. 3201	*
12 VAC 5-610-430*	Amended	15:24 VA.R. 3202	*
12 VAC 5-610-440*	Amended	15:24 VA.R. 3202	*
12 VAC 5-610-441 through 12 VAC 5-610-449*	Added	15:24 VA.R. 3202-3210	*
12 VAC 5-610-449.1*	Added	15:24 VA.R. 3211	*
12 VAC 5-610-450*	Amended	15:24 VA.R. 3212	*
12 VAC 5-610-470*	Amended	15:24 VA.R. 3212	*
12 VAC 5-610-480*	Amended	15:24 VA.R. 3214	*
12 VAC 5-610-490*	Amended	15:24 VA.R. 3214	*
12 VAC 5-610-500*	Amended	15:24 VA.R. 3215	*
12 VAC 5-610-510 through 12 VAC 5-610-550*	Repealed	15:24 VA.R. 3215-3216	*
12 VAC 5-610-560*	Amended	15:24 VA.R. 3216	*
12 VAC 5-610-570*	Repealed	15:24 VA.R. 3216	*
12 VAC 5-610-580*	Amended	15:24 VA.R. 3217	*
12 VAC 5-610-591 through 12 VAC 5-610-594*	Added	15:24 VA.R. 3217-3218	*
12 VAC 5-610-596 through 12 VAC 5-610-599*	Added	15:24 VA.R. 3218-3222	*
12 VAC 5-610-599.1 through 12 VAC 5-610-599.4*	Added	15:24 VA.R. 3222-3223	*
12 VAC 5-610-620*	Amended	15:24 VA.R. 3223	*
12 VAC 5-610-650*	Amended	15:24 VA.R. 3223	*
12 VAC 5-610-670*	Amended	15:24 VA.R. 3223	*
12 VAC 5-610-690*	Amended	15:24 VA.R. 3223	*

\* The regulatory process was suspended on this section in 16:2 VA.R. 202, and the final effective date is pending until further action by the board.



# Cumulative Table of VAC Sections Adopted, Amended, or Repealed

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
12 VAC 5-610-700*	Amended	15:24 VA.R. 3224	*
12 VAC 5-610-800*	Amended	15:24 VA.R. 3226	*
12 VAC 5-610-810*	Amended	15:24 VA.R. 3226	*
12 VAC 5-610-815*	Added	15:24 VA.R. 3226	*
12 VAC 5-610-817*	Added	15:24 VA.R. 3227	*
12 VAC 5-610-820*	Amended	15:24 VA.R. 3227	*
12 VAC 5-610-830*	Repealed	15:24 VA.R. 3227	*
12 VAC 5-610-840*	Repealed	15:24 VA.R. 3227	*
12 VAC 5-610-880*	Amended	15:24 VA.R. 3227	*
12 VAC 5-610-890*	Amended	15:24 VA.R. 3229	*
12 VAC 5-610-930*	Amended	15:24 VA.R. 3229	*
12 VAC 5-610-940*	Amended	15:24 VA.R. 3232	*
12 VAC 5-610-950*	Amended	15:24 VA.R. 3233	*
12 VAC 5-610-960*	Amended	15:24 VA.R. 3235	*
12 VAC 5-610-965*	Added	15:24 VA.R. 3236	*
12 VAC 5-610-980*	Amended	15:24 VA.R. 3237	*
12 VAC 5-610-1080*	Amended	15:24 VA.R. 3238	*
12 VAC 5-610-1140*	Amended	15:24 VA.R. 3240	*
12 VAC 5-610-1150*	Repealed	15:24 VA.R. 3240	*
12 VAC 30-10-441	Added	15:26 VA.R. 3454	10/13/99
12 VAC 30-10-490	Amended	15:26 VA.R. 3454	10/13/99
12 VAC 30-10-680	Amended	15:26 VA.R. 3454	10/13/99
12 VAC 30-50-100	Amended	15:24 VA.R. 3243	9/15/99
12 VAC 30-50-105	Amended	15:24 VA.R. 3245	9/15/99
12 VAC 30-50-140	Amended	15:24 VA.R. 3247	9/15/99
12 VAC 30-50-160	Amended	16:2 VA.R. 202	11/10/99
12 VAC 30-50-210	Amended	16:2 VA.R. 205	11/10/99
12 VAC 30-50-220	Amended	15:25 VA.R. 3362	10/1/99
12 VAC 30-50-270	Amended	16:6 VA.R. 706	1/5/00
12 VAC 30-60-130	Amended	16:6 VA.R. 707	1/5/00
12 VAC 30-80-30	Amended	16:2 VA.R. 207	11/10/99
12 VAC 30-80-30	Amended	16:6 VA.R. 710	1/5/00
12 VAC 30-80-40	Amended	16:2 VA.R. 208	11/10/99
12 VAC 30-130-270 through 12 VAC 30-130-530	Repealed	16:6 VA.R. 711-715	1/5/00
12 VAC 30-140-10 through 12 VAC 30-140-570	Added	15:26 VA.R. 3456-3465	10/13/99
12 VAC 30-140-370	Amended	16:4 VA.R. 404	12/8/99
12 VAC 30-140-380	Amended	16:4 VA.R. 404	12/8/99
<b>Title 13. Housing</b>			
13 VAC 5-175-10 through 13 VAC 5-175-40	Added	16:4 VA.R. 405-406	10/20/99
<b>Title 14. Insurance</b>			
14 VAC 5-270-30	Amended	16:5 VA.R. 582	1/1/00
14 VAC 5-270-40	Amended	16:5 VA.R. 582	1/1/00
14 VAC 5-270-60	Amended	16:5 VA.R. 582	1/1/00
14 VAC 5-270-70	Amended	16:5 VA.R. 583	1/1/00
14 VAC 5-270-80	Amended	16:5 VA.R. 583	1/1/00
14 VAC 5-270-160	Repealed	16:5 VA.R. 584	1/1/00
14 VAC 5-319-10 through 14 VAC 5-319-80	Added	16:5 VA.R. 585-599	1/1/00
14 VAC 5-350-10 et seq. (Forms)	Amended	16:8 VA.R. 976	--
14 VAC 5-395-20	Amended	16:4 VA.R. 407	10/20/99
14 VAC 5-395-25	Added	16:4 VA.R. 407	10/20/99
14 VAC 5-395-60	Amended	16:4 VA.R. 407	10/20/99
<b>Title 16. Labor and Employment</b>			
16 VAC 25-120-1917.1	Amended	16:7 VA.R. 843	1/20/00

\* The regulatory process was suspended on this section in 16:2 VA.R. 202, and the final effective date is pending until further action by the board.

## Cumulative Table of VAC Sections Adopted, Amended, or Repealed

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
16 VAC 25-130-1918.1	Amended	16:7 VA.R. 843	1/20/00
<b>Title 18. Professional and Occupational Licensing</b>			
18 VAC 5-20-10 emer	Amended	16:3 VA.R. 319	10/4/99-10/3/00
18 VAC 5-20-11 emer	Added	16:3 VA.R. 321	10/4/99-10/3/00
18 VAC 5-20-20 emer	Amended	16:3 VA.R. 322	10/4/99-10/3/00
18 VAC 5-20-30 emer	Repealed	16:3 VA.R. 324	10/4/99-10/3/00
18 VAC 5-20-40 emer	Repealed	16:3 VA.R. 324	10/4/99-10/3/00
18 VAC 5-20-41 emer	Added	16:3 VA.R. 324	10/4/99-10/3/00
18 VAC 5-20-50 emer	Repealed	16:3 VA.R. 325	10/4/99-10/3/00
18 VAC 5-20-60 emer	Repealed	16:3 VA.R. 325	10/4/99-10/3/00
18 VAC 5-20-70 emer	Repealed	16:3 VA.R. 326	10/4/99-10/3/00
18 VAC 5-20-80 emer	Repealed	16:3 VA.R. 326	10/4/99-10/3/00
18 VAC 5-20-81 emer	Added	16:3 VA.R. 326	10/4/99-10/3/00
18 VAC 5-20-90 emer	Repealed	16:3 VA.R. 326	10/4/99-10/3/00
18 VAC 5-20-91 emer	Added	16:3 VA.R. 327	10/4/99-10/3/00
18 VAC 5-20-100 emer	Amended	16:3 VA.R. 328	10/4/99-10/3/00
18 VAC 5-20-110 emer	Amended	16:3 VA.R. 329	10/4/99-10/3/00
18 VAC 5-20-111 emer	Added	16:3 VA.R. 330	10/4/99-10/3/00
18 VAC 5-20-112 emer	Added	16:3 VA.R. 330	10/4/99-10/3/00
18 VAC 5-20-120 through 18 VAC 5-20-440 emer	Repealed	16:3 VA.R. 330-333	10/4/99-10/3/00
18 VAC 5-20-441 emer	Added	16:3 VA.R. 333	10/4/99-10/3/00
18 VAC 5-20-442 emer	Added	16:3 VA.R. 334	10/4/99-10/3/00
18 VAC 5-20-443 emer	Added	16:3 VA.R. 334	10/4/99-10/3/00
18 VAC 5-20-444 emer	Added	16:3 VA.R. 336	10/4/99-10/3/00
18 VAC 5-20-445 emer	Added	16:3 VA.R. 336	10/4/99-10/3/00
18 VAC 5-20-450 emer	Repealed	16:3 VA.R. 336	10/4/99-10/3/00
18 VAC 5-20-451 emer	Added	16:3 VA.R. 336	10/4/99-10/3/00
18 VAC 5-20-460 through 500 emer	Repealed	16:3 VA.R. 337-339	10/4/99-10/3/00
18 VAC 10-20-10	Amended	16:3 VA.R. 298	12/1/99
18 VAC 10-20-20	Amended	16:3 VA.R. 299	12/1/99
18 VAC 10-20-35	Added	16:3 VA.R. 299	12/1/99
18 VAC 10-20-90	Amended	15:24 VA.R. 3248	10/1/99
18 VAC 10-20-110	Amended	16:3 VA.R. 299	12/1/99
18 VAC 10-20-120	Amended	16:3 VA.R. 300	12/1/99
18 VAC 10-20-140	Amended	16:3 VA.R. 300	12/1/99
18 VAC 10-20-150	Amended	16:3 VA.R. 301	12/1/99
18 VAC 10-20-160	Amended	16:3 VA.R. 303	12/1/99
18 VAC 10-20-170	Amended	15:24 VA.R. 3248	10/1/99
18 VAC 10-20-170	Amended	16:3 VA.R. 303	12/1/99
18 VAC 10-20-190	Amended	16:3 VA.R. 303	12/1/99
18 VAC 10-20-200	Amended	16:3 VA.R. 304	12/1/99
18 VAC 10-20-210	Amended	16:3 VA.R. 304	12/1/99
18 VAC 10-20-215	Added	16:3 VA.R. 305	12/1/99
18 VAC 10-20-230	Amended	16:3 VA.R. 305	12/1/99
18 VAC 10-20-250	Amended	16:3 VA.R. 305	12/1/99
18 VAC 10-20-260	Amended	16:3 VA.R. 306	12/1/99
18 VAC 10-20-270	Amended	16:3 VA.R. 306	12/1/99
18 VAC 10-20-280	Amended	15:24 VA.R. 3249	10/1/99
18 VAC 10-20-280	Amended	16:3 VA.R. 306	12/1/99
18 VAC 10-20-300	Amended	16:3 VA.R. 306	12/1/99
18 VAC 10-20-310	Amended	16:3 VA.R. 307	12/1/99
18 VAC 10-20-320	Amended	16:3 VA.R. 307	12/1/99
18 VAC 10-20-330	Amended	16:3 VA.R. 307	12/1/99
18 VAC 10-20-350	Amended	16:3 VA.R. 307	12/1/99
18 VAC 10-20-360	Amended	16:3 VA.R. 308	12/1/99
18 VAC 10-20-400	Amended	15:24 VA.R. 3249	10/1/99

## Cumulative Table of VAC Sections Adopted, Amended, or Repealed

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
18 VAC 10-20-440	Amended	16:3 VA.R. 308	12/1/99
18 VAC 10-20-450	Amended	16:3 VA.R. 308	12/1/99
18 VAC 10-20-470	Amended	15:24 VA.R. 3249	10/1/99
18 VAC 10-20-490	Amended	16:3 VA.R. 309	12/1/99
18 VAC 10-20-500	Repealed	16:3 VA.R. 309	12/1/99
18 VAC 10-20-520	Amended	15:24 VA.R. 3249	10/1/99
18 VAC 10-20-530	Amended	16:3 VA.R. 309	12/1/99
18 VAC 10-20-560	Amended	16:3 VA.R. 310	12/1/99
18 VAC 10-20-570	Amended	16:3 VA.R. 310	12/1/99
18 VAC 10-20-580	Amended	15:24 VA.R. 3249	10/1/99
18 VAC 10-20-590	Amended	16:3 VA.R. 310	12/1/99
18 VAC 10-20-630	Amended	15:24 VA.R. 3249	10/1/99
18 VAC 10-20-640	Amended	16:3 VA.R. 311	12/1/99
18 VAC 10-20-680	Amended	16:3 VA.R. 311	12/1/99
18 VAC 10-20-730	Amended	16:3 VA.R. 311	12/1/99
18 VAC 10-20-740	Amended	16:3 VA.R. 311	12/1/99
18 VAC 10-20-760	Amended	16:3 VA.R. 312	12/1/99
18 VAC 10-20-780	Amended	16:3 VA.R. 313	12/1/99
18 VAC 10-20-790	Amended	16:3 VA.R. 313	12/1/99
18 VAC 10-20-795	Added	16:3 VA.R. 314	12/1/99
18 VAC 25-21-70	Amended	15:26 VA.R. 3468	11/1/99
18 VAC 55-22-310	Amended	15:26 VA.R. 3476	11/1/99
18 VAC 55-22 (Forms)	Amended	16:5 VA.R. 600	--
18 VAC 60-20-20	Amended	16:7 VA.R. 846	1/19/00
18 VAC 60-20-30	Amended	16:7 VA.R. 846	1/19/00
18 VAC 65-20-70	Amended	16:7 VA.R. 851	1/19/00
18 VAC 65-20-120	Amended	16:7 VA.R. 851	1/19/00
18 VAC 65-20-130	Amended	16:7 VA.R. 851	1/19/00
18 VAC 65-20-435	Added	16:7 VA.R. 851	1/19/00
18 VAC 85-20-22	Amended	16:4 VA.R. 407	12/8/99
18 VAC 85-20-230	Amended	16:4 VA.R. 408	12/8/99
18 VAC 85-20-235	Added	16:4 VA.R. 408	12/8/99
18 VAC 85-20-236	Added	16:4 VA.R. 408	12/8/99
18 VAC 85-20-240	Amended	16:4 VA.R. 409	12/8/99
18 VAC 85-20-240	Erratum	16:8 VA.R. 997	--
18 VAC 85-20-280	Added	16:7 VA.R. 854	1/19/00
18 VAC 85-20-290	Added	16:7 VA.R. 854	1/19/00
18 VAC 85-20-300	Added	16:7 VA.R. 855	1/19/00
18 VAC 85-40-10	Amended	16:7 VA.R. 860	1/19/00
18 VAC 85-40-25	Added	16:7 VA.R. 860	1/19/00
18 VAC 85-40-40	Amended	16:7 VA.R. 860	1/19/00
18 VAC 85-40-45	Added	16:7 VA.R. 860	1/19/00
18 VAC 85-40-50	Amended	16:7 VA.R. 860	1/19/00
18 VAC 85-40-60	Amended	16:7 VA.R. 861	1/19/00
18 VAC 85-40-65	Added	16:7 VA.R. 861	1/19/00
18 VAC 85-40-80	Amended	16:7 VA.R. 861	1/19/00
18 VAC 85-80-10	Amended	16:7 VA.R. 868	1/19/00
18 VAC 85-80-20	Amended	16:7 VA.R. 868	1/19/00
18 VAC 85-80-25	Added	16:7 VA.R. 868	1/19/00
18 VAC 85-80-35	Added	16:7 VA.R. 868	1/19/00
18 VAC 85-80-40	Amended	16:7 VA.R. 868	1/19/00
18 VAC 85-80-50	Amended	16:7 VA.R. 869	1/19/00
18 VAC 85-80-60	Amended	16:7 VA.R. 869	1/19/00
18 VAC 85-80-70	Amended	16:7 VA.R. 869	1/19/00
18 VAC 85-80-80	Amended	16:7 VA.R. 869	1/19/00
18 VAC 85-101-10	Amended	16:4 VA.R. 410	12/8/99

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## Cumulative Table of VAC Sections Adopted, Amended, or Repealed

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SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
18 VAC 85-101-40	Amended	16:4 VA.R. 410	12/8/99
18 VAC 85-101-50	Amended	16:4 VA.R. 410	12/8/99
18 VAC 85-101-60	Amended	16:4 VA.R. 411	12/8/99
18 VAC 85-101-70	Amended	16:4 VA.R. 411	12/8/99
18 VAC 85-101-130	Amended	16:4 VA.R. 411	12/8/99
18 VAC 85-101-160	Amended	16:4 VA.R. 412	12/8/99
18 VAC 90-20-300	Amended	16:3 VA.R. 315	11/24/99
18 VAC 90-20-420	Added	16:3 VA.R. 315	11/24/99
18 VAC 90-20-430	Added	16:3 VA.R. 315	11/24/99
18 VAC 90-20-440	Added	16:3 VA.R. 316	11/24/99
18 VAC 90-20-450	Added	16:3 VA.R. 316	11/24/99
18 VAC 90-20-460	Added	16:3 VA.R. 317	11/24/99
18 VAC 100-20-10	Amended	15:26 VA.R. 3479	11/1/99
18 VAC 100-20-40	Amended	15:26 VA.R. 3479	11/1/99
18 VAC 100-20-50	Amended	15:26 VA.R. 3479	11/1/99
18 VAC 100-20-60	Amended	15:26 VA.R. 3479	11/1/99
18 VAC 100-20-70	Amended	15:26 VA.R. 3479	11/1/99
18 VAC 110-20-10	Amended	15:26 VA.R. 3482	10/13/99
18 VAC 110-20-135	Added	15:26 VA.R. 3484	10/13/99
18 VAC 110-20-140	Amended	15:26 VA.R. 3484	10/13/99
18 VAC 110-20-690	Added	15:26 VA.R. 3485	10/13/99
18 VAC 110-20-700	Added	15:26 VA.R. 3485	10/13/99
18 VAC 110-20-710	Added	15:26 VA.R. 3485	10/13/99
18 VAC 110-20-720	Added	15:26 VA.R. 3486	10/13/99
18 VAC 115-30-10	Amended	16:7 VA.R. 876	1/19/00
18 VAC 115-30-20	Repealed	16:7 VA.R. 877	1/19/00
18 VAC 115-30-30	Amended	16:7 VA.R. 877	1/19/00
18 VAC 115-30-40	Amended	16:7 VA.R. 877	1/19/00
18 VAC 115-30-45	Added	16:7 VA.R. 877	1/19/00
18 VAC 115-30-60	Amended	16:7 VA.R. 878	1/19/00
18 VAC 115-30-70	Amended	16:7 VA.R. 879	1/19/00
18 VAC 115-30-80	Repealed	16:7 VA.R. 879	1/19/00
18 VAC 115-30-90	Amended	16:7 VA.R. 879	1/19/00
18 VAC 115-30-100	Repealed	16:7 VA.R. 879	1/19/00
18 VAC 115-30-110	Amended	16:7 VA.R. 879	1/19/00
18 VAC 115-30-120	Amended	16:7 VA.R. 879	1/19/00
18 VAC 115-30-130	Repealed	16:7 VA.R. 879	1/19/00
18 VAC 115-30-140	Amended	16:7 VA.R. 879	1/19/00
18 VAC 115-30-150	Amended	16:7 VA.R. 880	1/19/00
18 VAC 115-30-160	Amended	16:7 VA.R. 880	1/19/00
18 VAC 115-50-10	Amended	16:7 VA.R. 886	1/19/00
18 VAC 115-50-30	Amended	16:7 VA.R. 886	1/19/00
18 VAC 115-50-40	Amended	16:7 VA.R. 887	1/19/00
18 VAC 115-50-50	Amended	16:7 VA.R. 887	1/19/00
18 VAC 115-50-55	Added	16:7 VA.R. 887	1/19/00
18 VAC 115-50-60	Amended	16:7 VA.R. 888	1/19/00
18 VAC 115-50-70	Amended	16:7 VA.R. 889	1/19/00
18 VAC 115-50-80	Repealed	16:7 VA.R. 889	1/19/00
18 VAC 115-50-90	Amended	16:7 VA.R. 889	1/19/00
18 VAC 115-60-10 through 18 VAC 115-60-150	Added	16:7 VA.R. 890-895	1/19/00
18 VAC 120-30-100	Amended	15:26 VA.R. 3487	11/1/99
18 VAC 125-20-10	Amended	16:2 VA.R. 210	11/10/99
18 VAC 125-20-30	Amended	16:2 VA.R. 210	11/10/99
18 VAC 125-20-40	Amended	16:2 VA.R. 210	11/10/99
18 VAC 125-20-41	Added	16:2 VA.R. 211	11/10/99
18 VAC 125-20-42	Added	16:2 VA.R. 211	11/10/99

## Cumulative Table of VAC Sections Adopted, Amended, or Repealed

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
18 VAC 125-20-50	Repealed	16:2 VA.R. 212	11/10/99
18 VAC 125-20-51	Repealed	16:2 VA.R. 212	11/10/99
18 VAC 125-20-52	Repealed	16:2 VA.R. 212	11/10/99
18 VAC 125-20-53	Repealed	16:2 VA.R. 213	11/10/99
18 VAC 125-20-54	Added	16:2 VA.R. 214	11/10/99
18 VAC 125-20-55	Added	16:2 VA.R. 214	11/10/99
18 VAC 125-20-56	Added	16:2 VA.R. 215	11/10/99
18 VAC 125-20-60	Repealed	16:2 VA.R. 216	11/10/99
18 VAC 125-20-65	Added	16:2 VA.R. 216	11/10/99
18 VAC 125-20-70	Repealed	16:2 VA.R. 216	11/10/99
18 VAC 125-20-80	Amended	16:2 VA.R. 217	11/10/99
18 VAC 125-20-90	Repealed	16:2 VA.R. 217	11/10/99
18 VAC 125-20-100	Repealed	16:2 VA.R. 217	11/10/99
18 VAC 125-20-120	Amended	16:2 VA.R. 218	11/10/99
18 VAC 125-20-130	Amended	16:2 VA.R. 218	11/10/99
18 VAC 125-20-140	Repealed	16:2 VA.R. 218	11/10/99
18 VAC 125-20-150	Amended	16:2 VA.R. 218	11/10/99
18 VAC 125-20-150	Erratum	16:4 VA.R. 444	--
18 VAC 125-20-160	Amended	16:2 VA.R. 219	11/10/99
18 VAC 125-20-170	Amended	16:2 VA.R. 219	11/10/99
18 VAC 160-20-40	Amended	15:24 VA.R. 3490	11/1/99
<b>Title 19. Public Safety</b>			
19 VAC 30-70 Appendix A	Amended	15:25 VA.R. 3364	7/29/99
19 VAC 30-165-10 emer	Added	16:3 VA.R. 339	9/24/99-9/23/00
19 VAC 30-165-20 emer	Added	16:3 VA.R. 340	9/24/99-9/23/00
19 VAC 30-165-30 emer	Added	16:3 VA.R. 340	9/24/99-9/23/00
19 VAC 30-165-40 emer	Added	16:3 VA.R. 340	9/24/99-9/23/00
19 VAC 30-165-50 emer	Added	16:3 VA.R. 340	9/24/99-9/23/00
19 VAC 30-165-60 emer	Added	16:3 VA.R. 340	9/24/99-9/23/00
<b>Title 22. Social Services</b>			
22 VAC 40-50-10 et seq.	Repealed	15:24 VA.R. 3250	9/15/99
22 VAC 40-710-10 et seq.	Repealed	16:4 VA.R. 412	12/8/99
22 VAC 40-820-10 et seq.	Repealed	16:5 VA.R. 599	12/22/99
22 VAC 40-880-350	Amended	16:4 VA.R. 413	12/8/99
<b>Title 24. Transportation and Motor Vehicles</b>			
24 VAC 30-130-10	Amended	16:2 VA.R. 229	9/13/99

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# NOTICES OF INTENDED REGULATORY ACTION

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## Symbol Key

† Indicates entries since last publication of the *Virginia Register*

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## TITLE 9. ENVIRONMENT

### STATE AIR POLLUTION CONTROL BOARD

#### † Withdrawal of Notice of Intended Regulatory Action

Notice is hereby given that the State Air Pollution Control Board has WITHDRAWN the Notice of Intended Regulatory Action for **9 VAC 5-91-10 et seq., Regulation for the Control of Motor Vehicle Emissions in Northern Virginia**, which was published in 14:24 VA.R 3737 August 17, 1998.

**Contact:** Cindy M. Berndt, Department of Environmental Quality, P. O. Box 10009, Richmond, VA 23240, telephone (804) 698-4378, FAX (804) 698-4500 or (804) 698-4021/TTY.

VA.R Doc. No. R98-302; Filed December 14, 1999; 4:15 p.m.

#### † Withdrawal of Notice of Intended Regulatory Action

Notice is hereby given that the State Air Pollution Control Board has WITHDRAWN the Notice of Intended Regulatory Action for **9 VAC 5-170-10 et seq., Regulation for General Administration (Rev. T97)**, which would have established requirements to govern the use of mediation and alternative dispute resolution in regulations development and permit issuance. The notice was published in 14:21 VA.R. 2833 July 6, 1998.

**Contact:** Cindy M. Berndt, Department of Environmental Quality, P. O. Box 10009, Richmond, VA 23240, telephone (804) 698-4378, FAX (804) 698-4500 or (804) 698-4021/TTY.

VA.R Doc. No. R98-254; Filed December 14, 1999; 4:15 p.m.

### VIRGINIA WASTE MANAGEMENT BOARD

#### Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Virginia Waste Management Board intends to consider amending regulations entitled: **9 VAC 20-130-10 et seq. Regulations for the Development of Solid Waste Management Plans**. The purpose of the proposed action is to consider all aspects of the regulations for amendment; however, focal issues are expected to include the definition of the terms defining the recycle rate and the structure, methodology and frequency of amendments to the plans. The establishment of progress reports may be considered, including the frequency, methodology and structure of the reports. The agency intends to hold a public hearing on the proposed regulation after publication.

Statutory Authority: § 10.1-1411 of the Code of Virginia.

Public comments may be submitted until February 1, 2000.

**Contact:** Robert G. Wickline, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4213.

VA.R. Doc. No. R00-60; Filed December 1, 1999, 8:46 a.m.

#### Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Virginia Waste Management Board intends to consider amending regulations entitled: **9 VAC 20-140-10 et seq. Regulations for the Certification of Recycling Machinery and Equipment for Tax Exemption Purposes**. The purpose of the proposed action is to amend the regulation to incorporate legislative changes made to the Code of Virginia since the regulations were adopted. The legislative changes include: (i) the increase in total credit allowable in a taxable year to 60%, as amended by the 1998 Acts of Assembly; (ii) carry over of tax credit from five to 10 years until the total credit amount is used and tax credit extended to year 2001, as amended by the 1996 Acts of Assembly; (iii) tax credit extended to January 1, 1997, as amended by the 1995 Acts of Assembly; (iv) the elimination of fixed location, as amended by the 1993 Acts of Assembly; and (v) the certification of items related to capitalized cost of equipment, as amended by the 1992 Acts of Assembly. The agency does not intend to hold a public hearing on the proposed regulation after publication.

Statutory Authority: §§ 10.1-1402, 58.1-3661 and 58.1-3664 of the Code of Virginia.

Public comments may be submitted until February 1, 2000.

**Contact:** John E. Ely, Director, Office of Waste Programs, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4249 or FAX (804) 698-4327.

VA.R. Doc. No. R00-59; Filed December 1, 1999, 8:46 a.m.

#### Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Virginia Waste Management Board intends to consider amending regulations entitled: **9 VAC 20-180-10 et seq. Regulations Governing the Commercial Transportation of Nonhazardous Municipal Solid Waste and Regulated Medical Waste by Truck**. The purpose of the proposed action is to adopt a regulation to govern the transportation of certain wastes by truck. The new regulation will establish requirements necessary to protect public health, safety and welfare and the environment from pollution, impairment or destruction. As part of this action, the board will consider what procedural rules and forms may be

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# Notices of Intended Regulatory Action

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necessary for filing of reports, as required by the statute, concerning loss or spillage of waste during transport. It will also consider rules and forms necessary to assure the Commonwealth that losses or spills are contained and removed as required by the statute and in accordance with all federal, state and local laws and regulations.

The agency intends to hold a public hearing on the proposed regulation after publication.

Statutory Authority: § 10.1-1454.2 of the Code of Virginia.

Public comments may be submitted until February 1, 2000.

**Contact:** Robert G. Wickline, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4213 or (804) 698-4327.

VA.R. Doc. No. R00-58; Filed December 1, 1999, 8:46 a.m.

## STATE WATER CONTROL BOARD

### † Withdrawal of Notice of Intended Regulatory Action

Notice is hereby given that the State Water Control Board has WITHDRAWN the Notice of Intended Regulatory Action for **VR 680-15-04, Shenandoah River Surface Water Management Area - The Shenandoah River, including the portions of the North Fork Shenandoah River and the South Fork Shenandoah River within Warren County**, which was published in 9:23 VA.R. 4145 August 9, 1993.

**Contact:** Cindy M. Berndt, Department of Environmental Quality, P. O. Box 10009, Richmond, VA 23240, telephone (804) 698-4378, FAX (804) 698-4500 or (804) 698-4021/TTY.

VA.R. Doc. No. C93-1906; Filed December 14, 1999; 4:15 p.m.

### † Withdrawal of Notice of Intended Regulatory Action

Notice is hereby given that the State Water Control Board has WITHDRAWN the Notice of Intended Regulatory Action for **VR 680-15-05, North River Surface Water Management Area - The North River and all its Tributaries Above the Confluence with the Middle River**, which was published in 9:23 VA.R. 4146 August 9, 1993.

**Contact:** Cindy M. Berndt, Department of Environmental Quality, P. O. Box 10009, Richmond, VA 23240, telephone (804) 698-4378, FAX (804) 698-4500 or (804) 698-4021/TTY.

VA.R. Doc. No. C93-1905; Filed December 14, 1999; 4:15 p.m.

### † Withdrawal of Notice of Intended Regulatory Action

Notice is hereby given that the State Water Control Board has WITHDRAWN the Notice of Intended Regulatory Action for **VR 680-15-06, James River Surface Water Management Area - The Richmond Metropolitan Area**, which was published in 9:23 VA.R. 4147 August 9, 1993.

**Contact:** Cindy M. Berndt, Department of Environmental Quality, P. O. Box 10009, Richmond, VA 23240, telephone (804) 698-4378, FAX (804) 698-4500 or (804) 698-4021/TTY.

VA.R. Doc. No. C93-1904; Filed December 14, 1999; 4:15 p.m.

### † Withdrawal of Notice of Intended Regulatory Action

Notice is hereby given that the State Water Control Board has WITHDRAWN the Notice of Intended Regulatory Action for **9 VAC 25-15-10 et seq. Mediation and Alternative Dispute Resolution**, which was published in 14:21 VA.R. 2837 July 6, 1998.

**Contact:** Cindy M. Berndt, Department of Environmental Quality, P. O. Box 10009, Richmond, VA 23240, telephone (804) 698-4378, FAX (804) 698-4500 or (804) 698-4021/TTY.

VA.R. Doc. No. R98-259; Filed December 14, 1999; 4:15 p.m.

### Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Water Control Board intends to consider amending regulations entitled: **9 VAC 25-260-5 et seq. Water Quality Standards**. The purpose of the proposed action is to consider amending the water quality standards to update numerical or narrative criteria for dissolved oxygen for certain waters of the Chesapeake Bay and other naturally occurring low dissolved oxygen waters where current criteria are not appropriate.

Intent: The intent of this rulemaking is to protect designated and beneficial uses in the Commonwealth by adopting regulations that are technically correct and reasonable. These standards will be used in setting Virginia Pollutant Discharge Elimination System Permit limits and for evaluating the waters of the Commonwealth for inclusion in the federal Clean Water Act § 305(b) report and § 303(d) list. Waters not meeting standards will require development of a Total Maximum Daily Load under the federal Clean Water Act § 303(d).

Need: This rulemaking is needed because the current dissolved oxygen criteria (4mg/l minimum and 5mg/l daily average) are not appropriate in waters where the naturally occurring dissolved oxygen levels are below the existing criteria. These types of water may include the deep trenches of the Chesapeake Bay, the deep waters of stratified lakes and wetlands. Changes to these criteria are needed to facilitate permitting, monitoring and Total Maximum Daily Load development.

Alternatives Available to Meet the Need: Many alternatives in the subject areas listed will become available as DEQ staff and the public begin to review scientific data and the needs of permitting and monitoring. DEQ will work in conjunction with other state and federal agencies to consider various alternatives. Alternatives provided by the public will also be considered.

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# Notices of Intended Regulatory Action

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The department has not accepted nor rejected any alternatives as of yet. Some alternatives being considered by the agency now include, but are not limited to, the following:

- whether we should include alternative dissolved oxygen criteria for the Chesapeake Bay, wetlands and lakes;
- whether we should consider for adoption the Chesapeake Bay Living Resources Goals or Environmental Protection Agency criteria or some other criteria;
- whether zones for application of the criteria should be included and what these zones should be (i.e. application of a lower dissolved oxygen criterion one meter off the bottom (for the Bay), in the hypolimnion or below the thermocline (lakes), throughout the column (wetlands) or should some other zone be considered for application of the alternative criteria);
- whether to improve the specific narrative criterion that recognizes natural background differences for all waters. Currently natural conditions in surface water are recognized in the following sections of the regulation: 9 VAC 25-260-10.G, 9 VAC 25-260-50 and 9 VAC 25-260-250;

**Request for Comments:** Comments are requested on the intended regulatory action, including any ideas to assist the agency in the development of the proposal. Comments are requested on the costs and benefits of the stated alternatives or other alternatives. DEQ also requests comments as to whether the agency should use the participatory approach to assist the agency in the development of the proposal. The participatory approach is defined as a method for the use of (i) standing advisory committees, (ii) ad hoc advisory groups or panels, (iii) consultation with groups or individuals registering interest in working with the agency, or (iv) any combination thereof.

**Public Meeting:** A public meeting will be held on January 27, 2000, at 2 p.m. at the Virginia War Memorial, 621 South Belvidere Street, Richmond, Virginia 23220. Public comments on the intended regulatory action will be accepted until February 18, 2000. Please submit comments to Eleanore Daub, Office of Water Quality Programs, Department of Environmental Quality, 629 East Main Street, Richmond, VA 23219.

The agency intends to hold a public hearing on the proposed regulation after publication.

Statutory Authority: § 62.1-44.15 of the Code of Virginia.

Public comments may be submitted until February 18, 2000.

**Contact:** Eleanore Daub, Environmental Program Planner, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4111 or (804) 698-4522.

VA.R. Doc. No. R00-57; Filed December 1, 1999, 8:46 a.m.

## † Withdrawal of Notices of Intended Regulatory Action

Notice is hereby given that the State Water Control Board has WITHDRAWN the Notice of Intended Regulatory Action for the repeal of **9 VAC 25-420-10 et seq. through 9 VAC 25-572-10 et seq. Water Quality Management Plans**, which was published in 14:1 VA.R. 14 September 29, 1997.

**Contact:** Cindy M. Berndt, Department of Environmental Quality, P. O. Box 10009, Richmond, VA 23240, telephone (804) 698-4378, FAX (804) 698-4500 or (804) 698-4021/TTY.

VA.R. Doc. No. R98-15; Filed December 14, 1999; 4:15 p.m.

## Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Water Control Board intends to consider amending regulations entitled: **9 VAC 25-430-10 et seq. Roanoke River Basin Water Quality Management Plan**. The purpose of the proposed action is to amend 9 VAC 25-430-20 of the current water quality management plan for the Town of Chase City. The amendment would allow for increased wasteload allocations for the existing wastewater treatment plant based on the results of mathematical modeling of water quality in the receiving water body.

A discharger currently permitted under the Virginia Pollutant Discharge Elimination System (VPDES) has requested revised waste load allocations in its VPDES permit. The VPDES permitted discharge is Chase City Municipal Sewage Treatment Plant (VPDES No. VA0076881), which discharges to Little Bluestone Creek. Chase City is in Mecklenburg County in Water Quality Management Area VII as defined in the Roanoke River Basin WQMP; this discharge is currently limited by waste load allocations in the WQMP. The Roanoke River Basin Water Quality Management Plan was originally adopted by the State Water Control Board December 9, 1976, and most recently amended January 6, 1999. Regulatory action, in the form of an amendment to the existing Roanoke River Basin WQMP, is necessary because State Water Control Law requires that VPDES permits be consistent with approved water quality management plans. Any time the allowable discharge in a VPDES permit which is limited by a waste load allocation in a WQMP is changed, the WQMP must be amended to reflect the new waste load allocation.

Water quality management plans identify water quality problems, consider alternative solutions, and recommend control measures needed to attain or maintain water quality standards. The existing Roanoke River Basin WQMP states, AAs more data becomes available, alternative methods of analysis can be considered, and in future updates of this plan, the appropriate action item(s) can be amended to reflect the use of these other equations and methods of analysis. (9 VAC 25-430-20). This amendment addresses the results of such an analysis. The affected segment is Little Bluestone Creek.

The Little Bluestone Creek segment was originally modeled in 1976 using the TVA Flat Water Equation. In 1997, a Streeter-Phelps mathematical model characteristic of Little Bluestone



# Notices of Intended Regulatory Action

Creek was developed by conducting an intensive stream survey (B&B Consultants, Inc., November 1997). In 1997, the Town of Chase City requested increased wasteload allocations for their existing facility on the basis that a seasonally tiered approach would take advantage of higher flows and lower temperatures during winter months. Based on this model, waste load allocations were developed for the existing 0.600 mgd discharge which are predicted by the model to maintain the dissolved oxygen standard in Little Bluestone Creek.

Statement of Statutory Mandates: Water Quality Management Plans are required by § 303(e) of the federal Clean Water Act (WCA) [33 USC 1251] as implemented by 40 CFR 130, et seq. The State Water Control Law § 62.1-44.15(13) as implemented in the Permit Regulation states no permit may be issued: ... For any discharge inconsistent with a plan or plan amendment approved under Section 208(b) of the CWA; [9 VAC 25-31-50, Prohibitions C.7., July 1996].

Statement of Conclusions: The Roanoke River Basin WQMP is an existing regulation. The Town of Chase City requested changes to the waste load allocations in its VPDES discharge permit. The proposed waste load allocations for the Town of Chase City discharge were predicted, through mathematical modeling, to be adequate to maintain water quality standards in Little Bluestone Creek. This amendment to the Roanoke

River Basin WQMP will satisfy the intent of the original plan, ensure existing beneficial uses of the affected water body are maintained, and accommodate the request of the VPDES permitted discharge.

The proposed Town of Chase City STP discharge waste load allocation will enable the Town to more effectively manage its limited resources in an effort to protect the health and safety of the citizens of the community, and the citizens of the Commonwealth.

Statement of Process for Considering Alternatives:

Alternative 1: Amend the Roanoke River Basin Water Quality Management Plan as proposed.

*This alternative is recommended.* The specific recommended changes to the wasteload allocations for the affected discharge are as follows:

Delete the § 303(e) Wasteload Allocation (BOD<sub>5</sub>) for Chase City Regional STP in WQMA VII - Clarksville-Chase City-Boydton, from Table 2 - Wasteload Allocations for Significant Discharges for Selected Alternative (9 VAC 25-430-20), and substitute a reference to Table 3; and add to Table 3 - Wasteload Allocations for Discharges with Tiered Permits (9 VAC 25-430-20), as follows:

Water Quality Management Area (WQMA)	Study Area Name	Discharger	Months	Flow (mgd)	Effluent D.O. (mg/l)	cBOD <sub>5</sub> (lbs/day)	BOD <sub>5</sub> (mg/l)	Ammonia (mg/l)	TKN (mg/l)
WQMA VII	Clarksville-Chase City-Boydton	Chase City Regional STP	Dec-Apr May-Nov	0.60	7.0	125.22	25.0 <sup>1</sup>	3.4	8.8
				0.60	6.0	65.04	13.0 <sup>1</sup>	1.8	4.2

NOTES:

<sup>1</sup>cBOD<sub>5</sub>/BOD<sub>5</sub> = 25/30

Alternative 2: Deregulate the existing Roanoke River Basin WQMP.

*This alternative is not recommended at this time for this discharge.* In the Executive Order 15 (94) review of the Water Quality Management Plan regulations, the Department of Environmental Quality (DEQ) proposed the repeal of 17 existing water quality management plans and replacement of the plans with one nonregulatory statewide plan. This proposal included the Roanoke River Basin WQMP. Deregulation and replacement of the current regulatory WQMP would eliminate the need for this proposed WQMP amendment. However, deregulation of the WQMP will not be completed in time to enable the affected discharge to increase loadings and remain in compliance with its VPDES permit.

Alternative 3: Maintain existing waste load allocations (No Action Alternative)

*This alternative is not recommended.* Receiving water quality modeling, based on data collected after the adoption of the

existing WQMP, predicts that the proposed Town of Chase City waste load allocation will be adequate to maintain the dissolved oxygen water quality standard in the receiving water body. It is clear that the intent of the WQMP is to incorporate the results of analysis based on data made available after the adoption of the original WQMP. Additionally, because VPDES permitted discharges are required to be in conformance with WQMPs, unless the WQMP waste load allocations are changed, increased loadings requested by the permittee will not be permitted.

In compliance with the SWCB's Public Participation Guidelines (9 VAC 25-10-10 et seq.), the DEQ will, during the Notice of Intended Regulatory Action and the Notice of Public Comment, include the proposed amendment and alternatives, and request comments from the public on these and other alternatives. The DEQ will also request comments on the costs and benefits of these alternatives or any other alternatives the public may wish to provide.

The DEQ intends to hold one public meeting on this proposed amendment no less than 30 days after it is published in the

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# Notices of Intended Regulatory Action

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Virginia Register of Regulations. The intent of the public meeting is to further explain the proposed amendment and to allow for verbal comments as requested from the public regarding the amendment. Additionally, the DEQ will form a Technical Advisory Committee to review the proposed amendment if there are more than five requests to do so within 30 days after publication of the Notice of Intended Regulatory Action in the Virginia Register of Regulations.

Statutory Authority: § 62.1-44.15 of the Code of Virginia.

Public comments may be submitted until January 31, 2000.

**Contact:** John van Soestbergen, Environmental Engineer Senior, Department of Environmental Quality, 4949-A Cox Rd., Glen Allen, VA 23060, telephone (804) 527-5043 or FAX (804) 527-5106.

VA.R. Doc. No. R00-56; Filed December 1, 1999, 8:46 a.m.

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## TITLE 11. GAMING

### VIRGINIA RACING COMMISSION

#### † Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Virginia Racing Commission intends to consider amending regulations entitled: **11 VAC 10-150-10 et seq. Regulations Pertaining to Horse Racing with Pari-Mutuel Wagering: Standardbred Racing.** The purpose of the proposed action is to bring the regulation into conformance with the standards of the U.S. Trotting Association and provide uniformity from jurisdiction to jurisdiction. The agency intends to hold a public hearing on the proposed regulation after publication.

Statutory Authority: § 59.1-369 of the Code of Virginia.

Public comments may be submitted until February 16, 2000.

**Contact:** William H. Anderson, Policy Analyst, Virginia Racing Commission, 10700 Horsemen's Road, New Kent, VA 23124, telephone (804) 966-7404 or FAX (804) 966-7418.

VA.R. Doc. No. R00-72; Filed December 20, 1999, 3:25 p.m.

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## TITLE 12. HEALTH

### STATE MENTAL HEALTH, MENTAL RETARDATION AND SUBSTANCE ABUSE SERVICES BOARD

#### Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Mental Health, Mental Retardation and Substance Abuse Services Board intends to

consider repealing regulations entitled: **12 VAC 35-110-10 et seq. Rules and Regulations to Assure the Rights of Residents of Facilities Operated by the Department of Mental Health, Mental Retardation and Substance Abuse Services.** The purpose of the proposed action is to repeal the regulation, which protects the legal and human rights of all clients who receive treatment in hospitals and training centers operated by the Department of Mental Health, Mental Retardation and Substance Abuse Services. The regulation is being superseded by a regulation that establishes a single standard for community and facility, public and private human rights programs; addresses consumer and family concerns; and reflects current practice and terminology. The agency does not intend to hold a public hearing on the proposed regulation after publication.

Statutory Authority: § 37.1-84.1 of the Code of Virginia.

Public comments may be submitted until February 3, 2000.

**Contact:** Rita Hines, Acting Director, Office of Human Rights, Department of Mental Health, Mental Retardation and Substance Abuse Services, P.O. Box 1797, Richmond, VA 23218-1797, telephone (804) 786-3988 or FAX (804) 371-2308.

VA.R. Doc. No. R00-68; Filed December 7, 1999, 9:29 a.m.

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## TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

### BOARD FOR CONTRACTORS

#### Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board for Contractors intends to consider amending regulations entitled: **18 VAC 50-22-10 et seq. Board for Contractors Regulations.** The purpose of the proposed action is to (i) modify the board's regulations relating to disciplinary standards; (ii) clarify the board's regulations relating to new work; (iii) revisit entry requirements, general definitions, contractor specialties, and renewal and reinstatement requirements; and (iv) make other changes which may be necessary pursuant to the board's periodic review of its regulations. The agency intends to hold a public hearing on the proposed regulation after publication.

Statutory Authority: §§ 54.1-201 and 54.1-1102 of the Code of Virginia.

Public comments may be submitted until February 3, 2000.

**Contact:** Kelley Hellams, Assistant Director, Board for Contractors, 3600 W. Broad St., 4th Floor, Richmond, VA 23230, telephone (804) 367-0841, FAX (804) 367-2474 or (804) 367-9753/TTY ☎, e-mail Contractors@dpor.state.va.us.

VA.R. Doc. No. R00-70; Filed December 7, 1999, 10:18 a.m.

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# Notices of Intended Regulatory Action

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## BOARD OF MEDICINE

### Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Medicine intends to consider amending regulations entitled: **18 VAC 85-20-10 et seq. Regulations Governing the Practice of Medicine, Osteopathy, Podiatry, Chiropractic, and Physician Acupuncture.** The purpose of the proposed action is to amend the regulation to address a problem with the seven-year rule for completion of the USMLE examinations and with the recent decision by the Federation of State Medical Boards to no longer accept combination examinations. The agency intends to hold a public hearing on the proposed regulation after publication.

Statutory Authority: Chapter 29 (§ 54.1-2900 et seq.) of the Code of Virginia.

Public comments may be submitted until January 19, 2000.

**Contact:** Warren W. Koontz, M.D., Executive Director, Board of Medicine, 6606 W. Broad St., Richmond, VA 23230-1717, telephone (804) 662-9908 or FAX (804) 662-9943.

VA.R. Doc. No. R00-51; Filed November 23, 1999, 10:56 a.m.

### Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Medicine intends to consider amending regulations entitled: **18 VAC 85-50-10 et seq. Regulations Governing the Practice of Physician Assistants.** The purpose of the proposed action is to address the practice of physician assistants in hospital emergency departments. The agency intends to hold a public hearing on the proposed regulation after publication.

Statutory Authority: Chapter 29 (§ 54.1-2900 et seq.) of Title 54.1 of the Code of Virginia.

Public comments may be submitted until January 19, 2000.

**Contact:** Warren W. Koontz, M.D., Executive Director, Board of Medicine, 6606 W. Broad St., Richmond, VA 23230-1717, telephone (804) 662-9908 or FAX (804) 662-9943.

VA.R. Doc. No. R00-50; Filed November 23, 1999, 10:56 a.m.

## BOARD OF LICENSED PROFESSIONAL COUNSELORS, MARRIAGE AND FAMILY THERAPISTS AND SUBSTANCE ABUSE TREATMENT PROFESSIONALS

### Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Licensed Professional Counselors, Marriage and Family Therapists and Substance Abuse Treatment Professionals intends to consider amending regulations entitled: **18 VAC 115-60-10 et seq. Regulations Governing the Practice of Licensed Substance Abuse**

**Treatment Practitioners.** The purpose of the proposed action is to consider an increase in fees for licensees to comply with a statutory requirement for revenues to be sufficient to cover the expenditures of the board. The agency intends to hold a public hearing on the proposed regulation after publication.

Statutory Authority: § 54.1-2400 and Chapter 35 (§ 54.1-3500 et seq.) of Title 54.1 of the Code of Virginia.

Public comments may be submitted until January 19, 2000.

**Contact:** Janet D. Delorme, Deputy Executive Director, Board of Psychology, 6606 W. Broad St., Richmond, VA 23230-1717, telephone (804) 662-9575 or FAX (804) 662-9943.

VA.R. Doc. No. R00-65; Filed December 1, 1999, 11:36 a.m.

## BOARD OF PSYCHOLOGY

### Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Psychology intends to consider amending regulations entitled: **18 VAC 125-20-10 et seq. Regulations Governing the Practice of Psychology.** The purpose of the proposed action is to establish a provision for temporary licensure for residents in psychology. The agency intends to hold a public hearing on the proposed regulation after publication.

Statutory Authority: § 54.1-2400 and Chapter 36 (§ 54.1-3600 et seq.) of Title 54.1 of the Code of Virginia.

Public comments may be submitted until January 19, 2000.

**Contact:** Janet D. Delorme, Deputy Executive Director, Board of Psychology, 6606 W. Broad St., Richmond, VA 23230-1717, telephone (804) 662-9575 or FAX (804) 662-9943.

VA.R. Doc. No. R00-52; Filed November 30, 1999, 10:45 a.m.

## REAL ESTATE BOARD

### Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Real Estate Board intends to consider amending regulations entitled: **18 VAC 135-40-10 et seq. Time Share Regulations.** The purpose of the proposed action is to incorporate changes into the regulations required by amendments to the Virginia Time-Share Act (§ 55-360 et seq. of the Code of Virginia) and to ensure compliance of the regulations with Executive Order 25 (98). The agency intends to hold a public hearing on the proposed regulation after publication.

Statutory Authority: § 55-396 of the Code of Virginia.

Public comments may be submitted until February 2, 2000.

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# Notices of Intended Regulatory Action

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**Contact:** Eric L. Olson, Regulatory Boards Administrator, Real Estate Board, 3600 W. Broad St., 4th Floor, Richmond, VA 23230, telephone (804) 367-8510, FAX (804) 367-2475 or (804) 367-9753/TTY ☎

VA.R. Doc. No. R00-69; Filed December 6, 12:57 p.m.

## BOARD FOR PROFESSIONAL SOIL SCIENTISTS

### Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board for Professional Soil Scientists intends to consider amending regulations entitled: **18 VAC 145-20-10 et seq. Board for Professional Soil Scientists Regulations.** The purpose of the proposed action is to review entry requirements, general definitions and renewal and reinstatement requirements, and make other amendments which may be necessary pursuant to the board's periodic review of regulations. The agency intends to hold a public hearing on the proposed regulation after publication.

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

Public comments may be submitted until February 3, 2000.

**Contact:** Kelley Hellams, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., 4th Floor, Richmond, VA 23230, telephone (804) 367-0841, FAX (804) 367-2474 or (804) 367-9753/TTY ☎, e-mail Contractors@dpor.state.va.us.

VA.R. Doc. No. R00-71; Filed December 7, 1999, 10:13 a.m.

## BOARD FOR WATERWORKS AND WASTEWATER WORKS OPERATORS

### † Notice of Intended Regulation Action

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board for Waterworks and Wastewater Works Operators intends to consider amending regulations entitled: **18 VAC 160-20-10 et seq. Board for Waterworks and Wastewater Works Operators Regulations.** The purpose of the proposed action is to seek public comment on existing regulations concerning the effectiveness and continued need for the regulations. The board is considering modifications to the definition section, the entry and experience requirements for licensure, and the procedures and provisions regarding license renewal and reinstatement. Further, the board intends to amend the regulations to implement the EPA Guidelines for the Certification and Recertification of the Operators of Community and Nontransient Noncommunity Public Water Systems, which were published in the February 5, 1999, edition of the Federal Register, by developing appropriate definitions; entry and experience standards; renewal, continuing professional education and reinstatement standards; and disciplinary standards for waterworks operators. The agency intends to hold a public hearing on the proposed regulation after publication.

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

Public comments may be submitted until February 17, 2000.

**Contact:** Joseph Kossan, Assistant Administrator, Department of Professional and Occupational Regulations, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-8505, FAX (804) 367-2475 or (804) 367-9753/TTY ☎

VA.R. Doc. No. R00-74; Filed December 22, 1999, 11:50 a.m.

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## TITLE 22. SOCIAL SERVICES

### STATE BOARD OF SOCIAL SERVICES

#### Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Board of Social Services intends to consider amending regulations entitled: **22 VAC 40-35-10 et seq. Virginia Independence Program.** The purpose of the proposed action is to amend 22 VAC 40-35-10 and 22 VAC 40-35-90 of the Code of Virginia existing regulations for the Virginia Initiative for Employment Not Welfare (VIEW) program to conform with Item 399 G of Chapter 935 of the 1999 Virginia Acts of Assembly, which provides the authority to provide up to one year of employment and training services, if needed, to former VIEW cases that were not sanctioned under VIEW at the time their TANF case closed. The agency does not intend to hold a public hearing on the proposed regulation after publication.

Statutory Authority: § 63.1-25 of the Code of Virginia and Item 399 G of Chapter 935 of the 1999 Acts of Assembly.

Public comments may be submitted until January 19, 2000.

**Contact:** Mark Golden, Program Consultant, Department of Social Services, 730 E. Broad St., Richmond, VA 23219, telephone (804) 692-1735.

VA.R. Doc. No. R00-61; Filed December 1, 1999, 8:20 a.m.

#### Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Board of Social Services intends to consider amending regulations entitled: **22 VAC 40-720-10 et seq. Child Protective Services Release of Information to Family Advocacy Representative of the United States Armed Forces.** The purpose of the proposed action is to amend the definition of "founded" to ensure that it is consistent with the definition of "founded" in the regulation entitled Child Protective Services (22 VAC 40-705-10 et seq.), which requires "preponderance of the evidence" for a founded disposition. The agency does not intend to hold a public hearing on the proposed regulation after publication.

Statutory Authority: §§ 63.1-25 and 63.1-248.6 of the Code of Virginia

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## Notices of Intended Regulatory Action

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Public comments may be submitted until January 19, 2000.

**Contact:** Betty Jo Zarris, Program Consultant, Department of Social Services, 730 E. Broad St., Richmond, VA 23219, telephone (804) 692-1220 or FAX (804) 692-2215.

VA.R. Doc. No. R00-63; Filed December 1, 1999, 8:20 a.m.

### Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Board of Social Services intends to consider repealing regulations entitled: **22 VAC 40-790-10 et seq. Minimum Standards for Local Agency Operated Volunteer Respite Child Care Programs.** The purpose of the proposed action is to repeal this regulation because it is not essential to protect the health, safety or welfare of citizens, or for the efficient, economical performance of an important government function. There are no programs being operated which fall under this program. The agency does not intend to hold a public hearing on the proposed regulation after publication.

Statutory Authority: §§ 63.1-25 and 63.1-55 of the Code of Virginia

Public comments may be submitted until January 19, 2000.

**Contact:** Phyllis S. Parrish, Program Consultant, Department of Social Services, 730 E. Broad St., Richmond, VA 23219, telephone (804) 692-1895 or FAX (804) 692-1869.

VA.R. Doc. No. R00-62; Filed December 1, 1999, 8:20 a.m.



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# PUBLIC COMMENT PERIODS - PROPOSED REGULATIONS

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## PUBLIC COMMENT PERIODS REGARDING STATE AGENCY REGULATIONS

This section gives notice of public comment periods and public hearings to be held on proposed regulations. The notice will be published once at the same time the proposed regulation is published in the Proposed Regulations section of the *Virginia Register*. The notice will continue to be carried in the Calendar of Events section of the *Virginia Register* until the public comment period and public hearing date have passed.

Notice is given in compliance with § 9-6.14:7.1 of the Code of Virginia that the following public hearings and public comment periods regarding proposed state agency regulations are set to afford the public an opportunity to express their views.

## TITLE 8. EDUCATION

### STATE BOARD OF EDUCATION

- February 28, 2000 - 7 p.m. -- Public Hearing**  
Marion Senior High, 848 Stage Street, Marion, Virginia.
- February 28, 2000 - 7 p.m. -- Public Hearing**  
John Marshall High School, 4225 Old Brook Road, Richmond, Virginia.
- February 28, 2000 - 7 p.m. -- Public Hearing**  
Fairfax, Virginia area; location to be announced.
- February 28, 2000 - 7 p.m. -- Public Hearing**  
Lynchburg, Virginia area; location to be announced.
- February 28, 2000 - 7 p.m. -- Public Hearing**  
Newport News, Virginia area; location to be announced.
- February 28, 2000 - 7 p.m. -- Public Hearing**  
Staunton, Virginia area; location to be announced.
- March 17, 2000** - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Board of Education intends to amend regulations entitled: **8 VAC 20-80-10 et seq. Regulations Governing Special Education Programs for Children with Disabilities in Virginia and repeal** regulations entitled: **8 VAC 20-750-10 et seq. Special Education Program Standards**. These regulations ensure that Virginia complies with the Individuals with Disabilities Education Act (IDEA) (20 USC § 1400 et seq.) and that all children with disabilities in the Commonwealth have available a free appropriate public education and procedural safeguards. The Special Education Program Standards, which provide special education teacher staffing and assignments, is being incorporated into the board of Virginia's special education regulations and is, therefore, being repealed.

Statutory Authority: §§ 22.1-16 and 22.1-214 of the Code of Virginia.

**Contact:** Catherine A. Pomfrey, Executive Secretary Senior, Department of Education, P.O. Box 2120, Richmond, VA 23218-2120, telephone (804) 225-2402, FAX (804) 371-8796 or (804) 371-2822/TTY ☎

## TITLE 12. HEALTH

### DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

**March 17, 2000** - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of Medical Assistance Services intends to amend regulations entitled: **Program for All-Inclusive Care for the Elderly - PACE: 12 VAC 30-10-10 et seq. State Plan Under Title XIX of the Social Security Act Medical Assistance Program; General Provisions; 12 VAC 30-50-10 et seq. Amount, Duration, and Scope of Medical and Remedial Care Services; 12 VAC 30-120-10 et seq. Waivered Services**. These proposed regulations provide for the creation of Medicaid coverage of PACE services (Program of All-Inclusive Care for the Elderly). These regulations link all types of medical care that frail, elderly individuals might need through a system of care management. This program has been modeled after the On Lok program in California.

Statutory Authority: § 32.1-325 of the Code of Virginia.

Public comments may be submitted until March 17, 2000, to T. C. Jones, Analyst, LTC-Appeals Division, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, Virginia 23219.

**Contact:** Victoria Simmons, Regulatory Coordinator, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 786-7959 or FAX (804) 786-1680.

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**March 17, 2000** - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of Medical Assistance Services intends to amend regulations

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## Public Comment Periods - Proposed Regulations

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entitled: **12 VAC 30-70-10 et seq. Methods and Standards for Establishing Payment Rates-Inpatient Hospital Care (Diagnosis Related Groups)**. The proposed regulations amend the existing inpatient hospital payment methodology regulations to remove transition period rules and fully implement the new Diagnosis Related Grouping (DRG) methodology. These amendments fulfill a directive by the 1996 General Assembly to implement a DRG methodology (Chapter 912, Item 322 J) and the settlement terms of a case brought under the federal Boren Amendment which required DMAS and the then Virginia Hospital Association to jointly develop a replacement reimbursement method.

Statutory Authority: § 32.1-325 of the Code of Virginia.

Public comments may be submitted until March 17, 2000, to Stan Fields, Director of Cost Settlement, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, Virginia 23219.

**Contact:** Victoria Simmons, Regulatory Coordinator, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 786-7959 or FAX (804) 786-1680.



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# PROPOSED REGULATIONS

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For information concerning Proposed Regulations, see Information Page.

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## Symbol Key

Roman type indicates existing text of regulations. *Italic type* indicates proposed new text.  
Language which has been stricken indicates proposed text for deletion.

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## TITLE 8. EDUCATION

### STATE BOARD OF EDUCATION

Title of Regulation: **8 VAC 20-80-10 et seq. Regulations Governing Special Education Programs for Children with Disabilities in Virginia (amending 8 VAC 20-80-10, 8 VAC 20-80-30 through 8 VAC 20-80-160 and 8 VAC 20-80-190; adding 8 VAC 20-80-45, 8 VAC 20-80-52, 8 VAC 20-80-54, 8 VAC 20-80-56, 8 VAC 20-80-58, 8 VAC 20-80-62, 8 VAC 20-80-64, 8 VAC 20-80-66, 8 VAC 20-80-68, 8 VAC 20-80-72, 8 VAC 20-80-74, 8 VAC 20-80-76, 8 VAC 20-80-78, 8 VAC 20-80-152, and 8 VAC 20-80-155; repealing 8 VAC 20-80-20, 8 VAC 20-80-170, 8 VAC 20-80-180, and 8 VAC 20-80-200).**

**8 VAC 20-570-10 et seq. Special Education Program Standards (REPEALING).**

Statutory Authority: §§ 22.1-16 and 22.1-214 of the Code of Virginia and the Individuals with Disabilities Education Act (20 USC § 1400 et seq.).

Public Hearing Dates:

February 28, 2000 - 7 p.m. - Fairfax.  
February 28, 2000 - 7 p.m. - Lynchburg.  
February 28, 2000 - 7 p.m. - Marion.  
February 28, 2000 - 7 p.m. - Newport News.  
February 28, 2000 - 7 p.m. - Richmond.  
February 28, 2000 - 7 p.m. - Staunton.

Public comments may be submitted until March 17, 2000.  
(See Calendar of Events section  
for additional information)

Basis: Section 22.1-16 of the Code of Virginia authorizes the Board of Education to promulgate such regulations as may be necessary to carry out the provisions of Title 22.1 of the Code of Virginia. Section 22.1-214 requires the board to prepare and supervise the implementation by each school division of a program of special education designed to educate and train children with disabilities.

Purpose: The purpose of these regulations is to align Virginia's special education regulations with the federal IDEA regulations that were issued on March 12, 1999 to ensure Virginia's continued eligibility for federal special education funding. The revision incorporates provisions of the Code of Virginia as well as other regulations that apply to the provision of special education programs and strives to clarify areas of ambiguity in the previous regulations. The regulations are essential to protect the health, safety or welfare of students with disabilities in Virginia. By ensuring that Virginia's regulations comport with federal law and regulations, we ensure that students with disabilities in the Commonwealth are ensured the availability of a free appropriate public education and are afforded the procedural safeguards and protections guaranteed by federal law.

Substance: The regulations contain provisions governing: (i) responsibilities of the Virginia Department of Education; (ii) responsibilities of local school divisions and state-operated programs; (iii) requirements associated with child find, evaluation, eligibility and provision of services to children with disabilities; (iv) the requirements associated with the provision of procedural safeguards, including notice and consent, and the opportunity to file complaints, request mediation or request a due process hearing; and (v) the requirements associated with funding.

Issues: Regulatory changes are being proposed in order to ensure that Virginia's special education regulations conform with federal special education regulations that were issued on March 12, 1999. Additionally, changes have been proposed to incorporate provisions of the Code of Virginia and the Special Education Program Standards, as well as other regulations that apply to the provision of special education programs and to clarify areas of ambiguity in the previous regulations.

Advantages to the Public: These regulations will ensure that Virginia's special education regulations comport with federal law thus ensuring that students with disabilities have available a free appropriate public education and are afforded the procedural safeguards and protections guaranteed by federal law.

Disadvantages to the Public: There are no identifiable disadvantages to the general public.

Advantages to the Agency: The Virginia Department of Education is required to revise these regulations in order to comport with the 1997 amendments to the Individuals with Disabilities Education Act and its implementing regulations in order to receive federal funding to support special education programs and services in Virginia. If these regulations are revised to comport with the federal special education regulations, the Virginia Department of Education will receive \$101.9 million in federal funding of which approximately 90% is passed on to local school divisions and state-operated programs to help offset the excess cost of special education.

Disadvantages to the Agency: There are no identifiable disadvantages to revising these regulations in this manner because if these regulations are not revised to comport with federal special education regulations, the Virginia Department of Education will lose the \$101.9 million in federal funding.

Impact: The federal special education funding appropriation has increased by \$36 million to \$101.9 million (an increase of 55%) since passage of the IDEA Amendments in 1997. Currently, local school divisions and state-operated programs are required to comply with the provisions of IDEA and have been required to do so since the amendments to IDEA were signed on June 4, 1997. Therefore, the proposed regulations do not create additional administrative burdens for them. Further, local school divisions have already experienced any



fiscal impact resulting from the IDEA requirements. The IDEA provisions make clear that services must be provided to special education students in regional and local jails. An additional IDEA requirement prescribes the development and implementation of a system for alternate assessments. The General Assembly appropriated \$2 million in general funds for this purpose during the 1998-00 biennium. As part of the state assessment system, funding will be requested in future years. As with the current testing system, there will be a local administrative impact that is expected to be minimal. Finally, the proposed regulations offer some flexibility to local school divisions and state-operated programs in the areas permitted by IDEA.

Department of Planning and Budget's Economic Impact Analysis: The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 9-6.14:7.1 G of the Administrative Process Act and Executive Order Number 25 (98). Section 9-6.14:7.1 G requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. The analysis presented below represents DPB's best estimate of these economic impacts.

Summary of the proposed regulation. In order to comply with the federal Individuals with Disabilities Education Act (IDEA), 20 USC §§ 1400 et seq., the Department of Education (DOE) is proposing to make numerous changes to this regulation. Additionally, DOE is proposing to repeal Special Education Program Standards (8 VAC 20-570-10 et seq.) in order to incorporate them into this regulation.

Estimated economic impact. There are numerous proposed changes to this regulation. Those changes that may have an economic impact include the following:

### Reaching More Students

Language is added to the regulation specifying that local educational agencies (LEAs) must provide free appropriate public education (FAPE) to children with disabilities who are homeless, have been suspended or expelled from school, or incarcerated. LEAs have been required to provide FAPE for all children within their districts. According to DOE, children in the aforementioned categories have been underserved. This may have been due to confusion on the part of LEAs over their responsibilities under the regulation. New language is also added specifying that LEAs must actively search for all children, including the categories mentioned above and migrant children, who are in need of special education and related services. The addition of this language will clear up any confusion on the part of the LEAs regarding their requirement to provide these groups of children with FAPE and will most likely increase the number of children with disabilities who receive special education.

There is no clear consensus on the value of special education for students with disabilities. Overall though, the

majority of studies conducted since 1980 have found that students with learning disabilities, the largest category of children with disabilities, perform better academically if they receive some special education instruction.<sup>1</sup> In 1997-98 the average additional cost of providing special education to learning disabled students was \$5,404. The average additional cost across all disability categories was \$5,664. On average, 68.5% of the expenditure was paid by localities, 22.9% was paid for with state funds, and 8.6% was paid with federal funds. The percentage varies depending on the locality's ability to pay. Since we do not have a reliable measure of the value of special education, we cannot determine whether the expected increase in the number of children with disabilities that receive special education has an expected net economic benefit. In terms of equity, though, there is an improvement by coming closer to providing FAPE to all children, regardless of background.

In order to comply with the federal mandate that incarcerated individuals in jails under the age of 18 receive FAPE, DOE estimates that \$1,716,000 in general funds will be required annually to reimburse local school divisions for all of the direct costs associated with providing special education services for inmates. DOE estimates that that figure would be approximately doubled if not for language that allows persons with any special education endorsement other than an early childhood endorsement to provide instructional services to eligible inmates with disabilities. Outside of jails, instructors are required to have endorsements in specific disability categories that match the disability of the students.

A majority of the research on the results of providing education to prisoners<sup>2</sup> indicates that recidivism declines and post-release employment improves when inmates are exposed to educational programs in prison. According to DOE, in many Virginia jails inmates under the age of 18 do not currently receive any age-appropriate education. Thus it would seem likely that the provision of special education services to disabled students under 18 would have some benefit. The benefit would likely be higher if instructors were required to have endorsements in specific disability categories that match the disability of the students. Of course, as mentioned earlier, the cost of providing such services would be approximately double the budgeted \$1,716,000 in general funds.

New language has been added which specifies that FAPE must be provided to students who have graduated (for example, with a special education diploma), but who have not been awarded a standard or advanced studies diploma. This change will increase the number of individuals eligible for special education. Again, we cannot determine whether the benefit garnered by providing special education to these students outweighs the cost of providing it since we do not have a reliable measure of the benefits of special education.

### Due Process, Training for Hearing Officers, and Mediation

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<sup>1</sup> A.M. Hocutt, "Effectiveness of Special Education: Is Placement the Critical Factor?," *The Future of Children*, Vol. 6, No. 1 – Spring 1996.

<sup>2</sup> J. Gerber and E.J. Fritsch, "Prison Education and Offender Behavior: A Review of the Scientific Literature," *Prison Education Research Project*, Report 1, July 1993.

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## Proposed Regulations

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The proposed language includes provisions changing the due process hearing system from two tiers to one tier. DOE administers a due process hearing system to settle disputes between parents and local school divisions over the identification of a child with a disability, the evaluation of a child with a disability, the educational placement and services of the child, or the provision of FAPE for the child. The elimination of the second tier of the system (for appeals) will result in savings of about \$50,000 per year. Additionally, with a one tiered system, parties can process their appeals without duplicative legal costs or unnecessary time delays. A representative of the Virginia Coalition for Students with Disabilities, an organization that includes parents of children with disabilities, indicated that they do not object to the elimination of the second tier.<sup>3</sup>

The representative of the Virginia Coalition for Students with Disabilities did express a strong concern over the level of training of the due process hearing officers. This proposed regulation does provide for additional training requirements for hearing officers. Currently hearing officers receive one day of training from DOE and one day of training from the Virginia Supreme Court. DOE plans to add two and half more days of training. DOE is confident that the cost of additional training will be considerably less than the \$50,000 saved from the elimination of the second tier.

Language has also been added regarding a DOE run mediation system. Parents will be informed that they have the option of either a due process hearing or mediation or both. The system is being paid for with federal dollars, Part B of IDEA. The estimated cost of the system is \$90,000 for the first year (fiscal year 2000) and \$50,000 to \$55,000 per year thereafter. This is a net benefit for Virginia since the cost of the mediation system is being paid for with federal dollars and the optional mediation system does presumably provide a service of some value.

The changes regarding the due process hearing system, training for hearing officers and the establishment of the mediation system appear to provide a clear net economic benefit to the citizens of the Commonwealth. In net the expenditure of Virginia taxpayer dollars are expected to be reduced, hearing officers will be better trained and the new mediation system provides a net benefit for the Commonwealth.

### Focus on Quality

In the past, under certain circumstances, DOE has granted waivers to LEAs for special education staffing requirements. Under the language of this proposed regulation waivers will no longer be considered, but alternate staffing plans will be considered as long as the plan includes at least as many positions as required by the regulation. Thus, some LEAs will need to support more staff under the proposed regulation than has been the case in the past. This change is intended to assure the quality of special education service by requiring the presence of the federally required staffing levels. Whether the benefit of assuring the presence of the federally

required staffing levels exceeds the cost cannot be determined due to insufficient data on the benefits of the higher staff levels.

As part of the federal mandate, DOE will establish goals and performance indicators for the performance of children with disabilities and will report progress to the U.S. Department of Education and the public every two years. DOE will use federal funds (the \$1.2 million State Improvement Grant) to help LEAs work toward achieving the established goals and improve the performance of the children with disabilities. It is hoped that by focusing on goals and performance measures rather than just meeting the minimum requirements of the regulation that the quality of special education will improve.

One new requirement in the proposed regulation is that the regular education teacher of a child with a disability must participate in the development, review, and revision of the child's Individualized Education Program (IEP). Most special education students are also in regular education classes. It seems reasonable to assume that the regular education teacher's participation can have benefits in both her contribution to the IEP from her experience with the child and from her becoming more aware of special education issues relevant to the student. The cost of her participation may be significant as well, though. If the IEP meetings take place during the school day a substitute teacher would likely be required. If the meetings take place outside of class hours, the teacher's time for class preparation may be diminished.

### Cost Savings – Increased Flexibility

The proposed regulation includes several changes that will enable LEAs to save on costs, increase their flexibility, or both. Language has been added to clarify that special education students are not prohibited from riding buses with regular education students. LEAs that have been running both special education buses and regular education buses over the same routes can potentially save on costs by eliminating the use of one of the buses, assuming there is sufficient space. The LEAs may choose to continue to run both types of buses due to other considerations, such as possible safety concerns for vulnerable children.

Language has been added that says children without disabilities may benefit from the expenditure of Part B federal funds when special education and related services are provided in a regular class or other education-related setting to a child with a disability. This will provide LEAs with significantly increased flexibility in how they provide special education services. According to DOE, there has been a misperception among some LEAs that the federal money in question could only benefit disabled students. Whether the increased flexibility produces a net economic benefit would depend on how and whether the LEAs choose to change their provision of special education services.

The proposed regulation allows interpreters an additional year to meet the Virginia Quality Assurance Screening Level III requirements. Under the current regulation, if an interpreter fails to meet the Level III requirement after four years, that individual can no longer be employed as an interpreter for special education. According to DOE, a large

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<sup>3</sup> Phone conversation with Malcolm Higgins of the Virginia Coalition for Students with Disabilities, Sept. 1999.

percentage of persons working as interpreters for disabled students have not met the Level III requirements within four years. That fact accompanied by a shortage of qualified interpreters has led to the hiring of less experienced personnel to replace those that did not meet the Level III requirements by the end of the second year. Thus, the strict qualification requirement has had the perverse effect of reducing the overall experience level of those providing interpreter services for disabled children. DOE believes that allowing interpreters an additional year to meet Level III requirements is reasonable and will result in the students receiving services from the best-qualified personnel.

New language has been added that places a limit on the expenditures LEAs incur for special education for students who are parentally placed in a private school, when FAPE is not an issue. According to DOE, there is potential for some savings by LEAs. The proposed limit would likely increase the cost of keeping children at private schools for some parents. Thus, this proposed change could result in some substitution of demand for special education services from private schools to public schools.

#### Other Issues

The proposed regulation includes new federal language that excludes certain children from eligibility for special education services. Students whose sub-par academic performance is judged to be primarily due to limited English proficiency or a lack of instruction in reading or math are not eligible for special education services. Presumably these students are less likely to benefit from special education than disabled students. Assuming that the students are properly evaluated, providing them with remedial instruction instead of special education would likely be to their benefit and possibly less costly.

IDEA requires Virginia and all other states to develop and implement a system for alternate assessment. In compliance with the federal legislation, the General Assembly appropriated \$2 million in general funds for this purpose for the 1998-00 biennium. DOE expects to request the same amount for the next biennium.

The proposed regulation specifies that the IEP team determines whether individual students with disabilities take the Standards of Learning exams (SOLs). Since in coming years schools stand to lose their accreditation if too low a percentage of students pass the SOLs, there appears to be an incentive for members of the IEP team associated with the school to have a bias toward determining that borderline students should not take the SOLs.<sup>4</sup>

Another incentive does exist that will somewhat counteract the accreditation incentive to limit SOL participation. According to DOE, starting with the students currently in 8th grade, all students will be required to pass the SOLs in order to earn a high school diploma. This counteracting incentive would likely be strong in high schools, but less so in elementary schools.

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<sup>4</sup>This is not an assertion that IEP team members will act against the best interest of the child.

Businesses and entities affected. The 153,848 Virginia children that are eligible for special education and related services and their parents are all affected by the proposed regulatory changes. All 1,862 schools and 165 educational centers in the Commonwealth are also affected along with their staff.

Localities particularly affected. The proposed regulation affects localities throughout the Commonwealth.

Projected impact on employment. DOE estimates that statewide LEAs will need to hire 33 full-time equivalent positions to screen the inmate population and deliver instructional services. DOE itself will need to hire one new classified position. Furthermore, the clarifications concerning the requirements that LEAs provide FAPE and search for children with disabilities that are homeless, migrants, or have been suspended or expelled from school may require some moderate additional hiring by LEAs. Also the elimination of waivers from staffing requirements may prompt some LEAs to hire additional special education staff. The clarification that special education students may ride on regular education buses may have a small negative impact on bus driver employment. To the extent that the proposed amendments to this regulation increase the population of children that receive FAPE, and to the extent that the provision of FAPE helps produce positive educational outcomes, some students may be more likely to be employed or obtain better jobs than they would have otherwise.

Effects on the use and value of private property. The new language that places a limit on the expenditures LEAs incur for special education for students who are parentally placed in a private school may decrease the demand for private schooling of students requiring special education.

Summary of analysis. For most of the proposed amendments to this regulation, it is not clear whether their potential benefits outweigh their costs. For example, we cannot come to a firm conclusion on whether the amendments that are expected to increase the population of children that receive special education produce a net economic benefit since we do not have a reliable way of determining the value of special education. For a few proposed changes, such as the new mediation system and the elimination of the second tier of the due process hearing system, it appears that there is a net economic benefit for the Commonwealth. None of the proposed changes are clearly detrimental to Virginia.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The economic impact associated with the Regulations Governing Special Education Programs for Children with Disabilities in Virginia is a result of changes to the federal requirements on which these regulations are based. Virginia must revise its regulations to comply with the requirements of the Individuals with Disabilities Education Act (IDEA) in order to continue to receive federal funding for special education in Virginia.

School divisions in Virginia must already be in compliance with the federal regulations. Therefore, the localities are currently experiencing the economic impact estimated by the Department of Planning and Budget (DPB). The department believes that the estimated impact determined by DPB

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# Proposed Regulations

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reflects the impact of the IDEA requirements, as applied in Virginia.

## Summary:

*The purpose of the proposed amendments is to align Virginia's special education regulations with the federal Individuals with Disabilities Education Act (IDEA) regulations that were issued on March 12, 1999. The revision incorporates provisions of the Code of Virginia and other regulations that apply to the provision of special education programs, and clarifies areas of ambiguity. Because the requirements contained in the Special Education Program Standards (8 VAC 20-570-10 et seq.) are being incorporated into this regulation, the Special Education Program Standards are being repealed concurrently with the promulgation of these amendments. The regulations contain provisions governing (i) the responsibilities of the Virginia Department of Education; (ii) the responsibilities of local school divisions and state-operated programs; (iii) the requirements associated with child find, evaluation, eligibility and the provision of services to children with disabilities; (iv) the requirements associated with the provision of procedural safeguards, including notice and consent, and the opportunity to file complaints, request mediation or request a due process hearing; and (v) the requirements associated with funding.*

## PART I. DEFINITIONS.

### 8 VAC 20-80-10. Definitions.

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

*"Age of eligibility"* means all eligible children with disabilities who have not graduated from a secondary school or completed a program approved by the Board of Education and who are identified as having autism, deaf-blindness, a developmental delay, a hearing impairment which may include deafness, mental retardation, multiple disabilities, an orthopedic impairment, other health impairment, a serious emotional disturbance, a severe and profound disability, a specific learning disability, a speech or language impairment, a traumatic brain injury, a visual impairment which may include blindness or who have other disabilities as defined by the Board of Education, with a standard or advanced studies high school diploma who, because of such impairments/disabilities, are in need of special education and related services, and whose second birthday falls on or before September 30, and who have not reached their 22nd birthday on or before September 30 August 1 (two to 21, inclusive).

*"Age of majority"* means the age when the procedural safeguards and other rights afforded to the parent or parents of a student with a disability transfer to the student. In Virginia, the age of majority is 18.

*"Alternate assessment"* means testing for students who cannot participate in the state-wide or division-wide testing programs even with appropriate accommodations and modifications.

*"Assistive technology device"* means any item, piece of equipment, or product system, whether acquired commercially off the shelf, modified, or customized, that is used to increase, maintain, or improve the functional capabilities of ~~children~~ a child with ~~disabilities~~ a disability.

*"Assistive technology service"* means any service that directly assists a child with a disability in the selection, acquisition, or use of an assistive technology device. The term includes:

1. The evaluation of the needs of a child with a disability, including a functional evaluation of the child in the child's customary environment;
2. Purchasing, leasing or otherwise providing for the acquisition of assistive technology devices by children with disabilities;
3. Selecting, designing, fitting, customizing, adapting, applying, ~~retaining~~ maintaining, repairing, or replacing assistive technology devices;
4. Coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing education and rehabilitation *plans and* programs;
5. Training or technical assistance for a child with disability or, if appropriate, that child's family; *and*
6. Training or technical assistance for professionals (including individuals providing education or rehabilitation services), employers, or other individuals who provide services to employ, or are otherwise substantially involved in the major life ~~function~~ functions of ~~children~~ with disabilities *that child*.

*"At no cost"* means that all specially designed instruction is provided without charge, but does not preclude incidental fees that are normally charged to nondisabled students or their parent or parents as part of the regular education program.

*"Audiology"* means services provided by a qualified audiologist and includes:

1. Identification of children with hearing loss;
2. Determination of the range, nature, and degree of hearing loss, including referral for medical or other professional attention for the rehabilitation of hearing;
3. Provision of habilitative activities, such as language habilitation, auditory training, speech reading (lip-reading), hearing evaluation, and speech conversation;
4. Creation and administration of programs for prevention of hearing loss;
5. Counseling and guidance of ~~pupils~~ children, parents and teachers regarding hearing loss; *and*
6. Determination of ~~the child's need~~ children's needs for group and individual amplification, selecting and fitting an appropriate aid, and evaluating the effectiveness of amplification.

"Autism" means a developmental disability significantly affecting verbal and nonverbal communication and social interaction, generally evident before age three, that adversely affects a child's educational performance. Other characteristics often associated with autism are engagement in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routines, and unusual responses to sensory experiences. *The term does not apply if a child's educational performance is adversely affected primarily because the child has an emotional disturbance as defined in this chapter. A child who manifests the characteristics of autism after age three could be diagnosed as having autism if the criteria in this definition are satisfied.*

"Braille user" means a child who is using or learning to use Braille as either a primary or secondary medium for literacy (reading, writing and printing raised dots that represent letters and numerals).

"Business day" means Monday through Friday, 12 months of the year, exclusive of federal and state holidays (unless holidays are specifically included in the designation of business days, as in 8 VAC 20-80-66 B 4 a).

"Calendar days" means consecutive days, inclusive of Saturdays, Sundays, and officially designated holidays at the local school division level. *Whenever any period of time fixed by this chapter shall expire on a Saturday, Sunday, or school holiday, the period of time for taking such action under this chapter shall be extended to the next day, not a Saturday, Sunday, or school holiday.*

"Caseload" means the number of students assigned to special education personnel.

"Change in identification" means a change in the eligibility committee's determination of the child's disability by the team that determines eligibility.

"Change in placement" means:

1. The change in a child's academic offerings from general to special education and from special education to child's initial placement in special education and related services from general education;
2. The expulsion or long-term suspension of a student with a disability;
3. The placement change which results from a change in the identification of a disability;
4. The change from a public school to a private day, residential or state-operated program; from a private day, residential or state-operated program to a public school; or to a placement in a separate facility for educational purposes;
5. Termination of all special education and related services; or
6. Graduation with a standard or advanced studies high school diploma.

"Change in placement procedures" means:

1. Written notice to the parent;

~~2. IEP committee meeting;~~

~~3. Parent consent to change the placement.~~

"Change in placement," for the purposes of discipline, means:

1. A removal of a student from the student's current educational placement for more than 10 consecutive school days; or
2. The student is subjected to a series of removals that constitute a pattern because they cumulate to more than 10 school days in a school year, and because of factors such as:
  - a. The length of each removal;
  - b. The total amount of time the student is removed; or
  - c. The proximity of the removals to one another.

"Charter schools" means any school meeting the requirements for charter as set forth in the Code of Virginia.

"Child" means any person who shall not have reached his 22nd birthday by ~~September 30~~ August 1 of the current year.

~~"Children~~ "Child with disabilities" means ~~those children~~ a child evaluated, in accordance with this chapter, as having and determined, as a result of this evaluation, to have autism, deaf-blindness, a developmental delay, a hearing impairment which may include including deafness, mental retardation, multiple disabilities, an orthopedic impairment, other health impairment, a serious an emotional disturbance, a severe or profound disability, a specific learning disability, a speech or language impairment, a traumatic brain injury, or a visual impairment which may include including blindness, who because of these impairments, need by reason thereof, needs special education and related services. The term "student" may also be used to refer to a child with a disability.

~~"Comprehensive programs and services" means educational programs and support services which are required to provide a free appropriate educational program in the least restrictive environment to every child with a disability ages two to 21, inclusive, in each local school division or other public agencies responsible for providing educational services to children with disabilities.~~

"Complaint" means a request that the Virginia Department of Education investigate an alleged violation by a local school division of a right of a parent or child who is eligible or believed to be eligible for special education and related services based on federal and state law and regulations governing special education.

"Comprehensive Services Act" (CSA) means the act that established the collaborative administration and funding system that addresses and funds services for certain at-risk youths and their families.

"Consent" means:

1. The parent or eligible student has been fully informed of all information relevant to the activity for which consent is sought in his the parent's, parents', or eligible student's native language, or other mode of communication;

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2. The parent or *eligible student* understands and agrees, in writing, to the carrying out of the activity for which consent is sought, and the consent describes that activity and lists the records (if any) ~~which~~ that will be released and to whom; and

3. The parent or *eligible student* understands that the granting of consent is voluntary on the part of the parent or *eligible student* and may be revoked any time ~~prior to the time limits set forth in 8 VAC 20-80-70.~~

*"Correctional facility"* means any state facility of the Department of Corrections or the Department of Juvenile Justice, any regional or local detention home, or any regional or local jail.

*"Counseling services"* means services provided by qualified visiting teachers, social workers, psychologists, guidance counselors, or other qualified personnel.

~~*"Current evaluation"* means one that has been completed within 365 calendar days or less.~~

~~*"Days"* are specified as either *"calendar days"* or *"administrative working days."* *"Administrative working days"* means days exclusive of Saturdays, Sundays, and officially designated holidays for all local school division personnel. *"Calendar days"* means consecutive days, inclusive of Saturdays, Sundays, and officially designated holidays at the local school division level. Whenever any period of time fixed by this procedure shall expire on a Saturday, Sunday, or school holiday, the period of time for taking such action under this procedure shall be extended to the next day not a Saturday, Sunday, or school holiday.~~

*"Day"* means calendar day unless otherwise indicated as business day or school day.

*"Deafness"* means a hearing impairment that is so severe that the child is impaired in processing linguistic information through hearing, with or without amplification, that adversely affects the child's educational performance.

*"Deaf-blindness"* means ~~concomitant~~ having hearing and visual impairments at the same time, the combination of which causes such severe communication and other developmental and educational ~~problems~~ needs that they cannot be accommodated in special education programs solely for deaf or blind children with deafness or children with blindness.

*"Developmental delay"* means a significant delay in one or more of the following areas of development for a child below age eight:

1. Cognitive ability;
2. Motor skills;
3. Social/adaptive behavior;
4. Perceptual skills; and
5. Communication skills.

*"Developmental delay"* means a disability affecting a child ages two through eight who:

1. Is experiencing developmental delays, as defined by the Virginia Department of Education and as measured by appropriate diagnostic instruments and procedures, in one or more of the following areas: physical development, cognitive development, communication development, social or emotional development, or adaptive development; and

2. Who, by reason thereof, needs special education and related services.

*"Direct services"* means services provided to a child with a disability directly by the ~~state directly~~ Virginia Department of Education, by contract, or through other arrangements.

*"Due process hearing"* means an impartial procedure used to resolve disagreements over issues related to provision of a free appropriate public education that arise between a parent or parents and a local school division.

*"Early identification and assessment of disabilities in children"* means the implementation of a formal plan for identifying a disability as early as possible in a child's life.

~~*"Emotional disturbance"; see "Serious emotional disturbance."* means a condition exhibiting one or more of the following characteristics over a long period of time and to a marked degree that adversely affects a child's educational performance:~~

1. An inability to learn that cannot be explained by intellectual, sensory, or health factors;
2. An inability to build or maintain satisfactory interpersonal relationships with peers and teachers;
3. Inappropriate types of behavior or feelings under normal circumstances;
4. A general pervasive mood of unhappiness or depression; or
5. A tendency to develop physical symptoms or fears associated with personal or school problems.

The term includes schizophrenia. The term does not apply to children who are socially maladjusted, unless it is determined that they have an emotional disturbance.

*"Evaluation"* means procedures used in accordance with this chapter to determine whether a child has a disability and the nature and extent of the special education and related services that the child needs. ~~The term means procedures used selectively with an individual child and does not include basic tests administered or procedures used with all children in a school, grade, or class.~~

*"Extended school year services"* means special education and related services that:

1. Are provided to a child with a disability:
  - a. Beyond the normal school year (in the number of days and hours) of the local educational agency;
  - b. In accordance with the child's individualized education program;
  - c. At no cost to the parents of the child; and

2. Meet any standards established by the Virginia Department of Education.

"Federal financial assistance" means any grant, loan, contract or any other arrangement by which the U.S. Department of Education provides or otherwise makes available assistance in the form of funds, services of federal personnel, or real and personal property.

"Free appropriate public education" (FAPE) means special education and related services ~~which that~~.

1. Are provided at public expense, under public supervision and direction, and without charge;
2. Meet the standards of the Virginia Board of Education;
3. Include preschool, elementary school, middle school or secondary school, ~~or vocational education in the state;~~ and
4. Are provided in conformity with an individualized education program *that meets the requirements of this chapter.*

~~FAPE is a statutory term which requires special education and related services to be provided in accordance with an individualized education program (IEP).~~

"General curriculum" means the curriculum adopted by a local educational agency, schools within the local educational agency or, where applicable, the Virginia Department of Education for all children from preschool through secondary school. The term relates to content of the curriculum and not to the setting in which it is taught.

"Hearing impairment" means an impairment in hearing, whether permanent or fluctuating, that adversely affects a child's educational performance but ~~which that~~ is not included under the definition of "deafness" in this section.

"Home-based instruction" means services that are delivered in the home setting (or other agreed upon setting) in accordance with the student's individualized education program.

"Homebound instruction" means academic instruction provided to students who are confined for periods that would prevent normal school attendance based upon certification of need by a licensed physician or licensed clinical psychologist.

"Home instruction" means instruction of a child or children by a parent, guardian or other person having control or charge of such child or children as an alternative to attendance in a public or private school. This instruction may also be termed home schooling.

"Home tutoring" means instruction by a tutor or teacher of qualifications prescribed by the Virginia Board of Education and approved by the division superintendent.

"Impartial hearing officer" means a person, selected from a list maintained by the Office of the Executive Secretary of the Supreme Court of Virginia to conduct a due process hearing. A hearing may not be conducted:

1. By a person employed by a public agency involved with the care or education of the child; or

2. By a person having a personal or professional interest which would conflict with his objectivity in the hearing.

~~A hearing officer is not an employee of the local education agency (LEA) or state education agency (SEA) solely because he is paid by the agency to serve as a hearing officer.~~

"Implementation plan" means the plan developed by the ~~LEA local school division~~ designed to operationalize the decision of the hearing officer, ~~the reviewing officer,~~ or agreement between the parties. The implementation plan shall include the name and position of the individual in the local school division charged with the implementation of the decision (case manager) as well as the date for effecting such plan.

"Independent educational evaluation" (IEE) means an evaluation conducted by qualified examiners who are not employed by the ~~public local educational agency~~ responsible for the education of the child in question. ~~Whenever an independent evaluation is made at public expense, the criteria governing the evaluation, including the location of the evaluation and the qualifications of the examiners, must be the same as the criteria the public agency uses when it initiates an evaluation.~~

~~"Individualized education program" (IEP) means a written statement for each child with a disability developed in any meeting by a representative of the LEA who shall be qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of children with disabilities, the teacher, the parents of such child, and whenever appropriate, such child. An IEP shall include:~~

1. A statement of the present levels of educational performance;
  - a. The statement should accurately describe the effect of the child's disability on the child's performance in any area of education that is affected including academic areas and nonacademic areas.
  - b. The statement should be written in objective measurable terms, to the extent possible. Test scores, if appropriate, should be self-explanatory or an explanation should be included.
  - c. There should be a direct relationship between the present level of performance and the other components of the IEP.
2. A statement of annual goals, including short-term instructional objectives;
3. A statement of the specific education and related services to be provided, and the extent to which such child will be able to participate in regular educational programs;
4. The projected date for initiation and anticipated duration of the services (month, day, and year);
5. Appropriate objective criteria and evaluation procedures and schedules for determining, at least on an annual basis, whether instructional objectives are being achieved;

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~~6. Necessary information regarding the Literacy Testing Program (LTP) (see 8 VAC 20-80-70 B 5 f);~~

~~7. A statement of the needed transition services for each student beginning no later than age 16 (and at a younger age, if determined appropriate) including, if appropriate, a statement of each public agency's and each participating agency's responsibilities or linkages, or both, before the student leaves the school setting. The transition services must address each of the following areas: (i) the development of employment and other post-school adult living objectives; (ii) instruction; (iii) community experiences; and (iv) if appropriate, acquisition of daily living skills and functional vocational evaluation, unless the IEP committee determines that services are not needed in one or more of those areas. The IEP committee must then include in the IEP a statement to that effect and the basis for that determination in the IEP; and~~

~~8. A statement as to whether or not the student will participate in Family Life Education.~~

*"Individualized education program" (IEP) means a written statement of services for a child with a disability that is developed, reviewed and revised in a meeting in accordance with this chapter.*

*"Individualized family service plan" (IFSP) under Part C means a written plan for providing early intervention services to an infant or toddler with a disability eligible under Part C and the child's family.*

*"Infant and toddler with a disability" means a child, ages birth through two, whose birthday falls on or before September 30, or who is eligible to receive services in the Part C early intervention system up to age three, and:*

- 1. Has delayed functioning;*
- 2. Manifests atypical development or behavior;*
- 3. Has behavioral disorders that interfere with acquisition of developmental skills; or*
- 4. Has a diagnosed physical or mental condition that has a high probability of resulting in delay, even though no current delay exists.*

*"Informed consent": see "Consent."*

*"Initial placement" means the first public local educational agency placement in either a public school, state-operated program, or private school program for the purpose of providing special education or related services.*

~~*"In-service training" means training other than that received by an individual in a full-time program which leads to a degree.*~~

*"Interpreting" means translating from one language to another (e.g., sign language to spoken English); for the purposes of this chapter, this includes transliterating for signed English systems and for cued speech.*

*"Interpreting personnel" means personnel individuals providing educational interpreting services for children with hearing impairments, deafness or both meeting qualifications*

~~set forth under the section on Qualified Professionals 8 VAC 20-80-45 E.~~

~~*"Itinerant" means a qualified professional employed by the local school division who provides services to students with disabilities in various locations.*~~

~~*"Learning disability": see "Specific learning disability."*~~

~~*"Local educational agency" (LEA) means the local school division or other public agencies responsible for providing educational services to children with disabilities.*~~

~~*"Least restrictive environment" (LRE) means that to the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are not disabled, and that special classes, separate schooling or other removal of children with disabilities from the regular educational environment occurs only when the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.*~~

~~*"Level I services" means the provision of special education and related services to students for less than 50% of their instructional school day (excluding intermission for meals). Time in special education is calculated on the basis of special education services described in the individualized education program, rather than the location of services.*~~

~~*"Level II services" means the provision of special education and related services to students for 50% or more of the instructional school day (excluding intermission for meals). Time in special education is calculated on the basis of special education services described in the individualized education program, rather than the location of services.*~~

~~*"Local educational agency" means a local school division governed by a local school board or a state-operated program that is funded and administered by the Commonwealth of Virginia.*~~

~~*"Medical services" means services provided by a licensed physician or nurse practitioner to determine a child's medically related disability which that results in the child's need for special education and related services.*~~

~~*"Mental retardation" means significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period, which that adversely affects a child's educational performance.*~~

~~*"Multiple disabilities" means concomitant two or more impairments at the same time (such as for example, mental retardation - blindness, mental retardation learning disability - orthopedic impairment, etc.), the combination of which causes such severe educational problems needs that they cannot be accommodated in special education programs solely for one of the impairments. The term does not include children with deaf-blindness.*~~

~~*"Native language" as defined by § 3283(a)(2) of the Bilingual Education Act, (20 USC § 3283), when if used with reference to a person an individual of limited*~~



~~English-speaking ability proficiency~~, means the language normally used by that ~~person~~ individual, or, in the case of a child, the language normally used by the *parent* or parents of the child~~-, except:~~

1. In all direct contact with a child (including evaluation of the child), ~~communication would be in the language normally used by the child and not that of the parents, if there is a difference between the two in the home or learning environment.~~

2. ~~If a person is deaf or blind~~ For an individual with deafness or blindness, or ~~has~~ for an individual with no written language, the mode of communication ~~would be~~ is that normally used by the ~~person~~ individual (such as sign language, Braille, or oral communication).

"Nonacademic services and extracurricular services" may include counseling services, athletics, transportation, health services, recreational activities, special interest groups or clubs sponsored by the public agency, referrals to agencies that provide assistance to individuals with disabilities, and employment of students, including both employment by the ~~public~~ local educational agency and assistance in making outside employment available.

"~~Notification~~" "Notice" means written statements in English and in the primary language of the ~~parent's~~ home of the parent or parents, and oral communication in the primary language of the ~~parent's~~ home of the parent or parents. If a person is deaf or blind, or has no written language, the mode of communication would be that normally used by the person (such as sign language, Braille, or oral communication).

"Occupational therapy" means services provided by a qualified occupational therapist or services provided under the direction or supervision of a qualified occupational therapist and includes:

1. Improving, developing, or restoring functions impaired or lost through illness, injury, or deprivation;
2. Improving ability to perform tasks for independent functioning ~~when~~ if functions are impaired or lost; and
3. Preventing, through early intervention, initial or further impairment or loss of function.

"Orientation and mobility services" means services provided to blind or visually impaired students by qualified personnel to enable those students to attain systematic orientation to and safe movement within their environments in school, home, and community; and includes teaching students the following, as appropriate:

1. Spatial and environmental concepts and use of information received by the senses (e.g., sound, temperature and vibrations) to establish, maintain, or regain orientation and line of travel (e.g., using sound at a traffic light to cross the street);
2. To use the long cane to supplement visual travel skills or as a tool for safely negotiating the environment for students with no available travel vision;
3. To understand and use remaining vision and distance low vision aids; and

#### 4. Other concepts, techniques, and tools.

"Orthopedic impairment" means a severe orthopedic impairment that adversely affects a child's educational performance. The term includes impairments caused by congenital anomaly (e.g., club foot, absence of some member, ~~etc.~~), impairments caused by disease (e.g., poliomyelitis, bone tuberculosis, ~~etc.~~), and impairments from other causes (e.g., cerebral palsy, amputations, and fractures or burns that cause ~~contracture~~ contractures).

"Other health impairment" means having limited strength, vitality or alertness, including a heightened alertness to environmental stimuli, that results in limited alertness with respect to the educational environment, that is due to chronic or acute health problems such as a heart condition, tuberculosis, rheumatic fever, nephritis, arthritis, asthma, sickle cell anemia, hemophilia, epilepsy, lead poisoning, leukemia, attention deficit disorder ~~or attention deficit hyperactivity disorder, or~~ and diabetes that are chronic or acute; and that adversely ~~affect~~ affects a child's educational performance.

"Paraprofessional" means an appropriately trained employee who assists and is supervised by qualified professional staff in meeting the requirements of this chapter.

"Parent" means a natural or adoptive parent of a child, a guardian, a person acting as in the place of a parent ~~of a child, (such as a grandparent or stepparent with whom the child lives, or a person who is legally responsible for the child's welfare), a foster parent under the circumstances described below or a surrogate parent who has been appointed pursuant to 8 VAC 20-80-80 in accordance with this chapter. The term does not include the state if the child is a ward of the state.~~ The term means either parent, unless the LEA local educational agency has been provided with evidence that there is a legally binding instrument or, a state law or court order to the contrary. ~~The term also includes persons acting in the place of a parent such as a grandparent or stepparent with whom the child lives. A child 18 years of older may assert any rights under this chapter in his own name. that has terminated the parent's or parents' rights. A foster parent may also serve as a parent:~~

1. If the natural parents' authority to make educational decisions on the child's behalf has been extinguished under § 16.1-283, § 16.1-277.01 or § 16.1-277.02 of the Code of Virginia; and
2. The child is in permanent foster care pursuant to § 63.1-206.1 of the Code of Virginia.
3. The foster parent (i) has an ongoing, long-term parental relationship with the child; (ii) is willing to make the educational decisions required of parents under this chapter; and (iii) has no interest that would conflict with the interests of the child.

The term "parent" does not include local departments of social services or their agents if the child is in the custody of a local department of social services.

"Parent counseling and training" means (i) assisting parents in understanding the special needs of their child and, (ii) providing parents with information about child

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development; and (iii) helping parents to acquire the necessary skills that will allow them to support the implementation of their child's IEP or IFSP.

"Participating agency" means ~~any agency or institution which collects, maintains, or uses personally identifiable information or from which information is obtained~~ a state or local agency (including a Comprehensive Services Act team), other than the local educational agency responsible for a student's education, that is financially and legally responsible for providing transition services to the student.

"Physical education" means the development of:

1. Physical and motor fitness;
2. Fundamental motor skills and patterns; and
3. Skills in aquatics, dance, and individual and group games and sports (including intramural and lifetime sports).

The term includes special physical education, ~~adaptive~~ adapted physical education, movement education, and motor development.

"Physical therapy" means services provided by a qualified physical therapist or under the direction or supervision of a qualified physical therapist upon medical referral and direction.

"Private school children with disabilities" means children with disabilities enrolled by their parents in private schools rather than placed in private schools by local educational agencies.

"Program" means the special education and related services, including accommodations, modifications, supplementary aids and services, as determined by a child's individualized educational program.

"Psychological services" ~~includes~~ means those services provided by a qualified psychologist or services provided under the direction or supervision of a qualified psychologist:

1. Administering psychological and educational tests, and other assessment procedures;
2. Interpreting assessment results;
3. Obtaining, integrating, and interpreting information about child behavior and conditions relating to learning;
4. Consulting with other staff members in planning school programs to meet the special needs of children as indicated by psychological tests, interviews, and behavioral evaluations; ~~and~~
5. Planning and managing a program of psychological services, including psychological counseling for children and parents; ~~and~~
6. Assisting in developing positive behavioral intervention strategies.

"Public agency" means the state educational agency (SEA), local educational agencies, intermediate educational units, and any other public agencies that are responsible for providing education to children with disabilities.

"Public expense" means that the LEA local educational agency either pays for the full cost of the service or evaluation or ensures that the service or evaluation is otherwise provided at no cost to the parent.

"Public notice" means the process by which certain information is made available to the general public. Public notice procedures may include, but not be limited to, newspaper advertisements, radio announcements, television features and ~~announcement~~ announcements, handbills, brochures, ~~by electronic means~~, and other methods which are likely to succeed in providing information to the public.

"Qualified personnel" means ~~that a person has met the state board educational agency approved or recognized certification, licensing, registration or other comparable requirements which personnel who have met Virginia Department of Education approved or recognized certification, licensing, registration, or other comparable requirements that apply to the area in which he~~ the individual is providing special education or related services. In addition, the professional must meet other state agency requirements for such professional service, and Virginia licensure requirements as designated by state Virginia law.

~~"Recipient" means any state or other political subdivision, any public or private agency, institution, organization, or other entity, or any person to which public financial assistance is extended directly or through another recipient.~~

"Recreation" includes:

1. Assessment of leisure function;
2. Therapeutic recreation services;
3. Recreation program in schools and community agencies; and
4. Licensure education.

"Reevaluation" means completion of a new evaluation in accordance with this chapter.

"Rehabilitation counseling services" means services provided by qualified personnel in individual or group sessions that focus specifically on career development, employment preparation, achieving independence, and integration in the workplace and community of a student with a disability. The term also includes vocational rehabilitation services provided to students with disabilities by vocational rehabilitation programs funded under the Rehabilitation Act of 1973 (29 USC §§ 701 et seq.), as amended.

"Related services" means transportation and such developmental, corrective, and other supportive services as are required to assist a child with a disability to benefit from special education, and includes speech-language pathology and audiology services; ~~interpreting and transliterating~~; psychological services; physical and occupational therapy; recreation, including therapeutic recreation; early identification and assessment of disabilities in children; counseling services, including rehabilitation ~~and psychological~~ counseling; ~~and orientation and mobility services~~; medical services for diagnostic or evaluation purposes. ~~The term also includes~~; school health services, social work services in

schools, and parent counseling and training. ~~Senate Report No. 94-168 provides a definition of "related services," making clear that all such related services may not be required for each individual child and that such term includes early identification and assessment of disabilities and the provision of services to minimize the effects of such conditions. The list of related services is not exhaustive and may include other developmental, corrective, or supportive services (such as artistic and cultural programs, and art, music and dance therapy), if they are required to assist a child with a disability to benefit from special education.~~

~~Each related service defined under this part may include appropriate administrative and supervisory activities that are necessary for program planning, management, and evaluation.~~

~~"School-based committee" means a committee that enables school personnel, and nonschool personnel, as appropriate, to meet the needs of individual children who are having difficulty in the educational setting. The committee reviews existing data and informal measures to make recommendations to meet children's needs and review the results of the recommendations.~~

~~"School day" means any day, including a partial day, that children are in attendance at school for instructional purposes. The term has the same meaning for all children in school, including children with and without disabilities.~~

~~"School health services" means services provided by a qualified school nurse or other qualified person.~~

~~"Screening" means those processes which are used routinely with all children to help determine educational strengths and weaknesses.~~

~~"Section 504" means that section of the Rehabilitation Act of 1973, as amended (29 USC §§ 701 et seq.), which is designed to eliminate discrimination on the basis of handicap disability in any program or activity receiving federal financial assistance.~~

~~"Serious emotional disturbance" means a condition exhibiting one or more of the following characteristics over a long period of time and to a marked degree that adversely affects a child's educational performance:~~

- ~~1. An inability to learn which cannot be explained by intellectual, sensory, or health factors;~~
- ~~2. An inability to build or maintain satisfactory interpersonal relationships with peers and teachers;~~
- ~~3. Inappropriate types of behavior or feelings under normal circumstances;~~
- ~~4. A general pervasive mood of unhappiness or depression; or~~
- ~~5. A tendency to develop physical symptoms or fears associated with personal or school problems.~~

~~The term includes children who are schizophrenic, but does not include children who are socially maladjusted unless it is determined that they are seriously emotionally disturbed.~~

~~"Severe and profound disability" means individuals who:~~

- ~~1. Have Primary disabilities that severely impair cognitive abilities, adaptive skills, and life functioning;~~
- ~~2. May have Associated severe behavior problems;~~
- ~~3. May have The high probability of additional physical or sensory disabilities; and~~
- ~~4. that require significantly more educational resources than are provided for the children with mild and moderate disabilities in special education programs.~~

~~"Social work services in schools" includes means those services provided by a school social worker or qualified visiting teacher or social worker including:~~

- ~~1. Preparing a social or developmental history on a child with a disability;~~
- ~~2. Group and individual counseling with the child and family;~~
- ~~3. Working in partnership with parents and others on those problems in a child's living situation (home, school, and community) that affect the child's adjustment in school; and~~
- ~~4. Mobilizing school and community resources to enable the child to learn as effectively as possible in his the child's educational program; and~~
- ~~5. Assisting in developing positive behavioral intervention strategies for the child.~~

~~"Special education" means specially designed instruction, at no cost to the parent or parents, to meet the unique needs of a child with a disability, including instruction conducted in a classroom, in the home, in hospitals, and in institutions, and in other settings and instruction in physical education. The term includes each of the following if it meets the requirements of the definition of special education:~~

~~1. The term includes Speech-language pathology or any other related service, if the service consists of specially designed instruction, at no cost to the parents, to meet the unique needs of a child with a disability, and is considered "special education" rather than a "related service" under state standards. services;~~

~~2. The term also includes Vocational education if it consists of specially designed instruction at no cost to the parent, to meet the unique needs of a child with a disability.; and~~

~~3. Travel training.~~

~~3. The terms in this definition are defined as follows:~~

~~a. "At no cost" means that all specially designed instruction is provided without charge, but does not preclude incidental fees which are normally charged to nondisabled students or their parents as a part of the regular education program.~~

~~b. "Physical education" means the development of (i) physical and motor fitness; (ii) fundamental motor skills and patterns; and (iii) skills in aquatics, dance and individual and group games and sports (including intramural and lifetime sports). The term includes~~

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~~special physical education, adaptive physical education, movement education, and motor development.~~

~~e. "Vocational education" means organized educational programs that are directly related to the preparation of individuals for paid or unpaid employment, or for additional preparation for a career requiring other than a baccalaureate or advanced degree.~~

~~4. The definition of "special education" is a particularly important one. While a child may be considered to have a disability under other laws, he does not have a disability under this chapter unless he needs special education. If a child does not need special education, there can be no related services since the provision of a related service must be necessary for a child to benefit from special education.~~

*"Specially-designed instruction" means adapting, as appropriate to the needs of an eligible child under this chapter, the content, methodology, or delivery of instruction:*

- 1. To address the unique needs of the child that result from the child's disability; and*
- 2. To ensure access of the child to the general curriculum, so that the child can meet the educational standards within the jurisdiction of the local educational agency that apply to all children.*

*"Specific learning disability" means a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, which that may manifest itself in an imperfect ability to listen, think, speak, read, write, spell or to do mathematical calculations. The term includes such conditions as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia. The term does not include children who have learning problems which that are primarily the result of visual, hearing, or motor disabilities; of mental retardation; of emotional disturbance; or of environmental, cultural, or economic disadvantage.*

*"Speech or language impairment" means a communication disorder, such as stuttering, impaired articulation, a language impairment, or a voice impairment, which that adversely affects a child's educational performance.*

*"Speech-language pathology services" includes means the following services:*

- 1. Identification of children with speech or language disorders impairments;*
- 2. Diagnosis and appraisal of specific speech or language disorders impairments;*
- 3. Referral for medical or other professional attention necessary for the habilitation of speech or language disorders impairments;*
- 4. Provisions of speech and language services for the habilitation or prevention of communicative disorders impairments; and*

5. Counseling and guidance of parents, children, and teachers regarding speech and language disorders impairments.

*"State educational agency" (SEA) means the Virginia Department of Education.*

~~*"Support services" means implementing the comprehensive system of personnel development; recruitment and training of hearing officers in conjunction with the Supreme Court of Virginia; and recruitment and training of surrogate parents; and public information and parent training activities relating to a free appropriate public education for children with disabilities.*~~

*"State-operated programs" means programs which provide educational services to children and youth who reside in facilities according to the admissions policies and procedures of those facilities that are the responsibility of state boards, agencies, and institutions. The educational services provided in a state-operated program must be comparable to services that a child or youth would receive in a local school division.*

*"Supplementary aids and services" means aids, services, and other supports that are provided in regular education classes or other education-related settings to enable children with disabilities to be educated with children without disabilities to the maximum extent appropriate in accordance with this chapter.*

*"Surrogate parent" means a person appointed in accordance with procedures set forth in this chapter to provide ensure that children who are in legal or physical custody of the state, or whose parents are not known or are unavailable, with are afforded the protection of procedural safeguards.*

~~*"Testing" means individual evaluation procedures (formal testing and assessment) to determine initial or continued eligibility for special education services.*~~

*"Transition from Part C services" means the steps identified in the IFSP to be taken to support the transition of the child to:*

- 1. Early childhood special education to the extent that those services are appropriate; or*
- 2. Other services that may be available, if appropriate.*

*"Transition services" means a coordinated set of activities for a student; with a disability that is designed within an outcome-oriented process, that promotes movement from school to post-school activities, including postsecondary education, vocational training, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation. The coordinated set of activities described must:*

- ~~*1. Be based on the individual student's needs, taking into account the student's preferences and interests; and*~~
- ~~*2. Include:*~~
  - ~~*a. The development of employment and other post-school adult living objectives;*~~
  - ~~*b. Instruction;*~~

e. Community experiences; and

d. If appropriate, acquisition of daily living skills and functional vocational evaluation.

Transition services for students with disabilities may be special education, if they are provided as specially designed instruction, or related services, if they are required to assist a student with a disability to benefit from special education. The list of activities above is not intended to be exhaustive.

"Transportation" includes:

1. Travel to and from school and between schools;
2. Travel in and around school building buildings; and
3. Specialized equipment (such as special or adapted buses, lifts, and ramps), if required to provide special transportation for a child with a disability.

"Traumatic brain injury" means an acquired injury to the brain caused by an external physical force, resulting in total or partial functional disability or psychosocial impairment, or both, that adversely affects a child's educational performance. The term applies to open or closed head injuries resulting in impairments in one or more areas, such as cognition; language; memory; attention; reasoning; abstract thinking; judgment; problem-solving; sensory, perceptual and motor abilities; psychosocial behavior; physical functions; information processing; and speech. The term does not apply to brain injuries that are congenital or degenerative, or to brain injuries induced by birth trauma.

"Travel training" means providing instruction, as appropriate, to children with significant cognitive disabilities, and any other children with disabilities who require this instruction, to enable them to:

1. Develop an awareness of the environment in which they live; and
2. Learn the skills necessary to move effectively and safely from place to place within that environment (e.g., in school, in the home, at work, and in the community).

"Visual impairment including blindness" means an impairment in vision that, even with correction, adversely affects a child's educational performance. The term includes both partial sight and blindness.

"Vocational education," for the purposes of special education, means organized educational programs or instruction in a sequence or aggregation of occupational competencies that are directly related to the preparation of individuals for paid or unpaid employment in current or emerging occupations or for additional preparation for a career requiring other than a baccalaureate or advanced degree. These programs must include competency-based applied learning that contributes to an individual's academic knowledge, higher-order reasoning, and problem-solving skills, work attitudes, general employability skills, and the occupation-specific skills necessary for economic independence as a productive and contributing member of society. This term also includes applied technology education.

~~"Ward of the state" means all parental rights and responsibilities for the care and custody of a child have been terminated by court order or applicable law, and the child has been placed in the care and custody of the state.~~

PART II.  
RESPONSIBILITIES OF THE STATE DEPARTMENT OF  
EDUCATION.

**8 VAC 20-80-20. Right to a free appropriate public education. (Repealed.)**

~~The Virginia Department of Education shall ensure that all persons with disabilities from two to 21, inclusive, residing in the Commonwealth of Virginia are identified, evaluated, and have available a free and appropriate public education. The provisions set forth in this chapter shall apply to all public and private schools and agencies in the Commonwealth which provide special education and related services to children with disabilities.~~

**8 VAC 20-80-30. Functions of the Virginia Department of Education.**

~~In keeping with its responsibilities in this regard, The Virginia Department of Education (SEA state educational agency) shall perform the functions which follow:~~

1. ~~Ensure that all children with disabilities, aged two through 21, inclusive, residing in Virginia, have a right to a free appropriate public education including, but not limited to:~~
  - a. ~~Children with disabilities who are migrant and who are homeless;~~
  - b. ~~Children with disabilities who have been suspended or expelled from school, in accordance with this chapter; and,~~
  - c. ~~Children with disabilities who are incarcerated in a state, regional, or local adult or juvenile correctional facility, with the exception of those provisions identified in 8 VAC 20-80-62.~~

~~2. Review and submit to the Virginia Board of Education for approval the Annual Special Education Plan/Report and Funding Applications a plan for the provision of special education from each local school division or other public agencies educational agency responsible for providing educational services to children with disabilities.~~

~~3. Prepare and submit for public hearing, for comment from members of the State Special Education Advisory Committee, and private special education schools, and for approval by to place on file with the U.S. Department of Education, the State Plan for Education of Children with Disabilities policies and procedures to ensure that the conditions of state eligibility for funding under the Individuals with Disabilities Education Act (20 USC §§ 1400 et seq.) are met. Such plan shall contain assurances of and procedures as prescribed by federal law.~~

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~~3-~~ 4. Develop procedures for implementing state and federal laws and regulations pertaining to the education of children with disabilities.

4. 5. Assist LEAs *local educational agencies* and other participating state agencies in the implementation of state and federal laws and regulations pertaining to the education of children with disabilities by providing technical assistance and consultative services.

~~5-~~ 6. Review and evaluate compliance of LEAs *local educational agencies* with state and federal laws and regulations pertaining to the education of children with disabilities and require corrective actions where needed.

a. Administer a special education due process hearing system that provides procedures for the training of hearing officers, requests for a hearing, appointment of hearing officers, the management and monitoring of hearings, and the administration of the hearing system.

b. Maintain and operate a complaint system that provides for the investigation and issuance of findings regarding violations of the rights of parents or children with disabilities. Allegations may be made by public or private agencies, individuals or organizations.

~~6-~~ 7. Review and evaluate compliance of ~~approved~~ private nonsectarian special education schools for children with disabilities with state and federal laws and regulations pertaining to the education of children with disabilities that are licensed or have a certificate to operate to ensure that each child with a disability placed in the school by a local educational agency or CSA team is provided special education and related services at no cost to the parent or parents in conformance with an IEP that meets the requirements of this chapter and meets the standards that apply to education provided by local educational agencies.

~~7-~~ 8. Establish and maintain a state advisory committee composed of persons involved in or concerned with the education of children with disabilities.

a. The membership ~~must include, but need not be limited to, at least one representative from each of the groups as follows~~ shall consist of individuals appointed by the Superintendent of Public Instruction who are involved in, or concerned with, the education of children with disabilities. The majority shall be individuals with disabilities or parents of children with disabilities. Membership shall include:

(1) Parents of children with disabilities;

~~a-~~ (2) Individuals with disabilities;

~~b-~~ (3) Teachers of children with disabilities;

~~e-~~ Parents of children with disabilities;

(4) Representatives of institutions of higher education that prepare special education and related services personnel;

~~d-~~ (5) State and local education officials;

~~e-~~ Special education program (6) Administrators of programs for children with disabilities;

~~f-~~ Public and private institutions of higher education; and

~~g-~~ Advocacy groups.

(7) Representatives of other state agencies involved in the financing or delivery of related services to children with disabilities;

(8) Representatives of private schools and public charter schools;

(9) At least one representative of a vocational, community, or business organization concerned with the provision of transition services to children with disabilities; and

(10) A representative from Virginia's juvenile and adult correctional educational agency.

b. Duties. The state special education advisory committee shall:

(1) Advise the Virginia Department of Education and the Virginia Board of Education of unmet needs within the state in the education of children with disabilities;

(2) Comment publicly on any rules or regulations proposed by the Virginia Board of Education regarding the education of children with disabilities;

(3) Advise the Virginia Department of Education in developing evaluations and reporting on data to the U.S. Secretary of Education under the Individuals with Disabilities Education Act (20 USC §§ 1400 et seq.);

(4) Advise the Virginia Department of Education in developing corrective action plans to address findings identified in federal monitoring reports under the Individuals with Disabilities Education Act (20 USC §§ 1400 et seq.);

(5) Advise the Virginia Department of Education in developing and implementing policies relating to the coordination of services for children with disabilities; and

(6) Advise on eligible children with disabilities in state, regional, or local adult or juvenile correctional facilities.

c. Procedures.

(1) The state special education advisory committee shall meet as often as necessary to conduct its business.

(2) By July 1 of each year the state special education advisory committee shall submit an annual report of committee activities and suggestions to the Virginia Board of Education. The report must be made available to the public in a manner consistent with other public reporting requirements of Part B of the

*Individuals with Disabilities Education Act (20 USC §§ 1400 et seq.).*

*(3) Official minutes must be kept on all committee meetings and must be made available to the public on request.*

*(4) All meetings and agenda items must be publicly announced prior to the meeting, and meetings must be open to the public.*

*(5) Interpreters and other necessary services shall be provided for advisory committee members or participants.*

*(6) The advisory committee shall serve without compensation, but the Virginia Department of Education shall reimburse the committee for reasonable and necessary expenses for attending meetings and performing duties.*

~~8-~~ 9. Provide at least annually to the State Special Education Advisory Committee all findings and decisions of due process hearings, with all personally identifiable information deleted, and in addition, a summary of the complaint findings.

10. Establish goals for the performance of children with disabilities that are consistent, to the maximum extent appropriate, with other goals and standards for all children established by the Virginia Board of Education and the Code of Virginia.

*a. Establish performance indicators to assess progress toward achieving those goals that address, at a minimum, dropout rates, graduation rates, and performance of students with disabilities on assessments.*

*b. Every two years, report to the public and the United States Secretary of Education on progress toward meeting the goals.*

~~9-~~ 11. Develop and implement a comprehensive personnel development plan which ~~focuses on pre-service and in-service educational needs~~ is designed to ensure an adequate supply of qualified special education, regular education, and related services personnel, including paraprofessionals, and meets the requirements for a state improvement plan relating to personnel development.

12. Demonstrate that children with disabilities are included in statewide and local assessment programs, with accommodations and modifications, or in an alternate assessment. Report to the public, with the same frequency and in the same details as reports on assessments are issued for children without disabilities, the number of children participating in regular and alternate assessments, and performance results on regular and alternate assessments, including both aggregated and disaggregated data.

~~10- Develop~~ 13. Establish procedures for disseminating significant information derived from research,

demonstration programs and projects involving children with disabilities.

~~44-~~ 14. Secure agreements ~~from~~ with state agency heads regarding appropriate roles and responsibilities for the identification, evaluation, placement, and delivery of or payment for educational and related services in order to ensure a free appropriate public education is provided to all children with disabilities. The agreements shall address financial responsibility for each nonpublic education agency for the provision of services. The agreements shall include procedures for resolving interagency disputes and for securing reimbursement from other agencies, including procedures under which local educational agencies may initiate proceedings.

~~42-~~ 15. Disburse the appropriated funds for the education of children with disabilities in the Commonwealth to LEAs local school divisions and state-operated programs which are in compliance with state and federal laws and regulations pertaining to the education of children with disabilities, including submission of revised policies and procedures for provision of special education and related services.

~~13- Establish procedures to~~ 16. Ensure that the placements of children with disabilities by other public agencies are in compliance with state and federal laws and regulations pertaining to the education of children with disabilities.

~~14- Establish reasonable tuition costs and other reasonable charges for each approved private nonsectarian school for children with disabilities based on the special education and services provided. Charges for other services, in addition to room and board, will be established in cooperation with other state agencies having similar responsibilities. All such costs and charges shall be established in accordance with the process determined by the Interdepartmental Committee on Rate Setting for Children's Facilities.~~

~~45-~~ 17. Report and certify annually to the appropriate federal agency, no later than February 1, to the United States Department of Education the number of children with disabilities in local school divisions and state-operated programs who are receiving special education and related services on December 1.

~~46-~~ Prepare an annual report which summarizes special education and related services provided children with disabilities.

~~17-~~ Review, investigate, and act on any allegations of substance which may be made by public or private agencies, individuals, or organizations of actions taken by any public agency that are contrary to the requirements of laws and regulations affecting the education of children with disabilities.

18. Establish procedures designed to fully inform parents and children with disabilities of educational rights and due process procedures.

19. Provide private special education schools that are licensed or have a certificate to operate with copies of all

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state regulations and standards relating to the education of children with disabilities and revisions of this chapter and standards as they occur.

~~20. Afford private schools to which a public agency has referred or placed a child with a disability the opportunity to participate in the development and revision of regulations and standards which apply to them.~~

20. Establish and implement a mediation process in accordance with 8 VAC 20-80-74, including providing for the cost of mediators and support personnel.

21. Ensure that requirements regarding use of public or private insurance to pay for services required under this chapter are met.

22. If the Virginia Department of Education provides direct services to children with disabilities, comply with the federal requirements as if it is a local educational agency and use federal funds under Part B of the Individuals with Disabilities Education Act (20 USC §§1400 et seq.).

a. The Virginia Department of Education shall use payments that would otherwise have been available to a local school division or state-operated program to provide special education services directly to children with disabilities residing in the area served by that local school division, or for whom that state-operated program is responsible, if the Virginia Department of Education determines the local school division or state-operated program meets criteria specified by the Individuals with Disabilities Education Act (20 USC §§ 1400 et seq.).

b. The Virginia Department of Education may provide special education and related services in the manner and at the location it considers appropriate, consistent with least restrictive environment requirements.

23. Ensure that children participating in early intervention programs assisted under Part C, and who will participate in preschool programs assisted under Part B, experience a smooth and effective transition to early childhood special education programs in a manner consistent with the Virginia lead agency's Part C early intervention policies and procedures, as follows:

a. For those children who at age two (on or before September 30) are found eligible for Part B early childhood special education programs, an IEP or, if consistent with Part B IEP requirements, an individualized family service plan is developed and is implemented for the child.

b. The local educational agency will participate in transition planning conferences arranged by the designated local Part C early intervention agency.

## PART III.

### RESPONSIBILITIES OF LEAS LOCAL SCHOOL DIVISIONS AND STATE AGENCIES OPERATED PROGRAMS.

#### **8 VAC 20-80-40. Applicability of requirements. Responsibility of local school divisions and state-operated programs.**

A. The requirements set forth in this part chapter are applicable to local school divisions and state agencies providing education and related services for children with disabilities and are developed in accordance with state and federal laws and regulations.

B. Each local school division shall ensure that all children with disabilities, aged two through 21, inclusive, residing in that school division have a right to a free appropriate public education. This shall include:

1. Children with disabilities who are migrant or who are homeless;
2. Children with disabilities who are served in public charter schools authorized by the Code of Virginia;
3. Children with disabilities who have been suspended or expelled from school, in accordance with this chapter;
4. Children with disabilities who are incarcerated in a regional, or local jail; with the exception of those provisions identified in 8 VAC 20-80-62;
5. Children with disabilities who are residents of the school division and who are on house arrest, as ordered by a court of competent jurisdiction;
6. Children with disabilities who are in a foster home or child caring institution in the school division's jurisdiction. However, if the child's individualized education program prescribes placement in a private day or residential facility, the responsibility for a free and appropriate public education shall transfer to the local school division in the same jurisdiction as the local social services agency that is providing foster care services to the child;
7. Children with disabilities who are placed in a private residential placement by a Comprehensive Services Act team. The local school division that is part of the Comprehensive Service Act team that places the child in the private residential placement shall be responsible for ensuring a free appropriate public education;
8. Children with disabilities who are placed in a nursing home with a pediatric unit, subject to the provisions of the Virginia Department of Medical Assistance Services, whose residence remains in the local school division; and
9. Students with disabilities age 18 or older whose parents have legal guardianship and who are residents of the local school division.

C. Each state-operated program shall ensure that all children with disabilities aged two through 21, inclusive, in that institution have the right to a free appropriate public education.



## **8 VAC 20-80-45. Special education staffing requirements.**

A. School age programs. The following specifies the staffing patterns for special education services for school age (five through 21, inclusive) children. Local educational agencies and private special education schools may offer an alternative staffing pattern which ensures the requirements of this chapter are met. Any alternative staffing plan shall be submitted to the Virginia Department of Education for approval. An alternative staffing plan that reduces the number of staff positions will not be acceptable.

1. Grouping. When children with disabilities are removed from the general education classroom for special education and related services, they may be grouped with children with the same disability or with children with different disabilities. Each child must receive the majority of special education services from special education personnel assigned in accordance with the requirements of Figure A in this section.

2. Personnel assignment.

a. Personnel assignment requirements are prescribed in Figure A.

b. Personnel not meeting the assignment requirements of Figure A may provide some services to children with disabilities if the children receive the majority of special education services from personnel assigned in accordance with Figure A.

c. Personnel providing services to children who have more than one disability do not need to be endorsed in all areas of a child's disabilities, but shall be endorsed in one area of a child's disabilities.

3. Caseloads standards.

a. The maximum special education caseloads are as funded in the Virginia Appropriation Act and presented in Appendix A.

b. A teacher's caseload shall include all children to whom the teacher provides services. Children receiving special education services from more than one special education teacher must be counted on the caseload of each teacher.

c. Special education personnel may also be assigned to serve children who are not eligible for special education and related services under this chapter, as long as special education personnel hold appropriate licensure and endorsement for such assignment.

d. When special education personnel are assigned to provide services for children who do not have a disability under this chapter, a reduction in the caseload specified in the Virginia Appropriation Act must be made in proportion to the percentage of school time on such assignment. This provision does not apply when special education and related services are provided in a regular class and children without disabilities incidentally benefit from such services.

B. Programs for early childhood special education.

1. Children of preschool ages (two through five, inclusive) who are eligible for special education receive early childhood special education. The amount of services is determined by the child's individualized education program team. There is no state minimum or maximum number of hours of services for preschool aged students with disabilities. Any alternative staffing plan shall be submitted to the Virginia Department of Education for approval. An alternative staffing plan that reduces the number of staff positions will not be acceptable.

2. Staffing requirements.

a. Children receiving early childhood special education services may be grouped together with other preschool aged children with the same or with different disabilities.

b. Personnel assignment standards are prescribed in Figure B.

c. The maximum special education caseloads are as funded in the Virginia Appropriation Act and as presented in Appendix A.

C. Staffing for education programs in regional and local jails. Persons with any special education endorsement, except early childhood special education, may provide instructional services to eligible students with disabilities incarcerated in a regional or local jail.

D. Alternative special education staffing plan. If the local school division or private special education director wishes to implement a different staffing pattern from those specified in this chapter, the local school division superintendent, or private special education school director shall submit an alternative staffing plan to the Virginia Department of Education.

1. Alternative staffing plans are considered on an individual teacher basis according to the description of the caseload. Plans shall be submitted on a form authorized by the Virginia Department of Education. Approval from the Virginia Department of Education is required to implement the plan. The teachers affected by the plan must be informed by the local school division or private special education school that a plan has been submitted, advised of its content, and of its approval status. Approval from the Virginia Department of Education must be secured if there are any modifications to the original plan.

2. In the event that a change in an IEP requires submission of an alternative staffing plan, a request for a plan must be submitted to the Virginia Department of Education within 30 days of the IEP meeting. The IEP shall be implemented while awaiting approval from the Virginia Department of Education.

3. Requests for continuation of an alternative staffing plan approved in the previous school year shall be submitted before August 1.

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Figure A. Special education teacher assignment requirements for school age children (ages five through 21, inclusive).

Disability Category	Endorsement
Autism	any special education endorsement, as appropriate to student needs
Deaf-blind	severe disabilities K-12 or any other special education endorsement, as appropriate to student needs
Developmental Delay: age 5-9	any special education endorsement, as appropriate to student needs
Emotional Disturbance	emotional disturbance K-12
Hearing Impairment/Deaf	hearing impairments preK-12
Learning Disabilities	learning disabilities K-12
Mental Retardation	mental retardation K-12
Multiple Disabilities	severe disabilities or any other special education endorsement, as appropriate to student needs
Orthopedic Impairment	any special education endorsement, as appropriate to student needs
Other Health Impairment	any special education endorsement, as appropriate to student needs
Severe Disabilities	severe disabilities K-12
Speech or Language Impairment	speech or language disorders preK-12
Traumatic Brain Injury	any special education endorsement, as appropriate to student needs
Visual Impairment	visual impairments preK-12

Figure B. Special education teacher assignment requirements for preschool children (ages two through five, inclusive).

Disability Category	Endorsement
Developmental Delay: ages 2 - 5	early childhood special education
Hearing Impairment	hearing impairments preK-12
Speech or language impairment	speech or language disorders preK-12
Vision Impairment	visual impairments preK-12
All other disability categories	early childhood special education

## E. Educational interpreting services.

1. The qualification requirements for personnel providing interpreting services are as follows:

a. Personnel providing educational interpreting services for children using sign language shall have a Virginia Quality Assurance Screening (VQAS) Level III, any Registry of Interpreters for the Deaf Certificate (excluding Certificate of Deaf Interpretation), or any other state or national certification recognized by the Virginia Department for the Deaf and Hard of Hearing as equivalent to or exceeding the VQAS Level III

b. Personnel providing educational interpreting services for children using cued speech or cued language shall have a Virginia Quality Assurance Screening Level III for Cued Speech or hold a Transliteration Skills Certificate from the Testing, Evaluation and Certification Unit (TEC Unit).

c. Personnel providing educational interpreting services for children requiring oral interpreting shall have met minimum requirements for competency on the Virginia Quality Assurance Screening's written assessment of the Code of Ethics.

2. An individual providing interpreting services for children using sign language or cued speech or cued language who does not hold the required qualifications may be employed in accordance with all of the following criteria:

a. The individual must have a Virginia Quality Assurance Screening Level I, or its equivalent, as determined by the Virginia Department for the Deaf and Hard of Hearing, upon hiring date in any local educational agency in Virginia;

b. Each individual must achieve the qualification requirements by the third anniversary date of hiring in any local educational agency in Virginia; and

c. The local educational agency shall inform the Virginia Department of Education of: (i) the person's name, social security number, and hiring date; (ii) the person's progress toward meeting the qualification requirements; and (iii) the person's development plan.

3. Waiver of qualification for interpreters requirements.

a. Conditions for requesting a waiver.

(1) The local educational agency superintendent or director of a private special education school that is licensed or has a certificate to operate shall request a waiver of the qualification requirements for any individual who does not meet the qualification requirements for providing interpreting services.

(2) A waiver may be provided for individuals who do not hold at least a Virginia Quality Assurance Screening (VQAS) Level I upon date of hire and who hold interpreting credentials from another state or who have registered to take the VQAS. The waiver shall be in place only until the VQAS level or equivalency determination is received.

(3) A waiver may be provided for one year for individuals who have not attained the qualification requirements by the third anniversary of their hiring date in any local educational agency in Virginia and who hold a VQAS Level II. This waiver may be provided for a second year if the individual continues to hold a VQAS Level II and has shown improvement in percentage scores.

b. Timeline for requesting a waiver. A request to waive the educational interpreter qualification requirements is to be submitted to the Virginia Department of

*Education within 30 days of the person's initial or continuing assignment to provide interpreting services, using a form authorized by the Virginia Department of Education.*

**8 VAC 20-80-50. Identification, evaluation, and eligibility Child find.**

~~A. Target ages and eligibility. Each annual special education plan/report and funding application shall include procedures which ensure that all children residing within the jurisdiction of an LEA, birth to age 21, inclusive, who may have disabilities, and who may need special education and related services are identified, located, and evaluated. The plan also shall include a practical method for determining children who are receiving needed special education and related services and those who are not receiving such services. Each local school division shall maintain an active and continuing child find program designed to identify, locate and evaluate those children residing in the jurisdiction who are birth to age 21, inclusive, who are in need of special education and related services. The requirements apply to:~~

- ~~1. Children who are highly mobile, such as migrant and homeless children;~~
- ~~2. Children who are attending private schools;~~
- ~~3. Children who are suspected of being a child with a disability and in need of special education, even though they are advancing from grade to grade; and~~
- ~~4. Children under age 18 who are suspected of having a disability and in need of special education and related services and are incarcerated in a regional or local jail for 10 or more days.~~

**B. Child find Public awareness.**

1. Each local school division shall, at least annually, conduct a public awareness campaign to:
  - a. Inform the community of a person's, *ages two to 21, inclusive*, statutory right to a free appropriate *public* education and the availability of special education programs and services;
  - b. Generate referrals; and
  - c. Explain the nature of disabilities, the early warning signs of disabilities, and the need for early intervention.
2. Procedures for informing the community shall show evidence of the use of a variety of materials and media, and shall:
  - a. Provide for personal contacts with community groups, public and private agencies and organizations; and
  - b. Provide information in the person's native language or primary mode of communication.
3. There shall be evidence of involvement of parents and community members in the required child find and community awareness campaign.

~~4. Each local school division shall maintain an active and continuing child find program designed to identify, locate and evaluate those children from birth to 21, inclusive, who are in need of special education and related services. Written procedures shall be established for collecting, reviewing and maintaining such data.~~

~~5. All children ages two to 21, inclusive, not enrolled in school and who are suspected of having a disability shall be referred to the division superintendent, or designee, who shall initiate the process of determining eligibility for special education services.~~

~~6. Where such children are determined to be eligible for special education services, school divisions are required to offer appropriate programs and placements consistent with each child's IEP from ages two to 21 inclusive.~~

**C. Screening.**

~~1. Each local school division shall establish and maintain screening procedures to assure the identification of children with disabilities residing within its jurisdiction and requiring special education. All procedural safeguards shall be maintained during the screening process. These include the following:~~

- ~~a. Written notice when appropriate;~~
- ~~b. Confidentiality; and~~
- ~~c. Maintenance of student's scholastic record.~~

~~2. 1. The screening process for all children enrolled in the school division a public school in Virginia, including transfers from out of state, is as follows:~~

~~a. All children, within 60 administrative working business days of initial enrollment in a public school, shall be screened in the following areas *speech, voice, and language* to determine if formal assessment is indicated:~~

- ~~(1) *Speech, voice, and language*; and~~
- ~~(2) *Vision and hearing*.~~

~~b. All children, within 60 business days of initial enrollment, shall be screened in the areas of vision and hearing to determine if formal assessment is indicated. In addition, the vision and hearing of all children in grades three, seven, and 10 shall be screened during the school year.~~

~~c. All children (through grade 3 three), within 60 administrative working business days of initial enrollment in public schools, shall be screened for fine and gross motor functions to determine if formal assessment is indicated.~~

~~d. For children entering a public kindergarten or elementary school in Virginia, the screening may take place up to 60 business days prior to the start of school. The local school division may recognize screenings reported as part of the child's pre-school physical examination required under the Code of Virginia if completed within the above prescribed time line.~~

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e. Specific measures or instruments will be employed which use:

- (1) Both observational and performance techniques; and
- (2) Techniques which guarantee nondiscrimination.

f. Children who fail any of the above screenings may be rescreened after the 60 business days specified in subdivision b above if the original results are not considered valid.

g. Children shall be referred to the special education administrator or designee no more than two business days after screening if results suggest the child may have a disability and may be in need of special education and related services. The referral shall include the screening results.

2. Each local school division shall establish and maintain screening procedures to assure the identification of children with suspected disabilities residing within its jurisdiction and requiring special education. All appropriate procedural safeguards shall be maintained during the screening process. These include the following:

- a. Written notice to parents of the scheduled screening and the results of the screening;
- b. Confidentiality; and
- c. Maintenance of the student's scholastic record.

3. ~~There shall be established a formal child study committee in each school to review records and other performance evidence of those children referred through a screening process or referred by a source other than through screening; for example, when a parent or external service provider makes a referral. All referrals for child study shall be made to the principal or designee. The committee shall include:~~

- ~~a. Referring source, as appropriate (except when referring source would breach confidentiality of child);~~
- ~~b. Principal or designee;~~
- ~~c. Teachers; and~~
- ~~d. Specialists.~~

~~The committee must have at least three persons in attendance.~~

~~4. The child study committee shall meet within 10 administrative working days following referral.~~

~~5. Actions by the committee shall be documented in writing and shall include information upon which a decision was based. The formal assessment components shall not be initiated (collected) before referral to the special education administrator and parental consent has been obtained.~~

~~D. Referral for evaluation. Children suspected of having a disability shall be referred by the child study committee or other referring source to the special education administrator~~

~~for formal assessment. If referral to the special education administrator is from the child study committee, it shall be made within five administrative working days following the determination by the child study committee that the child is suspected of having a disability.~~

## **8 VAC 20-80-52. Referral for evaluation.**

A. All children, ages two to 21, inclusive, whether enrolled in public school or not, and who are suspected of having a disability, shall be referred to the special education administrator or designee, who shall initiate the process of determining eligibility for special education and related services.

1. Referrals may be made by any source, including a school-based committee, school staff, a parent or parents, or other individuals.

2. If the referral is from a school-based committee, it shall be made within two business days following the determination by the committee that the child should be referred for evaluation for special education and related services. In addition, the school-based committee shall report, in writing, on strategies implemented to address the child's learning, behavior, communication or development.

3. If the referral is from any other source, the referring party shall inform the special education administrator or designee of why an evaluation is requested and efforts that have been made to address the concerns. The referral may be made orally or in writing.

### **B. Procedures for referral for evaluation.**

1. Upon receipt of the referral, the special education administrator, or designee, shall:

1. a. Record the date, reason for referral and names of the person/ or agency making the referral;

2. b. Implement procedures for maintaining the confidentiality of all data and institute procedural safeguards to:

a. (1) Inform the parent or parents of the referral child in the parent's or parents' native language or primary mode of communication, unless it is clearly not feasible to do so;

b. (2) Advise the parent or parents of his their rights in the parent's or parents' native language or primary mode of communication; and

c. Inform, within five business days of receipt of the referral, the referring source and the parent or parents if an evaluation to determine eligibility for special education and related services will be conducted.

(1) The special education administrator or designee may refer the child to a school-based committee to determine if an evaluation shall be completed. This shall occur within the five business day time period.

(2) If the decision is to not evaluate, prior written notice in accordance with 8 VAC 20-80-70 shall be

given to the parent or parents, including their right to appeal this decision.

(3) If the decision not to evaluate is made by a sole individual, the parent or parents may request a school-based committee to meet and determine if an evaluation is necessary.

(4) The decision whether to evaluate or not shall be made within 10 business days of the parent's or parents' request.

(5) The meeting of the school-based committee shall not be used to deny or delay a parent's or parents' right to a due process hearing to contest the decision not to evaluate.

2. If the decision is to conduct an evaluation the special education administrator or designee shall:

~~e. a. Secure written permission of informed consent from the parent or parents for the formal assessment; evaluation:~~

~~(1) Parental consent is not required before reviewing existing data as part of an evaluation or administering a test or other evaluation that is administered to all children, unless parental consent is required before administration to all children.~~

~~(2) If the parent or parents refuse consent for initial evaluation, the local educational agency may continue to pursue those evaluations by using due process or mediation procedures.~~

~~b. Provide all notice and procedural safeguards required by 8 VAC 20-80-70.~~

~~c. Inform the parent or parents of the procedures for determination of needed evaluation data and request any evaluation information the parent or parents may have.~~

~~d. Ensure that all evaluations are completed and that decisions about eligibility are made within 65 business days after the referral for evaluation is received by the special education administrator or designee.~~

~~3. Initiate formal assessment procedures; and~~

~~4. Notify the referral source, when appropriate, of the results of the decision regarding determination of eligibility.~~

**E. 8 VAC 20-80-54. Evaluation.**

A. Each local educational agency shall ensure that all children residing within its jurisdiction, ages two to 21, inclusive, who may have disabilities, and who may need special education and related services, are evaluated. The requirements apply to:

1. Children who are highly mobile, such as migrant and homeless children;

2. Children who are attending private schools;

3. Children who are suspected of being a child with a disability and in need of special education, even though they are advancing from grade to grade; and

4. Children, under age 18, who are suspected of being a child with a disability and in need of special education and are incarcerated in a regional or local jail for 10 or more days.

B. Each local educational agency shall conduct a full and individual evaluation before the initial provision of special education and related services to a child with a disability.

4. C. The LEA local educational agency shall establish procedures for the evaluation of referred children which include the following:

~~a. 1. Written prior notification (in the parent's or parents' native language or mode of communication);~~

~~b. 2. Opportunity for independent evaluation;~~

~~e. Written 3. Informed parental consent;~~

~~d. 4. Assignment of surrogate parent when necessary;~~

~~e. 5. Opportunity for an impartial hearing;~~

~~f. 6. Confidentiality;~~

~~g. 7. Opportunity for examination of records; and~~

~~h. 8. Nondiscriminatory testing.~~

D. Determination of needed evaluation data.

1. Review of existing evaluation data. As part of an initial evaluation, if appropriate, and as part of any reevaluation, a group that includes the individuals described in 8 VAC 20-80-62 C, and other qualified professionals, as appropriate, shall:

a. Review existing evaluation data on the child, including:

(1) Evaluations and information provided by the parent or parents of the child;

(2) Current classroom-based assessments and observations;

(3) Observations by teachers and related services providers; and

b. On the basis of that review, and input from the child's parent or parents, or the agency assigned legal custody of the child, identify what additional data, if any, are needed to determine:

(1) Whether the child has a particular category of disability;

(2) The present levels of performance and educational needs of the child;

(3) Whether the child needs special education and related services; and

(4) Whether any additions or modifications to the special education and related services are needed to enable the child to meet the measurable annual

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goals set out in the IEP of the child and to participate, as appropriate, in the general curriculum.

2. Conduct of review. The group completing the review may conduct its review without a meeting. The parent's or parents' participation in the review shall be ensured according to the procedures set forth in 8 VAC 20-80-62 D.

3. Need for additional data. The local educational agency shall administer tests and other evaluation materials as may be needed to produce the data identified in this subsection.

4. Requirements if additional data are not needed.

a. If it is determined that no additional data are needed to determine whether the child is a child with a disability, the local educational agency shall notify the child's parent or parents of that determination and the reasons for it; and, of the right of the parent or parents to request an evaluation to determine whether, for purposes of services under this part, the child is a child with a disability.

b. The local educational agency is not required to conduct the evaluation to determine if the child is a child with a disability unless requested to do so by the child's parent or parents.

~~2.~~ E. The LEA local educational agency shall establish policies and procedures to ensure that ~~tests and other evaluation materials meet~~ the following: requirements are met.

a. 1. Tests and other evaluation materials:

~~(1)~~ a. Are neither culturally nor racially discriminatory;

~~(2)~~ b. Are provided and administered in the child's native language or other mode of communication, unless it is clearly not feasible to do so.

2. Materials and procedures used to assess a child with limited English proficiency are selected and administered to ensure that they measure the extent to which the child has a disability and needs special education, rather than measuring the child's English language skills.

3. A variety of assessment tools and strategies are used to gather relevant functional and developmental information about the child, including information provided by the parent or parents, and information related to enabling the child to be involved in and progress in the general curriculum (or for a preschool child, to participate in appropriate activities), that may assist in determining whether the child is a child with a disability and the content of the child's IEP.

4. Evaluation tools and strategies are used that provide relevant information that directly assists persons in determining the educational needs of the child.

5. Any standardized tests that are given to a child:

~~(3)~~ a. Have been validated for the specific purpose for which they are used; and

~~(4)~~ b. Are administered by trained personnel in conformance with the instructions provided by ~~the producer~~ the test manufacturer.

6. If an evaluation is not conducted under standard conditions, a description of the extent to which it varied from standard conditions must be included in the evaluation report.

7. Any nonstandardized test, administered by qualified personnel, may be used to assist in determining whether the child is a child with a disability and the contents of the child's IEP.

~~b.~~ 8. Tests and other evaluation materials include those tailored to assess specific areas of educational need and not merely those which are designed to provide a single general intelligence quotient.

~~e.~~ 9. Tests are selected and administered so as to best ensure that when a test is administered to a child with impaired sensory, manual, or speaking skills, the test results accurately reflect the child's aptitude or achievement level or whatever other factors the test purports to measure rather than reflecting the child's impaired sensory, manual, or speaking skills (except where those skills are the factors which the test purports to measure).

10. The evaluation is sufficiently comprehensive to identify all of the child's special education and related services needs, whether or not commonly linked to the disability category in which the child has been classified.

11. Technically sound instruments are used that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors.

~~d.~~ 12. No single procedure shall be used as the sole criterion for determining an appropriate educational program for a child.

~~e.~~ 13. If the evaluation requires more than one component, the evaluation components shall be ~~made~~ completed by a multidisciplinary team ~~or group of persons~~, including at least one teacher or other specialist with knowledge in the area of suspected disability.

~~3.~~ 14. For a child suspected of having a specific learning disability, the multidisciplinary team shall include:

a. The child's regular teacher or if the child does not have a regular teacher, a classroom teacher qualified to teach a child of that age, or if a child is below school age, a person qualified to teach that age; and

b. At least one person qualified to conduct individual diagnostic examinations of children, such as a specific learning disabilities teacher, school psychologist, speech-language pathologist, or remedial reading teacher.

4. 15. For a child suspected of having a learning disability, the evaluation must include an observation of academic performance in the regular classroom by at least one team member other than the child's regular

teacher. In the case of a child of less than school age or out of school, a team member shall observe the child in an environment appropriate for a child of that age.

~~5. The LEA shall establish procedures to ensure:~~

~~a. That 16. Each child is assessed shall be evaluated by a qualified professional in all areas related to the suspected disability, including, where appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities, and adaptive behavior. This may include educational, medical, sociocultural, psychological, or developmental assessments. Reports from assessments must be provided in writing. However,~~

~~a. The hearing of each child with a disability shall be tested during the eligibility process prior to placement in a special education program.~~

~~b. A complete audiological assessment, including tests which will assess inner and middle ear functioning, must be performed on each child who is hearing impaired or who fails two hearing screening tests. The second hearing screening test shall be completed not less than 15 nor more than 45 calendar days after administration of the first screening test.~~

~~b. Parents are provided an opportunity to participate, if they so request, in the consideration of the areas to be assessed. Parents must be provided written notification of this right.~~

~~6. The LEA shall establish procedures to ensure that eligibility for special education and related services is determined within 65 administrative working days after request for evaluation is received by the special education administrator.~~

~~7. A multidisciplinary team may determine that a child has a specific learning disability if:~~

~~a. The child does not achieve commensurate with his age and ability levels in one or more of the areas listed in subdivision E 7 b of this section when provided with learning experiences appropriate for the child's age and ability levels; and~~

~~b. The team finds that a child has a severe discrepancy between achievement and intellectual ability in one or more of the following areas:~~

- ~~(1) Oral expression;~~
- ~~(2) Listening comprehension;~~
- ~~(3) Written expression;~~
- ~~(4) Basic reading skill;~~
- ~~(5) Reading comprehension;~~
- ~~(6) Mathematical calculations; or~~
- ~~(7) Mathematical reasoning.~~

~~c. The multidisciplinary team may not identify a child as having a specific learning disability if the severe~~

~~discrepancy between ability and achievement is primarily the result of:~~

- ~~(1) A visual, hearing or motor disability;~~
- ~~(2) Mental retardation;~~
- ~~(3) Serious emotional disturbance; or~~
- ~~(4) Environmental, cultural, or economic disadvantages.~~

~~17. Reports from evaluations must be provided in writing at the meeting to determine eligibility. A copy of the evaluation report shall be provided to the parent.~~

~~F. Reevaluation.~~

~~1. A reevaluation shall be conducted (i) if conditions warrant a reevaluation; (ii) if the child's parent or teacher requests a reevaluation; or (iii) at least once every three years.~~

~~2. The local educational agency shall ensure that a group of individuals, as described in 8 VAC 20-80-62 C, and other qualified professionals, as appropriate:~~

~~a. Reviews the reason for the reevaluation request, if applicable, and existing evaluation data on the child, including:~~

- ~~(1) Evaluations and information provided by the parents of the child;~~
- ~~(2) Current classroom-based assessments and observations; and~~
- ~~(3) Observations by teachers and related services providers.~~

~~b. Identify, on the basis of the above review, and input from the child's parents, what additional data, if any are needed to determine:~~

- ~~(1) Whether the child continues to have a particular disability;~~
- ~~(2) The present levels of performance and educational needs of the child;~~
- ~~(3) Whether the child continues to need special education and related services; and~~
- ~~(4) Whether any modifications to the special education and related services are needed to enable the child to meet the measurable annual goals set out in the IEP of the child and to participate, as appropriate, in the general curriculum.~~

~~c. The group may conduct its review without a meeting.~~

~~3. The local educational agency shall determine, based on the review in subdivisions 2 a and b of this subsection, if it shall administer tests and other evaluation materials as may be needed to make the determinations identified in subdivision 2 b of this subsection.~~

~~a. The local educational agency shall inform the parent and referring teacher, if applicable, of its determination.~~

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b. If the determination identified in subdivision (b) of this subsection is that no additional data are needed to determine whether the child continues to be a child with a disability, the local educational agency shall notify the child's parents of (i) that determination and the reasons for it; and (ii) the right of the parents to request an evaluation to determine whether, for purposes of services under this chapter, the child continues to be a child with a disability.

c. The local educational agency is not required to conduct the evaluation to gather additional information to determine whether the child continues to have a particular disability, unless requested to do so by the child's parents.

d. The local educational agency is not required to conduct an evaluation to gather additional information if it determines that it does not need additional data to determine:

- (1) The present levels of performance and educational needs of the child;
- (2) Whether the child continues to need special education and related services; and
- (3) Whether any modifications to the special education and related services are needed to enable the child to meet the measurable annual goals set out in the IEP of the child and to participate, as appropriate, in the general curriculum.

#### 4. Notice and parental consent.

a. The local educational agency shall provide notice in accordance with 8 VAC 20-80-70 C.

b. Parental consent is required before gathering additional evaluation data.

(1) If the local educational agency can demonstrate that it has taken reasonable measures to obtain that consent and the child's parent or parents have failed to respond, the local educational agency shall proceed as if consent has been given by the parent or parents. The procedures in 8 VAC 20-80-62 D shall be used to meet the reasonable measures requirement.

(2) If the parent or parents refuse consent for reevaluation, the local educational agency may continue to pursue those evaluations by using due process or mediation procedures.

c. Parental consent is not required before reviewing existing data as part of a reevaluation.

#### 5. Timelines.

a. Evaluations shall be completed within 65 business days of the provision of notice specified in subdivision 4 of this subsection.

b. The determination of whether the child continues to be a child with a disability in need of special education and related services shall be completed within 65

business days of the notice specified in subdivision 4 of this subsection.

c. If the reevaluation is a triennial evaluation, the notice shall be sent no less than 65 business days prior to the third anniversary of the date eligibility was last determined.

6. The review described in subdivision 2 of this subsection may be used to amend the child's IEP, even if no further evaluation data is gathered.

#### **F. 8 VAC 20-80-56. Eligibility. ~~Eligibility of children for special education programs and related services shall be determined by an eligibility committee.~~**

~~1. Membership of the eligibility committee shall include, but not be limited to, school division personnel representing the disciplines providing assessments and the special education administrator, or designee. At least one school division representative serving on the eligibility committee must have either assessed or observed the child.~~

~~2. The eligibility committee shall review the assessments, any pertinent information reported by an agency assigned legal custody of the child, and any other special reports to determine if the child has a disability which requires special education and related services. Once eligibility has been determined, adding a related service to an existing IEP is an IEP committee function. The assessments or other relevant data that are required or necessary for the proposed related service are forwarded to the IEP committee in order that appropriate goals and objectives can be developed.~~

A. The local educational agency shall establish procedures to ensure that the decision regarding eligibility for special education and related services is made within 65 business days after:

1. The referral for evaluation is received; or
2. The parent or parents are notified of any local educational agency decision not to reevaluate.

B. Upon completing the administration of tests and other evaluation materials or after determination that additional data are not needed, in accordance with 8 VAC 20-80-54 D, a team of qualified professionals and the parent or parents of the child must determine whether the child is, or continues to be, a child with a disability.

1. The team shall include, but not be limited to, school division personnel representing the disciplines providing assessments, the special education administrator, or designee, and the parent or parents.

2. At least one school division representative serving on the team must have either assessed or observed the child.

3. The team may be an IEP team, as defined in 8 VAC 20-80-62 C, as long as the above requirements and notice requirements of section 8 VAC 20-80-70 C, are met.



4. If determining whether a child suspected of having a specific learning disability, as defined by this chapter, the team shall include:

a. The child's regular teacher:

(1) If the child does not have a regular teacher, a regular teacher qualified to teach a child of that age; or

(2) For a child less than school age, an individual qualified to teach a child of this age; and

b. At least one person qualified to conduct diagnostic examinations of children, such as school psychologist, speech-language pathologist, teacher of specific learning disabilities or teacher of remedial reading.

C. Procedures for determining eligibility and placement.

1. In interpreting evaluation data for the purpose of determining if a child is a child with a disability and determining the educational needs of the child, the local educational agency shall:

a. Draw upon information from a variety of sources, including aptitude and achievement tests, parent input, teacher recommendations, physical condition, social or cultural background, adaptive behavior; and

b. Ensure that information from all these sources is documented and carefully considered.

2. The eligibility committee team shall follow due process procedures in the determination of eligibility and in ensuring the confidentiality of records.

3. The local educational agency must provide a copy of the documentation of the determination of eligibility to the parent or parents.

4. A child may not be determined to be eligible under this chapter if the determinant factor is lack of instruction in reading or math or limited English proficiency; and the child does not otherwise meet the eligibility criteria.

5. The decision regarding the child's eligibility shall be made by consensus. The eligibility committee team shall have a written summary that consists of essential deliberations supporting its findings as to the eligibility of each child for a special education program and related services. This summary shall be signed by each eligibility committee team member present. a. The written summary shall be maintained in the child's confidential files; scholastic record.

b. 6. The summary statement of the eligibility committee's team's essential deliberations shall be forwarded by the committee to the IEP committee team upon determination of eligibility. The summary statement may include other recommendations. A statement by each eligibility committee team member that the summary statement reflects his that member's conclusions shall be included. If the team does not reach consensus and the report does not reflect a particular member's conclusion, then a separate statement shall be submitted by the team member presenting his that member's conclusions.

7. The written summary concerning students identified as having a specific learning disability shall also include a statement of:

(1) A statement indicating a. Whether or not the child has a specific learning disability;

(2) b. The basis for making the determination;

(3) c. Relevant behavior noted during the observation and the relationship of the behavior to the child's academic functioning;

(4) d. Educationally relevant medical findings, if any;

(5) Information indicating e. Whether or not there is a severe discrepancy between the child's achievement and ability which that cannot be corrected without special education and related services; and

(6) f. The determination of the team concerning effects of any environmental, cultural, or economic disadvantage, as determined by the team; and.

(7) A statement by each eligibility committee member that the report reflects his conclusions. If it does not reflect a particular member's conclusion, then the team member must submit a separate statement presenting his conclusions.

G. Termination of services.

1. Termination of one or more related services for a child is a function of the IEP committee. Termination of related services occurs when the IEP committee determines that the services are no longer required in order for the child to benefit from special education.

2. Termination of all special education services for a child (i.e., removal from special education) shall be the responsibility of the eligibility committee. The IEP committee shall refer a student to the eligibility committee when they believe the child is no longer eligible to receive special education. Termination of special education services occurs:

a. If the eligibility committee determines that the services are no longer required based on the fact that the child no longer meets the eligibility criteria for special education and related services and parental consent has been obtained; or

b. If the parent withdraws permission for the child to remain in special education, then the decision of the parent to withdraw the child from special education must be reviewed by the LEA pursuant to the change in placement procedures. If the LEA disagrees with the withdrawal decision and attempts to resolve parental withdrawal of consent through informal methods and are unsuccessful, the LEA must use other measures as necessary to ensure that parental withdrawal of consent will not result in the withdrawal of a necessary free appropriate public education.

D. Eligibility for related services. A child with a disability must be found eligible for special education in order to receive related services. Related services are those supportive

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services that are required to assist a child with a disability to benefit from special education.

E. Eligibility of two-year old children. A child, aged two, previously participating in early intervention programs assisted under Part C, shall be determined eligible under Part B, in accordance with the requirements of this chapter.

F. Eligibility as a child with a developmental delay. If the local educational agency elects to use the term developmental delay for children aged two through eight:

1. The local educational agency must conform to the definition and age range in this chapter.

2. Other disability categories may be used for any child with a disability aged two through eight. However, teacher assignment requirements specified in 8 VAC 20-80-45 shall apply.

G. Criteria for determining the existence of a specific learning disability. The multidisciplinary team may determine that a child has a specific learning disability if:

1. The child does not achieve commensurate with the child's age and ability levels in one or more of the areas listed in subdivision 2 of this subsection when provided with learning experiences appropriate for the child's age and ability levels; and

2. The team finds that a child has a severe discrepancy between achievement and intellectual ability in one or more of the following areas:

- a. Oral expression;
- b. Listening comprehension;
- c. Written expression;
- d. Basic reading skill;
- e. Reading comprehension;
- f. Mathematical calculations; or
- g. Mathematical reasoning.

3. The multidisciplinary team may not identify a child as having a specific learning disability if the severe discrepancy between ability and achievement is primarily the result of:

- a. A visual, hearing or motor disability;
- b. Mental retardation;
- c. Emotional disturbance; or
- d. Environmental, cultural, or economic disadvantage.

H. Children found not eligible for special education. Information relevant to instruction for a child found not eligible for special education shall be provided to the child's teachers.

I. Child's status pending determination of eligibility. The child shall remain in the current placement during determination of eligibility for special education and related services, with the exception of the provisions in 8 VAC 20-80-68.

J. If the determination is made that a child has a disability and needs special education and related services, an IEP must be developed for the child in accordance with this chapter.

K. Child's status; previous enrollment in special education. If a child enrolled in a special education program transfers from one LEA to another LEA or from out of state to an LEA, the child shall be placed with written consent of the parent in a special education program consistent with the current IEP. The IEP committee may decide to continue with the placement. If the IEP committee believes the transfer will necessitate a change in educational placement, then the eligibility committee shall review the existing evaluations and conduct new evaluations or update them as appropriate. Pending the eligibility committee's and IEP committee's determination, the child shall be placed with consent of the parent in a special education program consistent with the current IEP. In the case of a child placed in a private residential school, absent parental consent or absent an appropriate program within the LEA, the child will remain in the private residential school until the eligibility committee and IEP committee have made a decision.

1. If a child with a disability has been receiving special education from one local educational agency in Virginia and transfers to another, the new local educational agency is responsible for ensuring that the child has available special education and related services in conformity with the former IEP.

a. The local educational agency shall adopt and implement the IEP of the former local educational agency or develop a new IEP for the child. The new local educational agency may provide interim services agreed to by both the parent or parents and the local educational agency.

b. If the parent or parents and the local educational agency are unable to agree on an interim placement, the local educational agency must implement the former IEP until a new IEP is developed and implemented.

2. When a child with a disability under the Individual with Disabilities Education Act (20 USC §§ 1400 et seq.) transfers from another state, the local educational agency must determine whether a disability exists and whether the evaluation and IEP comply with Virginia's statutes and regulations.

a. The local educational agency may adopt and implement the former IEP without a meeting, if the IEP meets the requirements of this chapter and the parent or parents consent.

b. If the local educational agency determines that the former IEP does not meet the requirements of this chapter, an IEP meeting must be held within 10 business days to develop a new IEP, in accordance with this chapter.

c. If the local educational agency determines that the former evaluation does not meet the requirements of this chapter, the local educational agency must initiate

evaluation procedures in accordance with this chapter and conduct the evaluation without undue delay. During the evaluation, the child shall be placed pursuant to an agreed-upon interim IEP or in regular education in absence of such agreement. If no mutually agreeable placement can be determined, the local educational agency is not obligated to adopt the former IEP and provide services according to the former IEP.

3. When a child with a disability transfers from a private residential school where the child was placed and funded under the Comprehensive Services Act, the new local educational agency must review the current placement and adopt or revise and implement the IEP within 30 days. The former local educational agency and CSA team shall be responsible for paying for services until 30 calendar days after the new CSA team receives written notification of the child's residence in the new locality from the former CSA team.

### **8 VAC 20-80-58. Termination of special education and related services.**

A. A local educational agency must evaluate a child with a disability in accordance with 8 VAC 20-80-54 before determining that the child is no longer a child with a disability under this chapter. Evaluation is not required before the termination of eligibility due to graduation with a standard or advanced studies high school diploma or exceeding the age of eligibility.

B. Termination of special education services for a child with a disability shall be conducted by the team identified in 8 VAC 20-80-56 B.

1. Termination of special education services occurs if the team determines that the child is no longer a child with a disability who needs special education and related services and parental consent is secured.

2. A related service may be terminated during an IEP meeting without any determination that the child is no longer a child with a disability who is eligible for special education and related services. Parental consent shall be secured.

3. If the parent or parents revoke consent for the child to continue to receive special education and related services, then the decision of the parent or parents must be reviewed by the special education administrator or designee.

a. If the special education administrator or designee agrees, services will be discontinued as a result of the revocation, but the child will continue to be a child eligible for special education and related services, unless termination of eligibility procedures are followed.

b. If the special education administrator or designee disagrees with the revocation of consent and attempts to resolve parental revocation through mediation or informal methods are unsuccessful, the special education administrator or designee must use other measures as necessary to ensure that parental

revocation of consent will not result in the withdrawal of a necessary free appropriate public education for the child.

### **8 VAC 20-80-60. Service delivery. A. Free appropriate public education.**

~~4.~~ A. Age of eligibility.

1. A free appropriate public education shall be available to all children with disabilities, ages two to 21, inclusive, residing within the jurisdiction of each LEA local educational agency. This includes children with disabilities who have been suspended or expelled from school in accordance with the provisions of 8 VAC 20-80-68. Each LEA local educational agency shall have established the a goal of providing a full educational opportunity for all children with disabilities from birth two to 21, inclusive, residing within their its jurisdiction.

~~2.~~ Continuum of alternative placements.

a. ~~Each local school division shall ensure that a continuum of alternative placements is available to meet the needs of children with disabilities.~~

~~(1) The continuum must include the alternative placements listed in the definition of special education (i.e., instruction in regular classes, special classes, special schools, home instruction, and instruction in hospitals and institutions). The continuum must make provision for supplementary services (such as resource room or itinerant instruction) to be provided in conjunction with regular class placement. The continuum should include integrated service delivery, that is, where some or all goals and objectives of the student's individualized educational program are met in the general education setting with age-appropriate peers.~~

~~(2) No single model for the delivery of services to any specific population or category of children with disabilities will be acceptable for meeting the requirement for a continuum of alternative placements (e.g., resource classes as the only option for children who need a self-contained placement or a separate facility as the only alternative placement for students with disabilities). All placement decisions must be based on the individual needs of each child.~~

~~(3) LEAs shall document fully all alternatives considered and the rationale for choosing the selected placement.~~

~~(4) Children with disabilities must be served in a program with age-appropriate peers (e.g., secondary age children shall be placed in a secondary school and elementary age children shall be placed in an elementary school), unless it can be shown that for a particular child with a disability the alternative placement is appropriate as documented by the IEP.~~

b. If a local school division is unable to provide a free appropriate public education to a child with a disability and it is not appropriately available in a state facility,

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~~other than Woodrow Wilson Rehabilitation Center, the local school division shall offer to place the child in Woodrow Wilson Rehabilitation Center or a nonsectarian private school for children with disabilities approved by the Board of Education or such other licensing agency as may be designated by state law. The school board of such division shall pay to, or on behalf of, the parent or guardian of such child the reasonable tuition cost and other reasonable charges as may be determined under the rules of the Interdepartmental Council on Rate-Setting as adopted by the Boards of Education, Social Services and Corrections. The school board, from its own funds, is authorized to pay such additional tuition or charges as it may deem appropriate.~~

### ~~3. Least restrictive environment (LRE).~~

~~a. Each LEA shall establish and implement procedures which satisfy requirements as follows:~~

~~(1) To the maximum extent appropriate, children with disabilities, including those in public or private institutions or other care facilities, are educated with children who are not disabled; and~~

~~(2) Special class placement, separate schooling or other removal of children with disabilities from the regular educational environment occurs only when the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.~~

~~b. In providing or arranging for the provision of nonacademic and extracurricular services and activities, including meals, recess periods, and other services and activities provided for nondisabled children, each LEA shall ensure that each child with a disability participates with nondisabled children in those services and activities, to the maximum extent appropriate to the needs of the child with a disability.~~

~~c. For children in public or private institutions, the LEA shall, where necessary, make arrangements with public and private institutions to ensure that requirements for least restrictive environment are met. (See Placements, 8 VAC 20-80-60 B 8.)~~

### ~~4. Safeguards in evaluation, eligibility and placement.~~

~~a. In interpreting evaluation data and in making eligibility and placement decisions, each LEA shall:~~

~~(1) Draw upon information from a variety of sources, including aptitude and achievement tests, teacher recommendations, physical condition, social or cultural background, and adaptive behavior;~~

~~(2) Ensure that information obtained from all of these sources is documented and carefully considered;~~

~~(3) Ensure that the placement decision is made by a group of persons, including persons knowledgeable about the child, the meaning of the evaluation data, and the placement options; and~~

~~(4) Ensure that the placement decision is made in conformity with the least restrictive environment (see Least Restrictive Environment, 8 VAC 20-80-60 A 3).~~

~~b. If it is determined that a child has a disability and needs special education and related services, an IEP must be developed for the child in accordance with this chapter.~~

~~a. The services provided to the child under this chapter shall address all of the child's identified special education and related services needs.~~

~~b. The services and placement needed by each child with a disability to receive a free appropriate public education must be based on the child's unique needs and not on the child's disability.~~

~~2. Exceptions. The obligation to make a free appropriate public education to all children with disabilities does not apply to:~~

~~a. Children with disabilities who have graduated from high school with a standard or advanced studies high school diploma. This exception does not apply to students who have graduated but have not been awarded a standard or advanced studies high school diploma.~~

~~b. A child who has been excused from compulsory school attendance in accordance with provisions of the Code of Virginia.~~

~~c. Students aged 18 through 21 who, if in their last educational placement prior to their incarceration in an adult correctional facility, were not identified as being a child with a disability; and did not have an IEP. This exception does not apply to students with disabilities, aged 18 through 21, who had been identified as a child with a disability and had received services in accordance with an IEP, but who left school prior to their incarceration or did not have an IEP in their last educational setting but who had actually been identified as child with a disability under this chapter.~~

~~B. Program options. Each local educational agency shall take steps to ensure that its children with disabilities have available to them the variety of educational programs and services available to children without disabilities in the area served by the local educational agency, including art, music, industrial arts, consumer and homemaking education, and vocational education.~~

~~C. Residential placement. If placement in a public or private residential program is necessary to provide special education and related services to a child with a disability, the program, including nonmedical care and room and board, must be at no cost to the parents of the child.~~

~~D. Proper functioning of hearing aids. Each local educational agency shall ensure that the hearing aids worn in school by children with hearing impairments, including deafness, are functioning properly.~~

~~E. Assistive technology.~~

1. Each local educational agency shall ensure that assistive technology devices or assistive technology services, or both, as those terms are defined in this chapter, are made available to a child with a disability if required as part of the child's:

- a. Special education;
- b. Related services; or
- c. Supplementary aids and services.

2. On a case-by-case basis, the use of school-purchased or leased assistive technology devices in a child's home or in other settings is required if the child's IEP team determines that the child needs access to those devices in order to receive a free appropriate public education.

#### ~~5-~~ F. Transportation.

~~a-~~ 1. Each child with a disability placed in an education program, including private special education day or residential placements, by the local school division shall be entitled to transportation to and from such program at no cost if such transportation is necessary to enable such child to benefit from educational programs and opportunities. There is no prohibition against regular education and special education students sharing the same transportation.

~~b-~~ 2. If an LEA a local educational agency enters an agreement with another LEA local educational agency for the provision of special education or related services for a child with a disability, such child shall be transported to and from such program at no cost to the parent or parents.

~~e-~~ 3. If a child with a disability is placed in a state residential Virginia school for the deaf and the blind, the responsibility for transportation resides with the respective state Virginia school for the deaf and the blind. However, When such children in a state residential school are educated as day students, the responsibility for transportation remains with the placing local school division.

#### ~~6-~~ Reevaluation.

~~a-~~ A reevaluation in all areas related to the suspected disability must be conducted (i) every three years; (ii) if conditions warrant a reevaluation at an earlier date; or (iii) if the child's parent or teacher requests a reevaluation.

~~b-~~ A reevaluation need not consist of all of the same assessments conducted during the initial evaluation as long as the reevaluation includes assessment in all areas related to the suspected disability. If three years have not elapsed and the parent or teacher requests that only specified areas be addressed by additional evaluation, and conditions do not warrant a reevaluation or an assessment which is more comprehensive than that requested by the parent or teacher, the LEA may limit the assessment to those areas which the parent or teacher requested.

~~c-~~ Notice is required for all reevaluations.

~~7-~~ G. Nonacademic and extracurricular services and activities.

1. Each LEA local educational agency shall take steps to provide nonacademic and extracurricular services and activities in such the manner as is necessary to afford children with disabilities an equal opportunity for participation in those services and activities.

2. Nonacademic and extracurricular services and activities may include counseling services, athletics, transportation, health services, recreational activities, special interest groups or clubs sponsored by the local educational agency, referrals to agencies that provide assistance to individuals with disabilities, and employment of students, including both employment by the local educational agency and assistance in making outside employment available.

#### ~~8-~~ H. Physical education.

~~a-~~ 1. General. Physical education services, specially designed if necessary, must be made available to every child with a disability receiving FAPE a free appropriate public education.

~~b-~~ 2. Regular physical education. Each child with a disability must be afforded the opportunity to participate in the regular physical education program available to nondisabled children without disabilities, unless:

~~(1)~~ a. The child is enrolled full time in a separate facility; or

~~(2)~~ b. The child needs specially designed physical education, as prescribed in the child's IEP.

~~e-~~ 3. Special physical education. If specially designed physical education is prescribed in a child's IEP, the LEA local educational agency responsible for the education of that child shall provide the services directly, or make arrangements for those services to be provided through other public or private programs.

~~d-~~ 4. Education in separate facilities. The LEA local educational agency responsible for the education of a child with a disability who is enrolled in a separate facility shall ensure that the child receives appropriate physical education services in compliance with subdivisions ~~8-a~~ 1 and ~~e~~ 3 of this subsection.

#### ~~i-~~ Extended school year services.

1. Each local educational agency shall ensure that extended school year services are available as necessary to provide a free appropriate public education, consistent with subdivision 2 of this subsection.

2. Extended school year services must be provided only if a child's IEP team determines, on an individual basis, in accordance with this chapter, that the services are necessary for the provision of a free appropriate public education to the child.

3. In implementing the requirements of this section, a local educational agency may not:

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a. *Limit extended school year services to particular categories of disability; or*

b. *Unilaterally limit the type, amount, or duration of those services.*

J. *Children with disabilities in public charter schools.*

1. *Children with disabilities who attend charter schools that are public schools of the local educational agency must be served by the local educational agency in the same manner as children with disabilities in its other schools.*

2. *The local educational agency must ensure that all requirements of this chapter are met.*

**B. 8 VAC 20-80-62. Individualized education program.**

~~4.~~ A. *Responsibility.* The LEA local educational agency shall ensure that an IEP is developed and implemented for each child with a disability in its jurisdiction, including such children placed in private special education schools ~~or facilities~~ by a local educational agency or Comprehensive Services Act team that includes the school division.

~~2.~~ B. *Accountability.*

~~a.~~ 1. An IEP must:

~~(1)~~ a. Be in effect before special education and related services are provided to ~~a~~ an eligible child; and

~~(2)~~ b. Be developed within 30 calendar days of ~~a~~ the initial determination that the child needs special education and related services, and be implemented as soon as possible following the IEP meeting.

2. *Each local educational agency shall ensure that:*

a. *The child's IEP is accessible to each regular education teacher, special education teacher, related service provider, and other service provider who is responsible for its implementation; and*

b. *Teachers and providers are informed of:*

*(1) Their specific responsibilities related to implementing the child's IEP; and*

*(2) The specific accommodations, modifications, and supports that must be provided for the child in accordance with the IEP.*

~~b.~~ 3. Each LEA local educational agency is responsible for initiating and conducting meetings to develop, review and revise ~~a child with a disability's IEP~~ the IEP or IFSP of a child with a disability.

~~c.~~ 4. Each LEA local educational agency shall initiate and conduct meetings periodically, *but not less than annually*, to review each child's IEP *to determine whether the annual goals are being achieved* and, where appropriate, revise its provisions. ~~A meeting must be held for this purpose at least once a year.~~ to address:

a. *Any lack of expected progress toward the annual goals and in the general curriculum, if appropriate;*

b. *The results of any reevaluation conducted under this chapter;*

c. *Information about the child provided to, or by, the parents;*

d. *The child's anticipated needs; or*

e. *Other matters.*

~~d.~~ 5. Each LEA local educational agency must provide special education and related services to a child with a disability in accordance with ~~an~~ the child's IEP.

6. *Each local educational agency must make a good faith effort to assist the child to achieve the goals and objectives or benchmarks listed in the IEP.*

7. *This chapter does not require that any local education agency, teacher or other person be held accountable if a child does not achieve the growth projected in the annual goals and benchmarks or objectives. However, the Virginia Department of Education and local educational agencies are not prohibited from establishing their own accountability systems regarding teacher, school, or agency performance.*

8. *Nothing in this section limits a parent's or parents' right to ask for revisions of the child's IEP or to invoke due process procedures if the parent or parents feel that the efforts required by this chapter are not being met.*

~~3.~~ *Participants in meeting.*

C. *IEP team.*

~~a.~~ 1. *General.* The LEA local educational agency shall ensure that each meeting includes participants as follows the IEP team for each child with a disability includes:

~~(1) A representative of the LEA, other than the child's teacher, who is qualified to provide or supervise the provision of special education;~~

~~(2) The child's teacher;~~

~~(3) One or both of the child's parents (see parent participation, 8 VAC 20-80-60 B 4);~~

~~(4) The child, if appropriate;~~

~~(5) Other individuals, at the discretion of the parents or LEA.~~

~~b.~~ For a child with a disability who has been evaluated for the first time, the LEA shall ensure that:

~~(1) A member of the evaluation team participates in the meeting; or~~

~~(2) The representative of the LEA, the child's teacher, or some other person is present at the meeting who is knowledgeable about the evaluation procedures used with the child and is familiar with the results of the evaluation.~~

a. *The parents of the child;*

b. At least one regular education teacher of the child (if the child is, or may be, participating in the regular education environment);

c. At least one special education teacher of the child, or if appropriate, at least one special education provider of the child. For a child whose primary disability is speech-language impairment, the special education provider may be the speech-language pathologist.

d. A representative of the local educational agency who is:

(1) Qualified to provide or supervise the provision of specially designed instruction to meet the unique needs of children with disabilities;

(2) Knowledgeable about the general curriculum; and

(3) Knowledgeable about the availability of resources of the local educational agency.

A local educational agency may designate another member of the IEP team to serve simultaneously as the agency representative if that individual meets the above criteria.

e. An individual who can interpret the instructional implications of evaluation results. This individual may be a member of the team serving in another capacity, other than the parent or the child.

f. At the discretion of the parent, parents, or local educational agency, other individuals who have knowledge or special expertise regarding the child, including related services personnel, as appropriate. The determination of the knowledge or special expertise of any individual shall be made by the party (parent, parents, or local educational agency) who invited the individual to be a member of the IEP team.

g. If appropriate, the child.

h. For children who are in the custody of a local social services or other child welfare agency, the child's caseworker pursuant to the following conditions:

(1) The caseworker may not assume the role of the parent at the meeting; and

(2) If the caseworker is unable to attend the meeting as scheduled, the meeting may be held without them.

## 2. Transition service participants.

~~e. If a purpose of the IEP meeting is the consideration of transition services for a student, the public~~ a. The local educational agency shall invite: ~~(i) the student; and (ii) a student of any age with a disability of any age to attend the student's IEP meeting if a purpose of the meeting will be the consideration of:~~

(1) The student's transition services needs;

(2) The needed transition services for the student; or

(3) Both.

b. If the student does not attend the IEP meeting, the local educational agency shall take other steps to ensure that the student's preferences and interests are considered.

c. In implementing the transition requirements for a student age 16 or younger (if determined appropriate by the IEP team) with a disability, the local educational agency also shall invite a representative of any other agency that is likely to be responsible for providing or paying for transition services. ~~If the student does not attend, the LEA shall take other steps to ensure that the student's preferences and interests are considered, and~~ If an agency invited to send a representative to a meeting does not do so, the LEA local educational agency shall take other steps to obtain the participation of the other agency in the planning of any transition services.

## 4. D. Parent participation.

~~a.~~ 1. Each LEA local educational agency shall take steps to ensure that one or both of the parents of the child with a disability are present at each IEP meeting or are afforded the opportunity to participate, including:

~~(1)~~ a. Notifying the parent or parents of the meeting early enough to ensure that they will have an opportunity to attend; and

~~(2)~~ b. Scheduling the meeting at a mutually agreed on time and place.

## 2. Notice.

~~b.~~ a. General notice. The notice given the parent or parents must should:

(1) Be in writing. Notice may be given by telephone or in person, with proper documentation;

(2) Indicate the purpose, time and location of the meeting, and who will be in attendance; and

(3) Inform the parents of the provisions relating to the participation of other individuals on the IEP team who have knowledge or special expertise about the child.

~~c. If a purpose of the meeting is the consideration of transition services for a student,~~ b. Additional notice requirements if transition services are under consideration.

(1) For a student age 14 or younger, if appropriate, with a disability the notice must also:

~~(1)~~ (a) Indicate this that a purpose of the meeting will be the development of a statement of the transition services needs of the student; and

~~(2)~~ (b) Indicate that the LEA local educational agency will invite the student; and

(2) For a student age 16 or younger, if appropriate, with a disability the notice must:

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(a) Indicate that a purpose of the meeting is the consideration of needed transition services for the student;

(b) Indicate that the agency will invite the student; and

~~(3)~~ (c) Identify any other agency that will be invited to send a representative.

~~d.~~ 3. If neither parent can attend, ~~then~~ the LEA local educational agency shall use other methods to ensure parent participation, including individual or conference telephone calls.

~~e.~~ 4. A meeting may be conducted without ~~the child's parents attending~~ a parent or parents in attendance if the LEA local educational agency is unable to convince ~~them~~ the parent or parents that they should attend. In this case, the LEA local educational agency must have a record of the attempts to arrange a mutually agreed on time and place, such as:

(1) a. Detailed records of telephone calls made or attempted and the results of those calls;

~~(2)~~ b. Copies of correspondence sent to the parent or parents and any responses received;

~~(3)~~ c. Detailed records of visits made to the parent's or parents' home or place of employment and the results of those visits.

~~f.~~ 5. The LEA local educational agency shall take whatever action is necessary to ensure that the parent ~~understands~~ or parents understand the proceedings at a the IEP meeting, including arranging for an interpreter for parents ~~who are deaf with deafness~~ or whose native language is other than English.

6. The local educational agency has the option to require, prohibit, limit or otherwise regulate the use of audio or video recording devices at IEP meetings. If the local educational agency has a policy that prohibits or limits the use of recording devices at IEP meetings:

a. That policy must provide for exceptions if they are necessary to ensure that the parent or parents understand the IEP or the IEP process or to implement other parental rights guaranteed under this chapter; and

b. Ensure that the policy is uniformly applied.

~~g.~~ 7. The LEA local educational agency shall give the parent a copy of the child's IEP at no cost to the parent or parents.

## E. Development, review and revision of the IEP.

1. In developing each child's IEP, the IEP team shall document consideration of:

a. The strengths of the child and the concerns of the parent or parents for enhancing the education of their child;

b. The results of the initial or most recent evaluation of the child;

c. As appropriate, the results of the child's performance on any general state or division-wide assessment programs.

2. The IEP team also shall document consideration:

a. In the case of a child whose behavior impedes the child's learning or that of others, consider, if appropriate, strategies, including positive behavioral interventions, strategies, and supports to address that behavior;

b. In the case of a child with limited English proficiency, consider the language needs of the child as those needs relate to the child's IEP;

c. In the case of a child who is blind or visually impaired, provide for instruction in Braille and the use of Braille unless the IEP team determines after an evaluation of the child's reading and writing skills, needs, and appropriate reading and writing media (including an evaluation of the child's future needs for instruction in Braille or the use of Braille), that instruction in Braille or the use of Braille is not appropriate for the child;

d. Consider the communication needs of the child;

e. In the case of a child who is deaf or hard of hearing, consider the child's language and communication needs, opportunities for direct communications with peers and professional personnel in the child's language and communication mode, academic level, and full range of needs, including opportunities for direct instruction in the child's language and communication mode; and

f. Consider whether the child requires assistive technology devices and services.

3. In conducting a meeting to review and, if appropriate, revise a child's IEP, the IEP team shall consider the factors described above.

4. If, in considering the special factors, the IEP team determines that a child needs a particular device or service (including an intervention, accommodation, or other program modification) in order for the child to receive a free appropriate public education, the IEP team must include a statement to that effect in the child's IEP.

5. The regular education teacher of a child with a disability, as a member of the IEP team, must, to the extent appropriate, participate in the development, review, and revision of the child's IEP, including assisting in the determination of:

a. Appropriate positive behavioral interventions and strategies for the child; and

b. Supplementary aids and services, accommodations, program modifications or supports for school personnel that will be provided for the child.



6. Nothing in this section shall be construed to require the IEP team to include information under one component of a child's IEP that is already contained under another component of the child's IEP.

7. Consideration of a free appropriate public education. The IEP team shall consider all factors identified under a free appropriate public education in 8 VAC 20-80-60, as appropriate, and make all decisions by consensus. If the IEP team cannot reach consensus:

a. The local educational agency determines the contents of the IEP;

b. The local educational agency shall then provide the parent or parents with prior written notice of the local educational agency's proposals or refusals, or both, regarding the child's educational program.

c. The parents have the right to challenge the new IEP by initiating an impartial due process hearing.

d. If the parent or parents initiate a due process hearing, the previous IEP becomes the stay put placement unless the parent or parents and the local educational agency agree to implement the new IEP provisions which they can agree upon as an interim IEP.

e. If the parent or parents do not request a due process hearing and the above procedures are followed, the new IEP shall go into effect.

5. F. Content of the individualized education program. The IEP for each child ~~must~~ with a disability shall include:

a. 1. A statement of the child's present level levels of educational performance, including:

~~(1) The statement should accurately describe the effect of the child's disability on the child's performance in any area of education that is affected including academic areas and nonacademic areas.~~

a. How the child's disability affects the child's involvement and progress in the general curriculum; or

b. For preschool children, as appropriate, how the disability affects the child's participation in appropriate activities.

~~(2)~~ c. The statement should be written in objective measurable terms, to the extent possible. Test scores, if appropriate, should be self-explanatory or an explanation should be included.

~~(3)~~ d. There should be a direct relationship between the present level of performance and the other components of the IEP.

e. The child's other educational needs that result from the child's disability.

b. 2. A statement of measurable annual goals, including benchmarks or short-term instructional objectives, related to:

a. Meeting the child's needs that result from the child's disability to enable the child to be involved in and progress in the general curriculum, or for preschool children, as appropriate, to participate in appropriate activities; and

b. Meeting each of the child's other educational needs that result from the child's disability.

~~e.~~ 3. A statement of the specific special education and related services and supplementary aids and services to be provided for the child, and the extent to which the child will be able to participate in regular educational programs, or on behalf of the child, and a statement of the program modifications or supports for school personnel that will be provided for the child:

a. To advance appropriately toward attaining the annual goals;

b. To be involved and progress in the general curriculum and to participate in extracurricular and other nonacademic activities; and

c. To be educated and participate with other children with disabilities and children without disabilities in the activities described in this section.

4. An explanation of the extent, if any, to which the child will not participate with children without disabilities in the regular class and in the activities described in this section.

5. Assessments. The following information concerning state-wide and division-wide assessments shall be included:

a. A statement of any individual accommodations or modifications, approved by the Virginia Board of Education, for use in the administration of state-wide assessments of student achievement that are needed in order for the child to participate in the assessment;

b. A statement of any individual accommodations or modifications approved for use in the administration of division-wide assessments of student achievement that are needed in order for the child to participate in the assessment;

c. If the IEP team determines that the child will not participate in a particular state-wide or division-wide assessment of student achievement (or part of an assessment), a statement of:

(1) Why that assessment is not appropriate for the child;

(2) How the child will be assessed, including the alternate assessment which the student will participate in if they cannot participate in the state-wide or district-wide assessment program; and

(3) Documentation of the discussion and the parent's or parents' understanding of the implications of nonparticipating on the student's course grade, promotion, graduation with a standard or advanced studies diploma or other matters.

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d. For students still participating in the Literacy Passport Testing Program, documentation that any decision to postpone or exempt the student from participation was reviewed during the annual IEP review or sooner.

~~d.~~ 6. The projected dates (month, day, and year) for initiation the beginning of the services and modifications and the anticipated frequency, location, and duration of the those services (month, day, and year) and modifications. Location refers to the continuum of alternative placements in 8 VAC 20-80-64 B.

7. A statement of:

a. How the child's progress toward the annual goals will be measured;

b. How the child's parent or parents will be regularly informed (through such means as periodic report cards), at least as often as parent or parents are informed of their children without disabilities' progress, of:

(1) Their child's progress toward the annual goals; and

(2) The extent to which that progress is sufficient to enable the child to achieve the goals by the end of the year.

~~e.~~ Appropriate objective criteria and evaluation procedures and schedules for determining, at least annually, whether the short-term instructional objectives are being achieved.

~~f.~~ For students beginning in the sixth grade, the following information concerning the Virginia Literacy Passport Testing Program must be included:

(1) Whether the student will participate in the Literacy Passport Testing Program (a decision to exempt the student from participating must be reviewed during the annual IEP review or sooner);

(2) Whether the student will postpone taking any of the literacy tests (a decision to postpone must be reviewed during the annual IEP review or sooner);

(3) Reasonable accommodations to take the literacy tests if the student needs them.

The school division shall document on the IEP that the Literacy Passport Testing Program and the requirement that the student pass all of the literacy tests to receive a regular diploma have been presented to the parent.

8. For each student with a disability beginning at age 14 (or younger, if determined appropriate by the IEP team), and updated annually, a statement of the transition service needs of the student under the applicable components of the student's IEP that focuses on the student's courses of study (such as participation in advanced-placement courses or a vocational education program); and

~~g.~~ The IEP 9. For each student, beginning no later than at age 16 (and at a or younger age, if determined appropriate by the IEP team), must include a statement of the needed transition services for the student, including, if appropriate, a statement of each public agency's and each participating agency's interagency responsibilities or any needed linkages, or both, before the student leaves the school setting. The IEP must include the following areas Transition services shall be based on the individual student's needs, taking into account the student's preferences and interests, and include:

(i) a. Instruction;

b. Related services;

(ii) c. Community experiences;

and (iii) d. The development of employment and other post-school adult living objectives, unless the IEP committee determines that services are not needed in one or more of those areas. The IEP committee must then include a statement to that effect together with the basis for that determination in the IEP.; and

~~h.~~ A statement as to whether or not the student will participate in family life education.

e. If appropriate, acquisition of daily living skills and functional vocational evaluation.

10. Beginning at least one year before a student reaches the age of majority, the student's IEP must include a statement that the student has been informed of the rights under this chapter, if any, that will transfer to the student on reaching the age of majority.

11. In the case of a child with a disability age two (on or before September 30) to age five (on or before September 30), an individualized family service plan may serve as and IEP if it meets the content and development requirements of an IEP. In implementing these requirements, the local educational agency shall:

a. Provide to the child's parent or parents a detailed explanation of the differences between an IFSP and an IEP; and

b. If the parent or parents choose an IFSP, obtain written informed consent from the parent or parents.

6- G. Agency responsibilities for transition services.

a- 1. If a participating agency, other than the local educational agency, fails to provide agreed upon transition services contained described in the IEP of a student with a disability, the public agency responsible for the student's education local educational agency shall, as soon as possible, initiate a meeting for the purpose of identifying alternative strategies to meet the transition objectives and, if necessary, revising the student's reconvene the IEP team to identify alternative strategies to meet the transition objectives for the student set out in the IEP.

b. 2. Nothing in this part relieves any participating agency, including a state vocational rehabilitation agency, of the responsibility to provide or pay for any transition service that the agency would otherwise provide to students with disabilities who meet the eligibility criteria of that agency.

7. ~~Placements. Each LEA placing the child shall ensure that:~~

a. ~~The educational placement of each child with a disability:~~

~~(1) Is determined at least annually;~~

~~(2) Is based on his IEP; and~~

~~(3) Is as close as possible to the child's home.~~

b. ~~The various alternative placements, discussed in 8-VAC-20-80-60-A-2 of this chapter, are available, to the extent necessary, to implement the IEP for each child with a disability.~~

c. ~~Unless a child with a disability's IEP requires some other arrangement, the child is educated in the school which he would attend if nondisabled.~~

d. ~~In selecting the least restrictive environment, consideration is given to any potential harmful effect on the child or on the quality of services which he needs.~~

e. ~~The placement decision shall include consideration of the child's social and personal needs, as well as the child's level of educational functioning.~~

8. ~~Private school placement.~~

a. ~~Before an LEA places a child with a disability in, or refers a child to, a private school or facility, the LEA shall initiate and conduct a meeting, in accordance with the preceding requirements, to develop an IEP for the child.~~

b. ~~Where a child is presently receiving the services of a private school or facility, or where the parents and the LEA agree, prior to the development of an IEP that a private school or facility may be required when the IEP is completed, the LEA shall ensure that a representative of the private school or facility attends the meeting. If the representative cannot attend, the LEA shall use other methods to ensure participation by the private school or facility, including individual or conference telephone calls.~~

c. ~~After a child with a disability enters a private school or facility, any meetings to review and revise the child's IEP may be initiated and conducted by the private school or facility at the discretion of the LEA.~~

d. ~~If the private school or facility initiates and conducts these meetings, the LEA shall ensure that the parents and an LEA representative:~~

~~(1) Are involved in any decision affecting the child's IEP; and~~

~~(2) Agree to any proposed changes in the program before these changes are implemented.~~

e. ~~When a private school or facility implements a child's IEP, responsibility for compliance with this part remains with the LEA.~~

f. ~~Whenever an eligible child with a disability is placed in an approved private school or facility by an LEA, all rights extended to any child educated in public school programs shall be available to him.~~

9. ~~Children with disabilities in private schools not placed or referred by public agencies.~~

a. ~~If a child with a disability has available a free appropriate public education and the parents choose to place the child in a private school or facility, then the local school division is not required to pay for the child's education at the private school or facility. However, the local school division shall make services available to the child as follows:~~

~~(1) Each local school division shall provide special education and related services designed to meet the needs of private school children with disabilities residing in its jurisdiction;~~

~~(2) Each local school division shall provide private school children with disabilities with genuine opportunities to participate in special education and related services consistent with the number of children and their needs.~~

b. ~~The needs of private school children with disabilities, the number who will participate, and the types of special education and related services which the local school division will provide for them must be determined after consultation with persons knowledgeable of the needs of these children on a basis comparable to that used in providing for the participation of children with disabilities enrolled in public schools.~~

c. ~~A local school division may provide special education and related services to private school children with disabilities which are different from the special education and related services it provides to public school children, if:~~

~~(1) The differences are necessary to meet the special needs of the private school children with disabilities; and~~

~~(2) The special education and related services are comparable in quality, scope, and opportunity for participation to those provided to public school children with needs of equal importance.~~

d. ~~Each LEA providing services to children enrolled in private schools shall maintain continuing administrative control and direction over these services.~~

10. ~~Children with disabilities on homebound instruction. Homebound instruction shall be deemed appropriate for a child with a disability only when such placement is~~

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stipulated in the child's IEP and is in accordance with the requirements of the least restrictive environment.

## 11. Suspension or expulsion of children with disabilities.

a. ~~Suspensions of 10 days or less. A short-term suspension is when the child is removed from class (i.e., an in-school suspension) or school for less than 10 school days. It does not constitute a change in placement. The child is subject to normal disciplinary procedures whether or not there is a causal connection between the child's disability and the misconduct.~~

b. ~~Long-term suspensions greater than 10 days and expulsions.~~

~~(1) When the child is removed from class or school for more than 10 consecutive school days, a determination must be made as to whether or not there is a direct causal relationship between the child's disability and the misconduct.~~

~~(2) This determination must be made pursuant to the change in placement procedures by a committee with the following composition:~~

~~(a) A representative of the LEA, other than the child's teacher, who is qualified to provide or supervise the provision of special education;~~

~~(b) The child's teacher;~~

~~(c) One or both of the child's parents;~~

~~(d) The child, if appropriate;~~

~~(e) Persons knowledgeable about the child, the meaning of the evaluation data, and the placement options;~~

~~(f) Other individuals, at the discretion of the parents or LEA.~~

~~(3) A series of suspensions which aggregate to more than 10 days may be considered a significant change in placement requiring reevaluation and procedural protections. Factors to consider in determining whether aggregate suspensions of greater than 10 days are long-term suspensions include length of each suspension, proximity of suspensions, and total amount of time suspended.~~

~~(4) If there is a causal connection or if the child was inappropriately placed at the time of the misconduct, the child may not be expelled, nor may the LEA impose a long-term suspension. If there is no causal connection or if the child was appropriately placed at the time of the misconduct, the child may be disciplined the same as a nondisabled child.~~

~~(5) In the case of an expulsion or long-term suspension, parental consent is not required.~~

c. ~~Dangerous student with a disability. LEAs may not unilaterally change the placement of a student with dangerous behavior when the misconduct is caused by the disability. LEAs, however, may use normal disciplinary measures for a child who exhibits~~

~~dangerous behavior to include, for example, time-outs or suspension up to 10 days. An LEA may only impose an expulsion or long-term suspension on a student with a disability whose misconduct has been determined to be caused by his disability by obtaining an injunction, based on dangerousness of the student, from a court of competent jurisdiction.~~

~~12. Assistive technology. Each LEA shall ensure that assistive technology devices or assistive technology services, or both, are made available to a child with a disability if required as part of the child's:~~

~~a. Special education;~~

~~b. Related services; or~~

~~c. Supplementary aids and services.~~

## ~~C. Educational interpreting services.~~

~~1. Educational personnel providing interpreting services for students using sign language shall have achieved a Virginia Quality Assurance Screening Level III or hold any Registry of Interpreters for the Deaf Certificate (excluding Certificate of Deaf Interpretation).~~

~~2. Educational personnel providing interpreting services for students using cued speech shall have achieved a Virginia Quality Assurance Screening Cued Speech Level III or National Cued Speech Association Cued Speech Transliterator Certificate.~~

~~3. Educational personnel providing interpreting services for students requiring oral interpreting shall have met Virginia Quality Assurance Screening's minimum requirements for competency on the Registry of Interpreters for the Deaf Code of Ethics.~~

~~4. An individual providing interpreting services for students using sign language or cued speech who does not hold the required Virginia Quality Assurance Screening level or Registry of Interpreters for the Deaf certificate (excluding certificate in reverse skills) or a National Cued Speech Association Cued Speech Transliterator Certificate may be employed according to all of the following criteria:~~

~~a. The individual must have a Virginia Quality Assurance Screening Level I upon hiring date in any local education agency or state operated program in Virginia (or the implementation date of this chapter, whichever is later). The local education agency/state operated program shall inform the Department of Education of the person's name, social security number and hiring date;~~

~~b. Each individual must achieve Level III Virginia Quality Assurance Screening or any Registry of Interpreters for the Deaf Certificate (excluding certification in reverse skills) or a National Cued Speech Association Cued Speech Transliterator Certificate by the third anniversary date of hiring in any local education agency or state operated program (or implementation date of this chapter, whichever is later); and~~

~~e. The local education agency/state operated program shall annually submit a professional development plan to the Virginia Department of Education on behalf of the individual.~~

*1. Additional requirements for eligible students with disabilities in state, regional, or local adult or juvenile correctional facilities.*

*1. A representative of the state from a state, regional, or local adult or juvenile correctional facility may participate as a member of the IEP team.*

*2. All requirements in this section apply to students with disabilities in state, regional or local adult or juvenile correctional facilities with the exception that the IEP team of a student with disabilities who is convicted as an adult under state law may modify the student's IEP or placement if the state has demonstrated, to the IEP team, a bona fide security or compelling penological interest that cannot be otherwise accommodated.*

*a. All requirements regarding IEP revision in this section shall apply.*

*b. If such modifications are made by the IEP team, the requirements related to least restrictive environment in 8 VAC 20-80-64 do not apply.*

*c. IEP requirements regarding participation in statewide assessment systems, including alternate assessment systems, do not apply. Assessment requirements for graduation with a standard or advanced studies diploma shall apply.*

*d. Provision of transition planning and transition services do not apply for students whose eligibility for special education and related services will end because of their age before they will be eligible for release based on consideration of their sentence and their eligibility for early release.*

## **8 VAC 20-80-64. Least restrictive environment and placements.**

*A. General least restrictive environment requirements.*

*1. Each local educational agency shall ensure:*

*a. That to the maximum extent appropriate, children with disabilities, including those in public or private institutions or other care facilities, are educated with children without disabilities; and*

*b. That special classes, separate schooling or other removal of children with disabilities from the regular educational environment occurs only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.*

*2. In providing or arranging for the provision of nonacademic and extracurricular services and activities, including meals, recess periods, and other services and activities provided for children without disabilities, each local educational agency shall ensure that each child with a disability participates with children without disabilities in*

*those services and activities, to the maximum extent appropriate to the needs of the child with a disability.*

*3. For children in public or private institutions, the local educational agency shall, where necessary, make arrangements with public and private institutions to ensure that requirements for least restrictive environment are met. (See also private school placements in 8 VAC 20-80-66.)*

*B. Continuum of alternative placements.*

*1. Each local educational agency shall ensure that a continuum of alternative placements is available to meet the needs of children with disabilities for special education and related services.*

*2. The continuum must:*

*a. Include the alternative placements listed in the definition of special education (instruction in regular classes, special classes, special schools, home-based instruction, instruction in hospitals and institutions, and including Woodrow Wilson Rehabilitation Center and other state facilities); and*

*b. Make provision for supplementary resource services (e.g., resource services or itinerant instruction) to be provided in conjunction with regular class placement. The continuum should include integrated service delivery, that is where some or all goals and objectives of the student's individualized education program are met in the general education setting with age-appropriate peers.*

*3. No single model for the delivery of services to any specific population or category of children with disabilities will be acceptable for meeting the requirement for a continuum of alternative placements (e.g., Level I services as the only option for children who need Level II or a separate facility as the only alternative placement for students with disabilities). All placement decisions must be based on the individual needs of each child.*

*4. Local educational agencies shall document fully all alternatives considered and the rationale for choosing the selected placement.*

*5. Children with disabilities must be served in a program with age-appropriate peers (e.g., secondary age children shall be placed in a secondary school and elementary age children shall be placed in an elementary school), unless it can be shown that for a particular child with a disability the alternative placement is appropriate as documented by the IEP.*

*C. Placements.*

*1. In determining the educational placement of a child with a disability, including a preschool child with a disability, each local educational agency shall ensure that:*

*a. The placement decision is:*

*(1) Made by a group of persons, including the parents, and other persons knowledgeable about the*

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child, the meaning of the evaluation data, and the placement options; and

(2) Made in conformity with the least restrictive environment provisions of this chapter.

b. The child's placement is:

(1) Determined at least annually;

(2) Based on the child's IEP; and

(3) As close as possible to the child's home.

c. Unless the IEP of a child with a disability requires some other arrangement, the child is educated in the school that the child would attend if not a child with a disability.

d. In selecting the least restrictive environment, consideration is given to any potential harmful effect on the child or on the quality of services which the child needs.

e. A child with a disability is not removed from education in age-appropriate regular classrooms solely because of needed modifications in the general curriculum.

2. Children with disabilities on home-based instruction. Home-based instruction shall be made available to students whose IEPs require the delivery of services in the home or other agreed-upon setting.

3. Children with disabilities on homebound instruction. Homebound instruction shall be made available to students who are confined for periods that would prevent normal school attendance based upon certification of need by a licensed physician or clinical psychologist. For students eligible for special education and related services, the IEP team must revise the IEP, as appropriate.

## **8 VAC 20-80-66. Private school placement.**

A. Private school placement by a local school division or Comprehensive Services Act team.

1. Whenever an eligible child is placed in a private school that is licensed or has a certificate to operate or facility by a local school division or Comprehensive Services Act team that includes that school division under Chapter 46 (§ 2.1-745 et seq.) of Title 2.1 of the Code of Virginia, the local school division shall be responsible for ensuring compliance with the requirements of this chapter, including participation in state-wide and division-wide assessments.

2. Before a local school division places a child with a disability in a private school that is licensed or has a certificate to operate or facility, the local school division shall initiate and conduct a meeting, in accordance with the preceding requirements, to develop an IEP for the child. The local school division shall ensure that a representative of a private school attends the meeting. If the representative cannot attend, the agency shall use other methods to ensure participation by a private school

or facility, including individual or conference telephone calls.

3. Where a child is presently receiving the services of a private school that is licensed or has a certificate to operate or facility, the local school division shall ensure that a representative of the private school or facility attends the meeting. If the representative cannot attend, the local school division shall use other methods to ensure participation by the private school or facility, including individual or conference telephone calls.

4. After a child with a disability enters a private school or facility, any meetings to review and revise the child's IEP may be initiated and conducted by the private school or facility at the discretion of the local school division.

5. If the private school or facility initiates and conducts these meetings, the local school division shall ensure that the parent or parents and a local school division representative:

a. Are involved in any decision affecting the child's IEP;

b. Agree to any proposed changes in the program before those changes are implemented; and

c. Are involved in meetings regarding reevaluation.

6. Even if a private school or facility implements a child's IEP, responsibility for compliance with the requirements regarding procedural safeguards, IEPs, assessment, reevaluation, and termination of services remains with the local school division.

7. Whenever a child with a disability is placed in an approved private school or facility by a local school division or a Comprehensive Services Act team, all rights and protections extended to any child with disabilities under this chapter shall be available to the child.

8. Whenever an eligible child is placed in an approved private school or facility that is out of state, the placement shall be processed through the Interstate Compact on the Placement of Children, as provided by the Code of Virginia.

B. Placement of children by parents if a free appropriate public education is at issue.

1. This section does not require a local school division to pay for the cost of education, including special education and related services, of a child with a disability at a private school or facility if the local school division made a free appropriate public education available to the child and the parent or parents elected to place the child in a private school or facility.

2. Disagreements between a parent or parents and a local school division regarding the availability of an appropriate program for the child, and the question of financial responsibility, are subject to the due process procedures of 8 VAC 20-80-76.

3. Reimbursement for private school placement. If the parent or parents of a child with a disability, who previously received special education and related

services under the authority of a local school division, enroll the child in a private preschool, elementary, middle, or secondary school without the consent of or referral by the local school division, a court or a hearing officer may require the agency to reimburse the parent or parents for the cost of that enrollment if the court or hearing officer finds that the local school division had not made a free appropriate public education available to the child in a timely manner prior to that enrollment and that the private placement is appropriate. A parental placement may be found to be appropriate by a hearing officer or a court even if it does not meet the standards of the Virginia Department of Education that apply to education provided by the Virginia Department of Education and local school division.

4. *Limitation on reimbursement.* The cost of reimbursement described in this section may be reduced or denied if:

a. At the most recent IEP meeting that the parent or parents attended prior to removal of the child from the public school, the parents did not inform the IEP team that they were rejecting the placement proposed by the local school division to provide a free appropriate public education to their child, including stating their concerns and their intent to enroll their child in a private school at public expense; or

b. At least 10 business days (including any holidays that occur on a business day) prior to the removal of the child from the public school, the parent or parents did not give written notice to the local school division of the information described above;

c. If, prior to the parent's or parents' removal of the child from the public school, the local school division informed the parent or parents, through the notice requirements described in 8 VAC 20-80-76, of its intent to evaluate the child (including a statement of the purpose of the evaluation that was appropriate and reasonable), but the parents did not make the child available for the evaluation; or

d. Upon a judicial finding of unreasonableness with respect to actions taken by the parent or parents.

5. Notwithstanding the above notice requirement, the cost of reimbursement may not be reduced or denied for the parent's or parents' failure to provide the notice to the local school division if:

a. The parent is illiterate or cannot write in English;

b. Compliance with this section would likely result in physical or serious emotional harm to the child;

c. The school prevented the parent or parents from providing the notice; or

d. The parent or parents had not received notice of the notice requirement in this section.

C. *Child find for private school and home instructed children with disabilities.*

1. Each local school division shall locate, identify, and evaluate all private school children with disabilities, including children attending religious schools, residing in the jurisdiction of the local school division. The provisions of this subsection shall apply to children who are home instructed in accordance with the Code of Virginia. The activities undertaken to carry out this responsibility for private school children with disabilities must be comparable to activities undertaken for children with disabilities in public schools.

2. Each local school division shall consult with appropriate representatives of private school children with disabilities on how to carry out the child find activities.

D. *Placement of children by parents when a free appropriate public education is not at issue.* To the extent consistent with their number and location in the state, provision must be made for the participation of private school children with disabilities in the program carried out under the Individuals with Disabilities Education Act (20 USC §§ 1400 et seq.) by providing them with special education and related services in accordance with a services plan developed and implemented under this subsection.

1. The provisions of this subsection shall apply to children who are home instructed in accordance with the Code of Virginia.

2. Each local school division shall ensure that a services plan is developed and implemented for each private school child with a disability who has been designated to receive special education and related services under this part.

3. *Expenditures.*

a. To meet the requirement of Individuals with Disabilities Education Act (20 USC §§1400 et seq.), each local school division must spend the following on providing special education and related services to private school children with disabilities:

(1) For children aged three to 21, inclusive, an amount that is the same proportion of the local school division's total subgrant under the Individuals with Disabilities Education Act (20 USC §§1400 et seq.) as the number of private school children with disabilities aged three to 21, inclusive, residing in its jurisdiction is to the total number of children with disabilities in its jurisdiction aged three to 21, inclusive, and

(2) For children aged three to five, inclusive, an amount that is the same proportion of the local school division total subgrant under the Act as the number of private school children with disabilities, aged three to five, inclusive, residing in its jurisdiction, is to the total number of children with disabilities in its jurisdiction aged three to five, inclusive.

b. Each local school division shall consult with representatives of private school children in deciding how to conduct the annual count of the number of

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private school children with disabilities and ensure that the count is conducted on December 1. The child count must be used to determine the amount that the local school division must spend on providing special education and related services to private school children with disabilities in the subsequent fiscal year.

c. Expenditures for child find activities, including evaluation and eligibility, described in 8 VAC 20-80-50 through 8 VAC 20-80-56, may not be considered in determining whether the local educational agency has met the expenditure requirements of the Individuals with Disabilities Education Act (20 USC §§ 1400 et seq.).

d. Local school divisions are not prohibited from providing services to private school children with disabilities in excess of those required by this section.

#### 4. Services determined.

a. No private school child with a disability has an individual right to receive some or all of the special education and related services that the child would receive if enrolled in a public school. Decisions about the services that will be provided to private school children with disabilities, must be made in accordance with subdivisions 4 b and c of this subsection.

b. Consultation with representatives of private school children with disabilities.

(1) Each local school division shall consult, in a timely and meaningful way, with appropriate representatives of private school children with disabilities in light of the funding, the number of private school children with disabilities, the needs of private school children with disabilities, and their location to decide (i) which children will receive services; (ii) what services will be provided; (iii) how and where the services will be provided; and (iv) how the services provided will be evaluated.

(2) Each local school division shall give appropriate representatives of private school children with disabilities a genuine opportunity to express their views regarding each matter that is subject to the consultation requirements in this section.

(3) The consultation required by this section must occur before the local school division makes any decision that affects the opportunities of private school children with disabilities to participate in services.

(4) The local school division shall make the final decisions with respect to the services to be provided to eligible private school children.

c. Services plan for each child served under this section. If a child with a disability is enrolled in a religious or other private school and will receive special education or related services from a local school division, the local school division shall initiate and conduct meetings to develop, review, and revise a services plan for the child; and ensure that a

representative of the religious or other private school attends each meeting. If the representative cannot attend, the local school division shall use other methods to ensure participation by the private school, including individual or conference telephone calls.

#### 5. Services provided.

a. The services provided to private school children with disabilities must be provided by personnel meeting the same standards as personnel providing services in the public schools.

b. Private school children with disabilities may receive a different amount of services than children with disabilities in public schools.

c. No private school child with a disability is entitled to any service or to any amount of a service the child would receive if enrolled in a public school.

d. Services provided in accordance with a services plan.

(1) Each private school child with a disability who has been designated to receive services under this subsection must have a services plan that describes the specific special education and related services that the local school division will provide to the child in light of the services that the local school division has determined it will make available to private school children with disabilities.

(2) The services plan must, to the extent appropriate, meet the requirements for the content of the IEP (8 VAC 20-80-62 F) with respect to the services provided, and be developed, reviewed, and revised consistent with 8 VAC 20-80-62 B 1, B 2, B 3, B 4, C, D, and E.

6. Location of services. Services provided to private school children with disabilities may be provided on-site at a child's private school, including a religious school, to the extent consistent with law.

#### 7. Transportation.

a. If necessary for the child to benefit from or participate in the services provided under this part, a private school child with a disability must be provided transportation:

(1) From the child's school or the child's home to a site other than the private school; and

(2) From the service site to the private school, or to the child's home, depending on the timing of the services.

b. Local school divisions are not required to provide transportation from the child's home to the private school.

c. The cost of the transportation described in this subsection may be included in calculating whether the local school division has met the requirement of this section.



## 8. Procedural safeguards, due process, and complaints.

a. *Due process inapplicable.* The procedures relative to procedural safeguards, consent, mediation, due process hearings, attorneys' fees, and surrogate parents do not apply to complaints that a local school division has failed to meet the requirements of this subsection, including the provision of services indicated on the child's services plan.

b. *Due process applicable.* The procedures relative to procedural safeguards, consent, mediation, due process hearings, attorneys' fees, and surrogate parents do apply to complaints that a local school division has failed to meet the requirements of child find (including the requirements of referral for evaluation, evaluation and eligibility) for private school children with disabilities (subsection C of this section).

c. *State complaints.* Complaints that the Virginia Department of Education or local school division has failed to meet the requirements of this section may be filed under the procedures in 8 VAC 20-80-78.

9. *Separate classes prohibited.* A local school division may not use funds available under the Individuals with Disabilities Education Act (20 USC §§ 1400 et seq.) for classes that are organized separately on the basis of school enrollment or religion of the students if (i) the classes are at the same site; and (ii) the classes include students enrolled in public schools and students enrolled in private schools.

10. *Requirement that funds not benefit a private school.* A local school division may not use funds provided under the Individuals with Disabilities Education Act (20 USC §§ 1400 et seq.) to finance the existing level of instruction in a private school or to otherwise benefit the private school. The local school division shall use funds provided under the Individuals with Disabilities Education Act (20 USC §§ 1400 et seq.) to meet the special education and related services needs of students enrolled in private schools, but not for the needs of a private school or the general needs of the students enrolled in the private school.

11. *Use of public school personnel.* A local school division may use funds available under the Individuals with Disabilities Education Act (20 USC §§ 1400 et seq.) to make public school personnel available in nonpublic facilities to the extent necessary to provide services under this section for private school children with disabilities and if those services are not normally provided by the private school.

12. *Use of private school personnel.* A local school division may use funds available under the Individuals with Disabilities Education Act (20 USC §§ 1400 et seq.) to pay for the services of an employee of a private school to provide services to a child enrolled in private school by the child's parents, if the employee performs the services outside of the employee's regular hours of duty; and the employee performs the services under public supervision and control.

13. *Requirements concerning property, equipment, and supplies for the benefit of private school children with disabilities.*

a. A local school division must keep title to and exercise continuing administrative control of all property, equipment, and supplies that the public agency acquires with funds under the Individuals with Disabilities Education Act (20 USC §§ 1400 et seq.) for the benefit of private school children with disabilities.

b. The local school division may place equipment and supplies in a private school for the period of time needed for the program.

c. The local school division shall ensure that the equipment and supplies placed in a private school are used only for purposes of special education and related services for children with disabilities and can be removed from the private school without remodeling the private school facility.

d. The local school division shall remove equipment and supplies from a private school if (i) the equipment and supplies are no longer needed for purposes of special education and related services for children with disabilities or (ii) removal is necessary to avoid unauthorized use of the equipment and supplies for other than purposes of special education and related services for children with disabilities.

e. No funds under the Individuals with Disabilities Education Act (20 USC §§ 1400 et seq.) may be used for repairs, minor remodeling, or construction of private school facilities.

## 8 VAC 20-80-68. Discipline procedures.

### A. Short-term removals.

1. A student with a disability may be removed from the student's current educational setting up to 10 cumulative school days in a school year for any violation of school rules to the extent removal would be applied to students without disabilities.

2. A student with a disability is entitled to the same due process rights that all students are entitled to under the school division's disciplinary policies and procedures.

### B. Long-term removals.

1. For purposes of removals of a student with a disability from the student's current educational placement, a change in placement occurs if:

a. The removal is for more than 10 consecutive school days; or

b. The student receives a series of removals that constitute a pattern because:

(1) The removals cumulate to more than 10 school days in a school year; and

(2) The removals involve such factors as the length of each removal, the total amount of time the student

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is removed, and the proximity of the removals to one another.

c. A student with a disability may be removed for a period of time that cumulatively exceeds 10 school days in a given school year for separate accounts of misconduct as long as the removals do not constitute a pattern.

(1) Isolated, short-term suspensions for unrelated instances of misconduct may not be considered a pattern.

(2) These removals do not constitute a change in placement.

## 2. Authority of school personnel.

a. A student with a disability may be removed consistent with subdivision 1 of this subsection for any violation of school rules to the extent removal would be applied to students without disabilities.

b. School personnel may remove a student with a disability to an appropriate interim alternative educational setting for the same amount of time that a child without a disability would be subject to discipline, but not for more than 45 calendar days, if:

(1) The student carries a weapon to or possesses a weapon at school or a school function under the jurisdiction of the local educational agency or the Virginia Department of Education; or

(2) The student knowingly possesses or uses illegal drugs or sells or solicits the sale of a controlled substance while at school or a school function under the jurisdiction of the local educational agency or the Virginia Department of Education. For purposes of this part, the following definitions apply:

(a) *Controlled substance* means a drug or other substance identified under schedules I, II, III, IV, or V in § 202(c) of the Controlled Substances Act at 21 USC § 812 (c).

(b) *Illegal drug* means a controlled substance, but does not include a substance that is legally possessed or used under the supervision of a licensed health-care professional or that is legally possessed or used under any other authority under the Controlled Substances Act or under any other provision of federal law.

(c) *Weapon* has the meaning given the term "dangerous weapon" in 18 USC § 930 (g), paragraph 2, as well as any other provisions of the Code of Virginia.

c. The interim alternative educational setting must be determined by an IEP team. The interim alternative educational setting must be selected so as to enable the student to:

(1) Continue to progress in the general curriculum, although in another setting;

(2) Continue to receive those services and modifications including those described in the student's current IEP, that will enable the student to meet the IEP goals; and

(3) Include services and modifications that address the behavior and are designed to prevent the behavior from recurring.

d. The local educational agency shall ensure that the following procedures are implemented either before or not later than 10 business days after either first removing the student for more than 10 school days in a school year, or commencing a removal that constitutes a change in placement under subdivision 1 of this subsection, including placements in interim alternative educational settings:

(1) The IEP team shall convene to develop a behavioral assessment plan if the local educational agency did not conduct a functional behavioral assessment and implement a behavioral plan for the student before the behavior resulted in the removal described in subdivision 1 of this subsection.

(2) The IEP team shall reconvene as soon as practicable after developing the assessment plan and completing the assessments required by the plan. The IEP team shall develop and implement appropriate behavioral interventions to address the behavior.

(3) If the student had a behavioral intervention plan before engaging in the behavior, the IEP team shall convene to review the plan and its implementation, and modify the plan and its implementation, as necessary, to address the behavior.

e. If the student who has a behavioral intervention plan and who has been removed from the student's current educational placement for more than 10 school days in a school year is subjected to a further removal that does not constitute a change in placement under subdivision 1 of this subsection the IEP team shall review the behavioral intervention plan and its implementation to determine if modifications are necessary. If one or more of the team members believes that modifications are needed in the student's behavioral intervention plan, the IEP team shall meet and modify the plan and its implementation as necessary.

## 3. Services during periods of disciplinary removal.

a. The local educational agency is not required to provide services during the first 10 school days in a school year that a student with a disability is removed from the student's current educational setting if services are not provided to students without disabilities who have been similarly removed.

b. A student with a disability is entitled to the same due process rights that all students are entitled to under the school division's disciplinary policies and procedures.

c. For a subsequent removal that is less than 10 school days in a school year, but exceeds 10 cumulative school days of removal, and which does not constitute a change in placement under subdivision 1 of this subsection, the local educational agency shall provide services to the extent determined necessary to enable the student to appropriately progress in the general curriculum and appropriately advance toward achieving the goals of the student's IEP.

d. The procedures for determining services under subdivision 3 c of this subsection for periods of removals are as follows:

(1) For removals for more than 10 school days in a school year which do not constitute a change in placement, school personnel, in consultation with the student's special education teacher, make the service determinations.

(2) For removals that constitute a change in placement, the IEP team determines what services are needed.

#### 4. Authority of the hearing officer.

a. A local educational agency may request an expedited due process hearing under the Virginia Department of Education's due process hearing procedures to effect a change in placement of a student with a disability for not more than 45 calendar days if the local educational agency believes that the student's behavior is likely to result in injury to self or others.

b. The hearing officer under 8 VAC 20-80-76 may order a change in the placement to an appropriate interim alternative educational setting for not more than 45 calendar days if the local educational agency has demonstrated by substantial evidence (beyond a preponderance of the evidence) that maintaining the current placement of the student is substantially likely to result in injury to the student or others. The hearing officer must:

(1) Consider the appropriateness of the student's current placement;

(2) Consider whether the local educational agency has made reasonable efforts to minimize the risk of harm in the student's current placement, including the use of supplementary aids and services; and

(3) Determine that the interim alternative educational setting that is proposed by school personnel who have consulted with the student's special education teacher, meets the requirements of subdivision 2 c of this subsection.

c. A local educational agency may ask the hearing officer for an extension of 45 calendar days for the interim alternative educational setting of a student with a disability when school personnel believe that the student's return to the regular placement would be dangerous to the student or others.

#### 5. Manifestation determination.

a. Manifestation determinations are required if the local educational agency is contemplating a removal that constitutes a change in placement, including removal to an interim alternative educational setting, for a student with a disability who has violated any rule or code of conduct of the local educational agency that applies to all students. The local educational agency shall notify the parents of that decision and provide the parents with the procedural safeguards notice not later than the date on which the decision to take the action is made.

b. The IEP team and other qualified personnel shall convene immediately, if possible, but not later than 10 school days after the date on which the decision to take the action is made. The IEP team shall review the relationship between the student's disability and the behavior subject to the disciplinary action.

(1) The IEP team and other qualified personnel may determine the behavior was not a manifestation of the student's disability only if the team and other qualified personnel first consider, in terms of the behavior subject to the disciplinary action, all relevant information, including:

(a) Evaluation and diagnostic results, including the results or other relevant information supplied by the parents of the student;

(b) Observations of the child;

(c) The student's IEP and placement; and

(2) The IEP team and other qualified personnel shall then determine that:

(a) In relationship to the behavior subject to the disciplinary action, the student's IEP and placement were appropriate, and the special education services, supplementary aids and services, and behavior intervention strategies were provided consistent with the student's IEP and placement;

(b) The student's disability did not impair the student's ability to understand the impact and consequences of the behavior subject to disciplinary action; and

(c) The student's disability did not impair the student's ability to control the behavior subject to the disciplinary action.

c. If the IEP team and other qualified personnel determine that the standards in subdivision 5 b (2) of this subsection were not met, the behavior must be considered a manifestation of the student's disability.

d. The review by the IEP team and other qualified personnel to determine manifestation may be conducted at the same IEP meeting to develop or review the student's behavioral intervention plan, as long as the purposes of the meeting are provided the parent.

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e. If the IEP team and other qualified personnel determine deficiencies in the student's IEP or placement, the local educational agency shall take immediate steps to remedy those deficiencies.

f. If the IEP team and other qualified personnel determine that the behavior of the student with a disability was not a manifestation of the student's disability, the relevant disciplinary procedures applicable to students without disabilities may be applied to the student in the same manner in which the procedures would be applied to students without disabilities.

(1) If the local educational agency initiates disciplinary procedures, providing due process rights that are applicable to all students, the local educational agency shall ensure that the special education and disciplinary records of the student with a disability are transmitted for consideration by the persons making the final determination regarding the disciplinary action.

(2) The IEP team determines the extent to which services are necessary to enable the student to appropriately progress in the general curriculum and appropriately advance toward achieving the goals set out in the student's IEP.

## 6. Parent appeal.

a. If the student's parent or parents disagree with the determination that the student's behavior was not a manifestation of the student's disability or with any decision regarding placement under these discipline procedures, the parent or parents may request an expedited due process hearing.

b. In accordance with the Virginia Department of Education's due process hearing procedures, an expedited hearing shall be scheduled in response to the parent's or parents' request. In reviewing the decision with respect to the manifestation determination, the hearing officer shall determine whether the local educational agency has demonstrated that the student's behavior was not a manifestation of the student's disability consistent with the requirements of subdivision 5 of this subsection. In reviewing the decision to place a student in an interim alternative educational setting, the hearing officer shall apply the standards in subdivision 4 of this subsection.

## 7. Placement during appeals.

a. If the parent or parents request a hearing to challenge the interim alternative educational setting or the manifestation determination, the student must remain in the interim alternative educational setting pending the decision of the hearing officer, or until the expiration of the time period not to exceed 45 calendar days, unless the parent or parents and local educational agency agree otherwise.

b. If the student is placed in an interim alternative educational setting and school personnel propose to change the student's placement after expiration of the

interim alternative placement, during the pendency of the due process proceedings, the student shall remain in the current placement (the student's placement prior to the interim alternative educational setting), except as provided in subdivision 7 c of this subsection.

c. If school personnel maintain that it is dangerous for the student to be in the current placement (the student's placement prior to the interim alternative educational setting) during the pendency of the due process proceedings, the local educational agency may request an expedited due process hearing under the procedures contained in subdivision 4 b of this subsection.

d. In determining whether the student may be placed in the alternative educational setting or in another appropriate placement ordered by the hearing officer, the hearing officer shall apply the standards in subdivision 4 c of this subsection.

e. Placements ordered by the hearing officer under the expedited hearings procedures may not be longer than 45 calendar days. If the local educational agency believes that it is dangerous for the student to return to the current placement, the local educational agency may request of the hearing officer to extend the 45 calendar days, in accordance with subdivision 4 c of this subsection.

## 8. Protection for students not yet eligible for special education and related services.

a. A student who has not been determined to be eligible for special education and related services and who has engaged in behavior that violates any rule or code of conduct of the local educational agency, including behavior described in subdivisions 2 and 4 of this subsection, may assert any of the protections provided in this chapter if the local educational agency had knowledge that the student was a student with a disability before the behavior that precipitated the disciplinary action occurred.

b. A local educational agency shall be deemed to have knowledge that a student is a student with a disability if:

(1) The parent or parents of the student have expressed concern in writing (or orally if the parent or parents do not know how to write or have a disability that prevents a written statement) to school personnel that the student is in need of special education and related services;

(2) The behavior or performance of the student demonstrates the need for these services;

(3) The parent or parents of the student have requested an evaluation of the student to be determined eligible for special education and related services; or

(4) The teacher of the student or school personnel has expressed concern about the behavior or performance of the student to the director of special

education of the local educational agency or to other personnel in accordance with the local educational agency's child find or special education referral system.

c. A local educational agency would not be deemed to have knowledge that a student is a student with a disability if the local educational agency:

(1) Conducted an evaluation and determined that the student is not a student with a disability; or

(2) Determined that an evaluation was not necessary, and provided notice to the student's parents of its determination in accordance with the notice requirements found in 8 VAC 20-80-70.

d. If the local educational agency does not have knowledge that a student is a student with a disability prior to taking disciplinary measures against the student, the student may be subjected to the same disciplinary measures applied to students without disabilities who engage in comparable behaviors.

e. If a request is made for an evaluation of a student during the time period in which the student is subjected to disciplinary measures under subdivisions 2 and 4 of this subsection, the evaluation must be conducted in an expedited manner.

(1) Until the evaluation is completed, the student remains in the educational placement determined by the school personnel, which can include suspension or expulsion without educational services.

(2) If the student is determined to be a student with a disability, taking into consideration information from the evaluations conducted by the local educational agency and information provided by the parents, the local educational agency shall provide special education and related services in accordance with the disciplinary procedures contained in these procedures.

9. Expedited due process hearing.

a. Under subdivision 4 of this subsection, a local educational agency may request an expedited hearing if there is substantial evidence that maintaining the current placement for a student with a disability is substantially likely to result in injury to the students or others.

b. Under subdivision 6 of this subsection, the parent or parents may request an expedited hearing if the parent or parents disagree with the manifestation determination or any decision regarding placement under this section.

c. The Virginia Department of Education shall establish procedures for expedited due process hearings to include the following requirements:

(1) Timelines for conducting the hearing and issuance of the decision consistent with the requirements found in 8 VAC 20-80-76;

(2) Delineation of any appeal requirements consistent with the requirements found in 8 VAC 20-80-76.

10. Referral to and action by law enforcement and judicial authorities.

a. Nothing in this chapter prohibits a local educational agency from reporting a crime by a student with a disability to appropriate authorities, or to prevent state law enforcement and judicial authorities from exercising their responsibilities with regard to the application of federal and state law to crimes committed by a student with a disability.

b. In reporting the crime, the local educational agency shall ensure that copies of the special education and disciplinary records of the student are transmitted for consideration by the appropriate authorities to whom school personnel report the crime. Transmission of such records shall be consistent with requirements under the Management of the Student's Scholastic Record in the Public Schools of Virginia (8 VAC 20-150-10 et seq.).

**8 VAC 20-80-70. Procedural safeguards.**

A. ~~Due process~~ Opportunity to examine records; parent participation and involvement.

1. Procedural safeguards. Each LEA local educational agency shall establish, maintain, and implement procedural safeguards as follows:

a. The parent or parents of a child with a disability, upon request, shall be afforded an opportunity to:

(1) Inspect and review all education records involving: ~~(1) with respect to (i) the identification, evaluation of, and educational placement of the child; or (2) and (ii) the provision of a free appropriate public education to the child.~~ ~~(see: as set forth in the Management of the Student's Scholastic Records Record in the Public Schools of Virginia, 8 VAC 20-150-10 et seq.)~~

~~b. The parent of a child with a disability shall be provided, on request, information as to where an independent educational evaluation (IEE) may be obtained.~~

~~(2) Participate in meetings with respect to the identification, evaluation, and educational placement of the child and the provision of a free appropriate public education to the child.~~

b. Parent participation in meetings.

(1) Each local educational agency shall provide notice to ensure that one or both of the parents of a child with a disability are present at each meeting or are afforded the opportunity to participate including notifying the parent or parents of the meeting early enough to ensure that they will have an opportunity to attend and scheduling the meeting at a mutually agreed on time and place. The notice must: (i) indicate the purpose, time, and location of the

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meeting and who will be in attendance and (ii) inform the parent or parents that at their discretion or at the discretion of the local educational agency other individuals who have expertise regarding the child, including related services personnel, as appropriate, may participate in meetings with respect to the identification, evaluation, and educational placement of the child and the provision of a free appropriate public education to the child.

(2) A meeting does not include informal or unscheduled conversations involving local educational agency personnel and conversations on issues such as teaching methodology, lesson plans, or coordination of service provision if those issues are not addressed in the child's IEP. A meeting also does not include preparatory activities that local educational agency personnel engage in to develop a proposal or a response to a parent proposal that will be discussed at a later meeting.

c. Parent involvement in placement decisions.

(1) Each local educational agency shall ensure that the parent or parents of each child with a disability are members of any group that makes decisions on the educational placement of their child.

(2) In implementing the requirements, the local educational agency shall provide notice to ensure that one or both of the parents of a child with a disability are present at each meeting or are afforded the opportunity to participate, including notifying the parent or parents of the meeting early enough to ensure that they will have an opportunity to attend and scheduling the meeting at a mutually agreed on time and place. The notice must indicate: (i) the purpose, time, and location of the meeting and who will be in attendance; (ii) inform the parent or parents that at their discretion or at the discretion of the local educational agency other individuals who have expertise regarding the child, including related services personnel, as appropriate, may participate in meetings with respect to the identification, evaluation, and educational placement of the child and the provision of a free appropriate public education to the child.

(3) If neither parent can participate in a meeting in which a decision is to be made relating to the educational placement of their child, the local educational agency shall use other methods to ensure their participation, including individual or conference telephone calls, or video conferencing.

(4) A placement decision may be made by a group without the involvement of the parent or parents if the local educational agency is unable to obtain the parents' participation in the decision. In this case, the local educational agency must have a record of its attempts to ensure their involvement, including: (i) information about its attempts to arrange a mutually agreed on time and place, such as detailed records of telephone calls made or attempted and the results

of those calls; (ii) copies of correspondence sent to the parents and any responses received; and (iii) detailed records of visits made to the parent's or parents' home or place of employment and the results of those visits.

(5) The local educational agency shall make reasonable efforts to ensure that the parent or parents understand, and are able to participate in, any group discussions relating to the educational placement of their child, including arranging for an interpreter for parents with deafness or whose native language is other than English.

B. Independent educational evaluation.

1. General.

~~ε.~~ a. The parent or parents of a child with a disability shall have the right to obtain an ~~IEE~~ independent educational evaluation of the child:

b. The local educational agency shall provide to the parent or parents of a child with a disability, upon request, information about where an independent educational evaluation may be obtained and the applicable criteria for independent educational evaluations.

2. Parental right to evaluation at public expense.

~~(1) Such IEE will be~~ a. The parent or parents have the right to an independent educational evaluation at public expense if the parent ~~disagrees~~ or parents disagree with the evaluation obtained by the LEA; however, the LEA shall have the right to initiate a due process hearing to show that its evaluation is appropriate. If the final decision is that the evaluation is appropriate then, the parent still has the right to an IEE, but not at public expense local educational agency.

b. If the parent or parents request an independent educational evaluation at public expense, the local educational agency must, without unnecessary delay, either:

(1) Initiate a due process hearing to show that its evaluation is appropriate; or

(2) Ensure that an independent educational evaluation is provided at public expense, unless the local educational agency demonstrates in a hearing that the evaluation obtained by the parent or parents does not meet local educational agency criteria.

c. If the local educational agency initiates a hearing and the final decision is that the evaluation provided by the local educational agency is appropriate, the parent or parents still have the right to an independent educational evaluation, but not at public expense.

d. If the parent or parents request an independent educational evaluation, the local educational agency may ask for the parent's or parents' reasons why they object to the public evaluation. However, the explanation by the parent or parents may not be

required and the local educational agency may not unreasonably delay either providing the independent educational evaluation at public expense or initiating a due process hearing to defend the public evaluation.

~~(2) Whenever~~ e. Agency criteria. If an ~~IEE~~ independent educational evaluation is at public expense, the criteria under which the evaluation is obtained, including the location of the evaluation and the qualifications of the examiner, must be the same as the criteria which the LEA local educational agency uses when it initiates an evaluation, to the extent those criteria are consistent with the parent's or parents' right to an independent educational evaluation. Except for the criteria, a local educational agency may not impose conditions or timelines related to obtaining an independent educational evaluation.

~~(3)~~ 3. Parent-initiated evaluations. The results of the ~~IEE~~ independent educational evaluation whether or not at public expense:

~~(a)~~ a. Must be considered by the LEA local educational agency, if it meets local educational agency criteria, in any decision regarding a free appropriate public education for the child; and

~~(b)~~ b. May be presented as evidence at a hearing under ~~8 VAC 20-80-70 A 2 of this chapter~~ 8 VAC 20-80-76.

C. Prior notice by the local educational agency; content of notice.

~~d.~~ The parent of a child with a disability shall be given 1. Written notice ~~within~~ must be given to the parent or parents of a child with a disability a reasonable time before the LEA local educational agency:

a. Proposes ~~or refuses~~ to initiate or change the identification, evaluation, or educational placement (including graduation with a standard or advanced studies diploma) of the child, or the provision of free appropriate public education for the child; or

b. Refuses to initiate or change the identification, evaluation, or educational placement of the child, or the provision of free appropriate public education for the child.

If the notice relates to an action proposed by the local educational agency that also requires parental consent, the local educational agency may give notice at the time it requests parental consent.

~~e.~~ 2. The notice shall include:

~~(1) A full explanation of all procedural safeguards available to the parents;~~

~~(2)~~ a. A description of the action proposed or refused by the LEA, local educational agency;

b. An explanation of why the LEA local educational agency proposes or refuses to take the action; ~~and;~~

c. A description of any other options the LEA local educational agency considered and the reasons why those options were rejected;

~~(3)~~ d. A description of the nature, purpose, and use of any each evaluation procedure, test, record, or report the LEA local educational agency used as a basis for the ~~proposal proposed or refusal refused~~ action; ~~and~~

~~(4)~~ e. A description of any other factors which are relevant to the LEA's local educational agency's proposal or refusal;

f. A statement that the parent or parents of a child with a disability have protection under the procedural safeguards and, if this notice is not an initial referral for evaluation, the means by which a copy of a description of the procedural safeguards can be obtained; and

g. Sources for the parent or parents to contact to obtain assistance in understanding the provisions of this section.

~~f.~~ Information contained in 3. The notice shall be: ~~(1)~~ (i) written in language understandable by to the general public; ~~(2) and~~ (ii) provided in the native language of the parent or parents or other mode of communication used by the parent or parents, unless it is clearly not feasible to do so; and

~~(3)~~ If the native language or other mode of communication of the parent or parents is not a written language, ~~then~~ the LEA local educational agency shall take steps to ensure that:

~~(a)~~ That a. The notice is translated orally or by other means to the parent or parents in his their native language or other mode of communication;

~~(b)~~ That b. The parent understands or parents understand the content of the notice; and

~~(c)~~ That c. There is documentation written evidence that the requirements in of subdivisions ~~(a) a~~ and ~~(b) b~~ of subdivision A 1 f (3) of this section subdivision have been met.

D. Procedural safeguards notice.

1. A copy of the procedural safeguards available to the parent or parents of a child with a disability must be given to the parent or parents at a minimum:

a. Upon initial referral for evaluation;

b. Upon each notification of an IEP meeting;

c. Upon reevaluation of the child; and

d. Upon receipt of a request for a due process hearing.

2. The procedural safeguards notice must include a full explanation of all of the procedural safeguards relating to:

a. Independent educational evaluation;

b. Prior written notice;

c. Parental consent;

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- d. Access to educational records;
- e. Opportunity to present complaints and to initiate due process hearings;
- f. The child's placement during pendency of due process proceedings;
- g. Procedures for students who are subject to placement in an interim alternative educational setting;
- h. Requirements for unilateral placement by parents of children in private schools at public expense;
- i. Mediation;
- j. Due process hearings, including requirements for disclosure of evaluation results and recommendations;
- k. Civil actions;
- l. Attorneys' fees; and
- m. The state complaint procedures, including a description of how to file a complaint and the timelines under those procedures.

3. The notice required under this section must meet the prior notice requirements regarding understandable language of subsection C of this section.

## E. Parental consent.

~~g. Written~~ 1. General parental consent shall be obtained before:

- ~~(1) Preplacement~~ a. Conducting an initial evaluation or reevaluation;
- b. Any change in identification of a child with disabilities;
- ~~(2) c. Initial placement of provision of special education and related services to a child with a disability in a program providing special education and related services; and any revision to the child's IEP;~~

~~(3) Any change in program/placement, including d. Any partial or complete termination of special education and related services, except for expulsions and graduation. Consent for placement may be revoked up until the first day of the placement, with a standard or advanced studies diploma; and~~

h. Written parental consent shall be obtained for the following:

- (1) Any change in identification of a child with disabilities; and
- (2) Any evaluation which is conducted other than the triennial evaluations. (Parental consent is not necessary for reviewing the child's records for conducting a reevaluation.)

e. Accessing a parent's or parents' private insurance proceeds.

2. Consent for initial evaluation may not be construed as consent for initial placement.

3. Consent for initial placement may be revoked by the parent at any time prior to the first day of that placement. If a parent revokes consent, that revocation is not retroactive (i.e., it does not negate an action that has occurred after the consent was given and before the consent was revoked).

~~i. Except for preplacement evaluation and initial placement, consent or refusal to give consent for those other situations requiring consent shall be given by the parent to the LEA within 10 administrative working days after notice is received. If the parent fails to notify the LEA within 10 administrative working days, the LEA may proceed as if consent had been granted, and the parent must initiate due process to contest the action. If the parent refuses to give consent, the LEA shall attempt to resolve parental withholding of consent through informal means. If those informal methods are not successful, the LEA must use other measures as necessary to ensure that, except for preplacement evaluation and initial placement, parental refusal to consent will not result in a denial of a necessary free appropriate public education.~~

~~2. Impartial due process hearing. Each LEA or the parent of a child determined or believed to have a disability, shall have the right to initiate a hearing when a disagreement occurs on matters relating to identification, evaluation (including determination of whether or not an IEE at public expense is appropriate), or educational placement of the child or the provision of a free appropriate public education for the child. The LEA may initiate due process to appeal parental withholding of consent where this chapter requires the LEA to obtain consent.~~

~~3. Child's status during proceedings. The child's status during proceedings shall be as follows:~~

~~a. During the pendency of any administrative hearing or appeal or during the pendency of any judicial proceeding regarding this chapter, unless the LEA and the parent of the child agree otherwise, the child must remain in his current educational placement. While the placement may not be changed, this does not preclude using normal procedures for dealing with children who are endangering themselves or others. Such procedures do not include expulsion or suspension over 10 days; however, the procedures may include time out, detention, restriction of privileges, or temporary suspension up to 10 days.~~

~~b. If the issue involves an application for initial admission to public school, the child of school age, with consent of the parent, must be placed in a public school program until the completion of all proceedings.~~

4. Mediation. This chapter does not preclude the use of mediation in the resolution of differences, but mediation shall not be used to deny or delay a parent's rights. Such mediation may be conducted only by personnel who were not previously involved in the particular case. However, such mediation shall not extend the resolution of a hearing beyond the 45 calendar days unless otherwise



approved and documented as in the best interests of the child by the hearing officer upon request of the parties. The hearing officer shall notify the parties and the SEA in writing of the specific number of days to be allowed for mediation.

## 5. Commencement of the due process hearing.

a. Request for a hearing shall be made in writing to the LEA or other public agency board as appropriate.

b. The LEA shall inform the parent of any free or low-cost legal or other relevant services available in the area as well as the attorney fees provision of 8 VAC 20-80-70 A 12 when:

(1) The parent requests the information; or

(2) The parent or the LEA initiates a hearing.

c. The LEA shall ensure that the Virginia Supreme Court appoints a hearing officer within five administrative working days following the request for a hearing to facilitate compliance with the 45-calendar days timeline.

## 6. Qualifications, removal, substitution and challenge of hearing officers.

"Impartial hearing officer" means a person selected from a list maintained by the Office of the Executive Secretary of the Supreme Court of Virginia. A hearing may not be conducted:

a. By a person employed by an agency involved with the care or education of the child; or

b. By a person having a personal or professional interest which would conflict with his objectivity in the hearing.

Appointment, qualifications, retention, training, selection, removal and disqualification of hearing officers are governed by the Hearing Office System Rules of Administration Promulgated by the Supreme Court of Virginia.

## 7. Responsibilities of LEA; prehearing.

a. The confirmation of the appointment of the hearing officer by the LEA shall be done in such a manner as to protect the confidentiality of the parents and the child. All necessary information shall be forwarded promptly to the hearing officer, together with the official request for a hearing in order to ensure that timelines are maintained.

b. The LEA shall send a copy of the correspondence confirming the appointment of a hearing officer along with a copy of the request for a hearing to the SEA within five administrative working days of the appointment of a hearing officer.

c. The LEA shall arrange for recording equipment to be set up, or a stenographer to be present, in the hearing room. The LEA shall also ensure that the recording equipment, if used, is reliable and working and that the recording is clear and can be transcribed, if necessary.

A complete, accurate, written verbatim transcript of the proceedings need not be made at the conclusion of the hearing, unless the hearing officer needs it for review prior to rendering a decision. When there is an appeal of the decision, a verbatim copy of the recording or transcript shall be supplied to the parties to the appeal, upon request, and free of charge.

d. Each LEA shall keep a list of the persons who serve as hearing officers. The list must include a statement of the qualifications of each of those persons.

## 8. Responsibilities of the hearing officer; prehearing.

a. The hearing officer shall, within five administrative working days of appointment, secure a time, date and location for the hearing which is convenient to both parties, and notify both parties to the hearing, and the SEA, in writing, of the time, date and location of the hearing.

b. The hearing officer shall ascertain whether or not the parties will have attorneys at the hearing. If so, the hearing officer shall send copies of correspondence to the attorneys of the parties.

c. The hearing officer shall ascertain from the parents whether the hearing will be open.

d. The hearing officer shall ensure that a stenographer or recording equipment is present at the hearing and ensure that testimony is clearly recorded, either by the stenographer or recording equipment, to permit an accurate record of the proceedings. If a tape recorder is used, the hearing officer shall be provided a written list of speakers in order of appearance, and at the beginning of the hearing identify on tape each speaker's title, position, and interest in the proceeding. Thereafter, each speaker, prior to addressing the hearing, shall state his name for the record.

e. The hearing officer shall receive a list of witnesses and documentary evidence for the hearing no later than five administrative working days prior to the hearing.

f. The hearing officer may schedule a prehearing conference to be attended by the parties and attorneys, if appropriate. Such a conference may be requested by the hearing officer or the parties to the hearing to simplify or eliminate issues.

g. The hearing officer has power to issue subpoenas requiring testimony or the productions of books, papers, and physical or other evidence.

(1) The hearing officer may procure an order of enforcement for a subpoena in the circuit court of the jurisdiction in which the hearing is to be held.

(2) Any person so subpoenaed may petition the circuit court for a decision regarding the validity of such subpoena if the hearing officer does not question or modify the subpoena after objection to that.

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- ~~h. The hearing officer shall ensure that the LEA has appointed a surrogate parent who is acting to protect the educational interests and rights of the child in accordance with 8 VAC 20-80-80 of this chapter.~~
9. Rights of parties to the hearing.
- a. Any party to a hearing shall have the right to:
- ~~(1) Be accompanied and advised by counsel or by individuals with special knowledge or training concerning the problems of children with disabilities, without being in violation of the provisions of § 54.1-3904 of the Code of Virginia.~~
  - ~~(2) Present evidence and confront, cross-examine, and request the hearing officer to compel the attendance of witnesses.~~
  - ~~(3) Prohibit the introduction of any evidence at the hearing that has not been disclosed to the other party at least five administrative working days before the hearing.~~
  - ~~(4) Receive written findings of fact and decisions rendered by the hearing officer.~~
- b. The parents involved in a hearing must be given the right to:
- ~~(1) Have the child who is the subject of the hearing present;~~
  - ~~(2) Open the hearing to the public;~~
  - ~~(3) Receive a copy of the implementation plan; and~~
  - ~~(4) Obtain the written or electronic verbatim record of the hearing upon request and free of charge.~~
10. Due process hearing procedure.
- a. The rights of all parties to the hearing shall be protected by the hearing officer.
- b. The hearing officer shall ensure that an atmosphere conducive to impartiality and fairness is maintained at all times in the hearing. The hearing officer may excuse witnesses after they testify to limit the number of expert witnesses present at the same time or to sequester witnesses during the hearing.
- c. The hearing officer may stop unnecessarily hostile or irrelevant pursuits in questioning.
- d. The hearing officer shall remand the matter in dispute to a conference between the parties only when informal resolution and discussion appear to be desirable and constructive. This action shall not be used to delay or deprive the parties of their rights and shall be exercised only when the best interest of the child will be served.
- e. The hearing officer may require an independent educational evaluation of the child. This evaluation shall be at public expense and shall be conducted in accordance with the regulations governing evaluation and assessment.
- f. The hearing officer, in the course of the proceedings, shall include in the written findings a determination of the following:
- ~~(1) Whether or not the requirements of notice to parents were satisfied;~~
  - ~~(2) Whether or not the child has a disability;~~
  - ~~(3) Whether or not the child needs special education and related services; and~~
  - ~~(4) Whether or not the LEA is supplying a free appropriate public education.~~
- g. The hearing officer shall make no presumptions in the case and shall base his findings of fact and decisions solely upon the preponderance of the evidence presented at the hearing and applicable state and federal law.
- h. The hearing officer shall report findings of fact and decisions to both parties to the appeal, the LEA, and to the SEA.
- i. A decision made by the hearing officer is final, unless a party to the hearing appeals to the state for an administrative review. An appeal by either party must be instituted within 30 administrative working days of the date of the hearing decision.
11. Administrative appeal and impartial review.
- a. If there is an appeal of the decision of a hearing officer, the SEA shall ensure an impartial review of the hearing. The review shall be conducted by a reviewing officer appointed according to the Hearing Officer System Rules of Administration Promulgated by the Supreme Court of Virginia. The SEA shall ensure the appointment within two administrative days of the receipt of a request for a review of a due process hearing. The official conducting the review shall:
- ~~(1) Examine the entire hearing record;~~
  - ~~(2) Ensure that the procedures at the hearing were consistent with the requirements of due process;~~
  - ~~(3) Seek additional evidence, if necessary. If a hearing is held to receive additional evidence, then all hearing rights as specified in this section apply;~~
  - ~~(4) Afford the parties an opportunity for oral or written argument, or both, at the discretion of the reviewing official;~~
  - ~~(5) Advise all parties of their right to continue to be represented by counsel whether or not the reviewing official determines that a further hearing is necessary;~~
  - ~~(6) Make an independent decision upon completion of the review; and~~
  - ~~(7) Give a copy of written findings and the decisions to the parties to the appeal, the LEA and to the SEA in the manner prescribed.~~

b. The decision made by the reviewing official is final and binding on all parties, unless any party aggrieved by the findings and decisions of the administrative review brings civil action in any state court of competent jurisdiction within one year or in federal district court. In any such action, the court shall receive the records of the administrative proceedings, shall hear additional evidence in its discretion at the request of either party, and basing its decision on the preponderance of the evidence, shall grant such relief as it determines to be appropriate.

#### 12. Attorney's fees.

a. In any such action or proceeding, the court, in its discretion, may award reasonable attorney's fees as part of the costs to the parents or guardian of a child with a disability who is the prevailing party.

b. If a written offer of settlement is made to a parent or guardian within the time prescribed by Rule 68 of the Federal Rules of Civil Procedure, or, in the case of an administrative proceeding, at any time more than 10 days before the proceeding begins, and the offer is not accepted within 10 days and the court or administrative officer finds that the relief finally obtained by the parents or guardian is not more favorable to the parent or guardian than the offer of settlement, no award of attorney's fees and related costs may be made for services performed subsequent to the time of such offer, unless the court finds that the prevailing party was reasonably justified in rejecting the settlement offer.

#### 13. Timelines for hearings and reviews.

a. The LEA shall ensure that not later than 45 calendar days after the receipt of a request for a due process hearing:

- (1) A final decision is rendered in the hearing, unless otherwise documented by the hearing officer; and
- (2) A copy of the decision is mailed to the parties and the SEA.

b. The SEA shall ensure that not later than 30 calendar days after the receipt of a request for a review:

- (1) A final decision is rendered in the review, unless otherwise documented by the reviewing officer; and
- (2) A copy of the decision is mailed to the parties.

c. A hearing or reviewing officer may grant specific extensions of time beyond the periods set out in subdivisions a and b of subdivision A 13 of this section at the request of either party. This action shall in no way be used to delay or deprive the parties of their rights and should be exercised only when the best interests of the child will be served. Changes in hearing dates or extensions are to be noted in writing which shall be sent to all parties and to the SEA.

d. Each hearing and each review involving oral arguments must be conducted at a time and place

which is reasonably convenient to the parent and child involved.

#### 14. Costs of due process hearings and state review.

a. Costs for a local hearing shall be shared equally by the LEA and the SEA. The costs shared by the SEA shall include expenses of the hearing officer (i.e., time, travel, secretarial, postal and telephone expenses), expenses incurred by order of the hearing or reviewing officer (i.e., independent educational evaluations, deposition or transcript), and expenses for making a record of a hearing (i.e., hearing tapes or stenographer). The SEA shall not be liable to the LEA for expenses incurred for witnesses (except where hearing or reviewing officers subpoena witnesses on their own initiative) or for attorney's fees.

b. The SEA shall be responsible for all approved costs for state reviews.

#### 15. Implementation plan.

a. The LEA shall develop an implementation plan within 45 calendar days of the rendering of a decision or the withdrawal of a hearing or review request. Such plan shall be based upon the decision of the hearing officer, the reviewing officer, or agreement between the parties. The implementation plan must state how and when the decision or agreement will be put into operation. If the decision or agreement affects the child's educational program, the revised IEP shall be made a part of the implementation plan. The implementation plan shall include the name and position of a case manager in the LEA charged with implementing the decision. Copies of this plan shall be forwarded to the parties to the hearing, the hearing or reviewing officer, and the SEA.

b. Failure of either of the parties to comply with the implementation plan shall be reported to the SEA for investigation or appropriate action.

#### 16. Due process file. The LEA shall maintain a file containing the following:

- a. A copy of the hearing and reviewing officer's findings of fact and decisions;
- b. A copy of the implementation plan;
- c. A copy of the electronic or verbatim transcript of the hearing proceedings; and
- d. A copy of all documents and exhibits presented at the due process hearing and state level review.

B. Confidentiality of information. The confidentiality of information shall be as set forth in the Management of the Student's Scholastic Record.

C. Complaint procedure. Complaints regarding violations of rights of parents or children with disabilities or both shall be addressed to the Superintendent of Public Instruction or designee, with the additional requirements as follows:

1. The complaint must be in writing, signed by the organization or individual filing the complaint, and contain

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~~a statement that an LEA has violated the Individuals with Disabilities Education Act (IDEA) (20 USC § 1400 et seq.) or this chapter.~~

~~2. The complaint must contain a statement of facts on which the complaint is based. In addition, all relevant documents shall be forwarded to the Superintendent of Public Instruction or designee.~~

4. Parental consent is not required before:

a. Reviewing existing data as part of an evaluation or a reevaluation;

b. Administering a test or other evaluation that is administered to all children unless, before administration of that test or evaluation, consent is required of the parent or parents of all children; or

c. Administering a test or evaluation that is used to measure progress on the children's goals and objectives and is included in the IEP.

5. If the parent or parents of a child with a disability refuse consent for initial evaluation or a reevaluation, the local educational agency may continue to pursue those evaluations by using the due process procedures or the mediation procedures if appropriate.

6. Failure to respond to request for reevaluation.

a. Informed parental consent need not be obtained for reevaluation if the local educational agency can demonstrate that it has taken reasonable measures to obtain that consent, and the child's parent or parents have failed to respond.

b. To meet the reasonable measures requirement in this subdivision 6 a, the local educational agency must use parent participation procedures consistent with those in 8 VAC 20-80-62 D 4.

7. A local educational agency may not use a parent's or parents' refusal to consent to one service or activity to deny the parent, parents or child any other service, benefit, or activity of the local educational agency, except as provided by this chapter.

F. Parental rights regarding use of public or private insurance.

1. Each local educational agency using public insurance to pay for services required under this chapter shall:

a. Provide notice to the parent or parents that:

(1) The parent or parents are not required to sign up for public insurance in order for their child to receive a free appropriate public education; and

(2) The parent or parents are not required to incur out-of-pocket expenses, such as payment of a deductible or copay amount.

b. Obtain informed parental consent to release educational records to the public insurance company for billing purposes in accordance with the provisions of the Management of Student's Scholastic Records in

the Public Schools of Virginia (8 VAC 20-150-10 et seq.).

2. Each local educational agency using private insurance to pay for services required under this chapter shall:

a. Obtain informed parental consent to access the parent's or parents' private insurance proceeds.

b. Obtain parental consent and inform the parent or parents that their refusal to permit the public agency to access their private insurance does not relieve the local educational agency of its responsibility to ensure that all required services are provided at no cost to the parent or parents each time it proposes to access the parent's or parents' private insurance.

c. Obtain parental consent to release educational information to the private insurance company for billing purposes in accordance with the provisions of the Management of Student's Scholastic Records in the Public Schools of Virginia (8 VAC 20-150-10 et seq.).

G. The confidentiality of information shall be as set forth in the Management of Student's Scholastic Record in the Public Schools of Virginia (8 VAC 20-150-10 et seq.).

## **8 VAC 20-80-72. Transfer of rights to students who reach the age of majority.**

A. A student who has reached the age of 18 years shall be presumed to be a competent adult, and thus all rights under the Individuals with Disabilities Education Act shall transfer to the adult student unless one of the following actions has been taken:

1. The adult student has been declared legally incompetent or legally incapacitated by a court of competent jurisdiction and a representative has been appointed by the court to make decisions for the student.

2. The adult student designates, in writing, another competent adult to be the student's agent to receive notices and to participate in meetings and all other procedures related to the student's educational program. A local educational agency may rely on such a written designation until notified that the authority to act under the designation has been revoked, terminated or superseded by court order or by the adult student.

3. The adult student has been certified, according to the following procedures, as unable to provide informed consent. Any competent adult student who has been found eligible for special education pursuant to this chapter and does not have a representative appointed to make decisions on the adult student's behalf by a court of competent jurisdiction may have an educational representative appointed based on the following certification procedure to act on the student's behalf for all matters described in this chapter, including all rights accruing to the adult student under the Individuals with Disabilities Education Act (20 USC § 1400 et seq.) and the exercise of rights related to the student's school record.

a. An educational representative may be appointed based on the following conditions and procedures:

(1) Two professionals (one from list one and one from list two) must, based on a personal examination or interview, certify in writing that the adult student is incapable of providing informed consent and that the student has been informed of this decision:

(a) List one includes (i) a medical doctor licensed in the state where the doctor practices medicine; (ii) a physician's assistant whose certification is countersigned by a supervising physician; or (iii) a certified nurse practitioner.

(b) List two includes (i) a medical doctor licensed in the state where the doctor practices medicine; (ii) a licensed clinical psychologist; (iii) a licensed clinical social worker; (iv) an attorney who is qualified to serve as a guardian ad litem for adults under the rules of the Virginia Supreme Court; or (v) a court-appointed special advocate for the adult student.

(2) The individuals who provide the certification in subdivision 3 a (1) of this subsection may not be employees of the local educational agency currently serving the adult student or be related by blood or marriage to the adult student.

(3) Incapable of providing informed consent, as used in this procedure, means that the individual is:

(a) Unable to understand the nature, extent and probable consequences of a proposed educational program or option on a continuing or consistent basis;

(b) Unable to make a rational evaluation of the benefits or disadvantages of a proposed educational decision or program as compared with the benefits or disadvantages of another proposed educational decision or program on a continuing or consistent basis; or

(c) Unable to communicate such understanding in any meaningful way.

(4) The certification that the adult student is incapable of providing informed consent may be made as early as 60 calendar days prior to the adult student's eighteenth birthday or 65 business days prior to an eligibility meeting if the adult student is undergoing initial eligibility for special education services.

(5) The certification shall state when and how often a review of the adult student's ability to provide informed consent shall be made and why that time period was chosen.

(6) The adult student's ability to provide informed consent must be recertified at any time that the previous certifications are challenged. Challenges can be made by the student or by anyone with a bonafide interest and knowledge of the adult student.

Challenges must be provided in writing to the local educational agency's director of special education who then must notify the adult student and current appointed representative.

(a) Upon receipt of a written challenge to the certification by the adult student, the local educational agency may not rely on an educational representative, appointed pursuant to subdivision 3 b of this subsection for any purpose until a designated educational representative is affirmed by a court of competent jurisdiction.

(b) Upon receipt of a written challenge to the certification by anyone with a bonafide interest and knowledge of the adult student, the local educational agency may not rely on an educational representative appointed pursuant to this procedure for any purpose until a more current written certification is provided by the appointed educational representative. Certifications provided after a challenge are effective for 60 calendar days, unless a proceeding in a court of competent jurisdiction is filed challenging and requesting review of the certifications. The local educational agency shall not rely upon the designated educational representative until the representative is affirmed by the court.

b. Upon receiving the written certification of the adult student's inability to provide informed consent, the local educational agency shall designate the parent or parents of the adult student to act as an educational representative of the adult student (unless the student is married, in which event the student's adult spouse shall be designated as educational representative). If the parent or parents or adult spouse is not available or competent to give informed consent, the individual designated by the local educational agency shall designate a competent individual from among the following:

(1) An adult brother or sister;

(2) An adult aunt or uncle; or

(3) A grandparent.

If no one from the previous categories is willing and able to serve as the adult student's educational representative, then an individual (who is not an employee of the local educational agency) shall be designated to serve in this capacity by the local educational agency.

## B. Notification.

1. The local educational agency shall notify the parent or parents and the student of the following:

a. That educational rights under the Individuals with Disabilities Education Act (20 USC §§ 1400 et seq.) will transfer from the parent or parents to the student upon the student reaching the age of majority. Such

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notification must be given at least one year prior to the student's eighteenth birthday.

b. The procedures for appointing the parent or parents or, if the parent or parents are not available, another appropriate individual, to represent the educational interests of the student throughout the student's eligibility for special education and related services if the child is determined not to have the ability to provide informed consent with respect to the educational program of the student as specified in subsection A of this section.

2. The local educational agency shall include a statement on the IEP (beginning at least one year before the student reaches the age of majority) that the student has been informed of the rights that will transfer to the student on reaching the age of 18.

3. The local educational agency shall provide any further notices required under the Individuals with Disabilities Education Act (20 USC §§ 1400 et seq.) to both the student and the parent or parents.

4. The local educational agency may continue to invite the parent or parents, as appropriate, as bonafide interested parties knowledgeable of the student's abilities, to participate in meetings where decisions are being made regarding their adult child's educational program.

5. The adult student may invite the student's parent or parents to participate in meetings where decisions are being made regarding the student's educational program.

C. All rights accorded to the parent or parents under the Individuals with Disabilities Education Act (20 USC §§1400 et seq.) transfer to children upon the age of majority (18) who are incarcerated in an adult or juvenile federal, state, regional, or local correctional institution.

## **8 VAC 20-80-74. Mediation.**

A. Each local educational agency shall ensure that the parent or parents are informed of the option of mediation to resolve disputes, at a minimum, whenever a due process hearing is requested.

B. The local educational agency may use the Virginia Department of Education's mediation process to resolve such disputes. The procedures shall ensure that the process is:

1. Voluntary on the part of both the local educational agency and parent;

2. Not used to deny or delay a parent's or parents' right to a due process hearing or to deny any other rights afforded under this chapter; and

3. Conducted by a qualified and impartial mediator, from a list maintained by the Virginia Department of Education, who is trained in effective mediation techniques and is knowledgeable in laws and regulations relating to the provision of special education and related services.

C. The local educational agency may establish procedures to require parents who choose not to use the mediation

process to meet, at a time and location convenient to the parent, with a disinterested party who is under contract with:

1. A parent training and information center established under the Individuals with Disabilities Education Act (20 USC §§ 1400 et seq.), community parent resource center in Virginia established under § 1482 or § 1485 of the Individuals with Disabilities Education Act (20 USC §§ 1400 et seq.); or

2. An appropriate alternative dispute resolution entity.

The purpose of the meeting is to encourage the use and explain the benefits of the mediation process to the parent or parents.

The local educational agency may not deny or delay a parent's or parents' right to a due process hearing if the parent or parents choose not to participate in this meeting.

D. In accordance with the Virginia Department of Education's procedures:

1. The Virginia Department of Education shall maintain a list of individuals who are qualified mediators and knowledgeable in laws and regulations relating to the provision of special education and related services;

2. The mediator shall be chosen on a rotation basis; and

3. The Virginia Department of Education shall bear the cost of the mediation process, including costs in subsection C of this section.

E. The mediation process shall:

1. Be scheduled in a timely manner and held in a location that is convenient to the parties to the dispute;

2. Conclude with a written mediation agreement if an agreement is reached by the parties to the dispute; and

3. Guarantee that discussions that occur during the mediation process are confidential and may not be used as evidence in any subsequent due process hearings or civil proceedings. Parties to the mediation process may be required to sign a confidentiality pledge prior to the commencement of the mediation process.

F. An individual who serves as a mediator:

1. May not be an employee of any local educational agency or the Virginia Department of Education if it is providing direct services to a child who is the subject of the mediation process; and

2. Must not have a personal or professional conflict of interest.

A person who otherwise qualifies as a mediator is not an employee of the local educational agency or the Virginia Department of Education solely because the person is paid by the agency to serve as a mediator.

## **8 VAC 20-80-76. Due process hearing.**

A. The Virginia Department of Education administers a special education due process hearing system that provides procedures for the training of hearing officers, requests for a

hearing, appointment of hearing officers, the management and monitoring of hearings, and the administration of the hearing system. The Virginia Department of Education is responsible for the operation of the due process system; however, the local educational agency shares responsibility for the hearing process by ensuring the timely appointment of officers, communicating with the Virginia Department of Education, assisting with the hearing, and implementing the hearing officer's decision. A hearing officer's decision may be appealed directly to any state court of competent jurisdiction or to a district court of the United States.

### *B. Basis for due process hearing request.*

1. Either a parent or parents or a local school division may request a due process hearing when a disagreement arises regarding any of the following:

- a. Identification of a child with a disability;
- b. Evaluation of a child with a disability (including disagreements regarding payment for an independent educational evaluation);
- c. Educational placement and services of the child; and
- d. Provision of a free appropriate public education to the child.

2. A local educational agency may initiate a due process hearing to resolve a disagreement when the parent or parents withhold consent for an action that requires parental consent to provide services to a student with a disability or who is suspected to have a disability.

3. In circumstances involving disciplinary actions, a parent or parents of a student with a disability may request an expedited due process hearing:

- a. If the parent or parents disagree with a determination that the child's behavior was not a manifestation of the child's disability; or
- b. If the parent or parents disagree with any decision regarding an interim alternative placement.

4. The local educational agency may request an expedited hearing if the school division maintains that it is dangerous for the child to be in the current placement during the pendency of the due process proceedings.

### *C. Procedure for requesting a due process hearing.*

1. A request for a hearing is made in writing to the local educational agency, with a copy to the Virginia Department of Education. If the request is received solely by the Virginia Department of Education, the Virginia Department of Education will immediately notify the local educational agency by telephone or by facsimile, and forward a copy of the request to the local educational agency within one day of the Virginia Department of Education's receipt, including those cases where mediation is requested.

2. The local educational agency shall inform the parent or parents of low-cost legal services and provide procedural safeguards and rights. The local educational agency shall confirm that the mediation option has been explored.

3. The local educational agency shall appoint the hearing officer within five business days of the request for a hearing. The local educational agency contacts the Supreme Court of Virginia to secure the name of a hearing officer, contacts the hearing officer to confirm availability, and upon acceptance, appoints the hearing officer in writing, with a copy to the Virginia Department of Education. In the case of an expedited hearing, the hearing officer must be appointed within two business days of the request for a hearing.

### *D. Assignment of hearing officer.*

1. A hearing officer is appointed to a case from a list maintained by the Supreme Court of Virginia.

2. Upon a request by the local educational agency, the Supreme Court identifies a hearing officer from its list and provides the name to the local educational agency. Should the first person selected be unavailable or disqualified, the local educational agency shall immediately request another name to ensure a timely appointment is made.

3. Upon request, the Virginia Department of Education shall share information on qualifications of the hearing officer with the parent or parents and the local educational agency, and either party has two business days to object on the basis of conflict of interest.

4. Hearing officers who serve as counsel for the parent or parents or local educational agencies are not excluded from the hearing officers list, but a hearing may not be conducted by a person having a personal or professional interest which would conflict with that person's objectivity in the hearing. If a hearing officer recuses himself or is otherwise disqualified, the local educational agency shall ensure that another hearing officer is promptly appointed.

### *E. Child's status during administrative or judicial proceedings.*

1. During the pendency of any administrative or judicial proceeding, the child must remain in the current educational placement unless the parent or parents of the child and local educational agency agree otherwise.

2. If the proceeding involves an application for initial admission to public school, the child, with the consent of the parent or parents, must be placed in the public school until the completion of all the proceedings.

3. If the decision of a hearing officer agrees with the child's parent or parents that a change of placement is appropriate, that placement shall be treated as an agreement between the local educational agency and the parent or parents for the purposes of maintaining the child's placement during the pendency of any administrative or judicial appeal proceeding.

4. The child's placement during administrative or judicial proceedings regarding a disciplinary action by the local educational agency shall be in accordance with 8 VAC 20-80-68.

### *F. Rights of parties in the hearing.*

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1. Any party to a hearing has the right to:

- a. Be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of children with disabilities;
- b. Present evidence and confront, cross examine, and compel the attendance of witnesses;
- c. Prohibit the introduction of any evidence at the hearing that has not been disclosed to that party at least five business days before the hearing;
- d. Obtain a written or, at the option of the parent or parents, electronic, verbatim record of the hearing; and
- e. Obtain written or, at the option of the parent or parents, electronic findings of fact and decisions.

2. Additional disclosure of information shall be given as follows:

- a. At least five business days prior to a hearing, each party shall disclose to all other parties all evaluations completed by that date and recommendations based on the offering party's evaluations that the party intends to use at the hearing.
- b. A hearing officer may bar any party that fails to comply with the disclosure requirements from introducing the relevant evaluation or recommendation at the hearing without the consent of the other party.

3. Parental rights at hearings.

- a. A parent or parents involved in a hearing must be given the right to:
  - (1) Have the child who is the subject of the hearing present; and
  - (2) Open the hearing to the public.
- b. The record of the hearing and the findings of fact and decisions must be provided at no cost to parents.

G. Responsibilities of the Virginia Department of Education. The Virginia Department of Education shall:

1. Maintain and monitor the due process hearing system and establish procedures for its operation;
2. Ensure that the local educational agency is informed of its responsibilities in carrying out the requirements of state and federal statutes and regulations;
3. Develop and disseminate a model form to assist the parent or parents in filing a request for due process that includes the name of the child, address of the residence of the child, the name of the school the child is attending, a description of the nature of the problem of the child relating to the proposed or refused initiation or change, and a proposed resolution of the problem to the extent known and available to the parent or parents at the time;
4. Ensure that the hearing is conducted by individuals who are impartial and who are not employees of the Virginia Department of Education or the local educational agency providing education or care of the child, or by

anyone with a personal or professional interest that would conflict with objectivity in the case.

5. Assist in ensuring that each local educational agency has a list of persons who serve as hearing officers. This list shall include a statement of the qualifications of each officer.

6. The Virginia Department of Education notifies the Supreme Court of the receipt of either the hearing officer's written decision or conclusion of the case.

7. Provide findings and decisions to the state advisory committee and to the public after deleting any personally identifiable information.

H. Responsibilities of the parent. In a due process hearing, the parent shall:

1. Notify the hearing officer whether the hearing will be open.
2. Ensure that the parent, parents or individuals assisting the parent make timely and necessary responses to the hearing officer.
3. Assist in clarifying the issues for the hearing and participate in the prehearing conference.
4. Upon request, provide information to the hearing officer to assist in the hearing officer's administration of a fair and impartial hearing.
5. Upon request, provide documents and exhibits necessary for the hearing within required timelines.
6. Comply with timelines, orders, and requests of the hearing officer.

I. Responsibilities of the local educational agency. The local educational agency shall:

1. Provide the parent or parents a form to assist in the initiation of a due process hearing and written procedural safeguards.
2. Upon receipt of the notice, ensure that the notice remains confidential.
3. Ensure that the right to a hearing is not delayed or denied for failure to provide the required notice.
4. Ensure that a hearing officer is appointed within five business days of the request for a hearing.
5. Inform the parent or parents at the time the request is made that mediation is available.
6. Inform the parent or parents of any free or low cost legal and other relevant services if the parent or parents request it, or anytime the parent, parents, or the local educational agency initiates a hearing.
7. Assist the hearing officer, upon request, in securing the location and recording equipment for the hearing.
8. Make timely and appropriate responses to the hearing officer.



9. Assist in clarifying the issues for the hearing and participate in the pre-hearing conference.

10. Upon request, provide information to the hearing officer to assist in the hearing officer's administration of a fair and impartial hearing.

11. Provide documents and exhibits necessary for the hearing within required timelines.

12. Comply with timelines, orders, and requests of the hearing officer.

13. Maintain a file, which is a part of the child's scholastic record, containing communications, exhibits, decisions, and implementation plan, including mediation communications, except as prohibited by laws or regulations.

14. Forward all necessary communications to the Virginia Department of Education and parties as required.

15. Develop and submit an implementation plan within 45 calendar days of the rendering of a decision or the withdrawal of a hearing request. Such plan shall be based upon the decision of the hearing officer or agreement between the parties. The implementation plan must state how and when the decision or agreement will be put into operation. If the decision or agreement affects the child's educational program, the revised IEP shall be made a part of the implementation plan. The implementation plan shall contain the name and position of a case manager in the local educational agency charged with implementing the decision. Copies of this plan shall be forwarded to the parties to the hearing, the hearing officer, and the Virginia Department of Education.

16. Notify the Virginia Department of Education if the local educational agency has knowledge that the case has been filed in court.

17. Forward the record to the court for any case appealed if requested by the court.

J. Responsibilities of the hearing officer. The hearing officer shall:

1. Affirm, by accepting appointment, that he has complied with all training requirements and agrees to complete the hearing within the regulatory timelines: 45 calendar days if assigned to a regular due process hearing and 10 business days if assigned to an expedited hearing.

2. Ensure impartiality, and ensure that the hearing officer is not an employee of the Virginia Department of Education or of the local educational agency that is involved in the education or care of the child.

3. Ensure that the rights of all parties are protected and that the laws and regulations regarding the educational placement or services of the child are followed in the conduct of the hearing and in rendering the decision.

4. Within five business days of appointment, secure a date, time, and location for the hearing that are convenient to both parties, and notify both parties to the hearing and the Virginia Department of Education, in

writing, of the date, time, and location of the hearing. If the hearing is an expedited hearing, the hearing officer must complete these responsibilities within one day of appointment.

5. Ascertain whether or not the parties will have attorneys or others assisting them at the hearing. The hearing officer shall send copies of correspondence to the parties and their attorneys.

6. Conduct a prehearing conference unless the hearing officer deems such conference unnecessary. The prehearing conference may be used to clarify or narrow issues and determine the scope of the hearing. If a prehearing conference is not held, the hearing officer shall document in the written prehearing report to the Virginia Department of Education the reason for not holding the conference.

7. At the prehearing stage, inform the parties of their rights regarding mediation, of their opportunity to settle the case, and that at the end of the hearing and upon receiving the decision, of their right to appeal the case directly to either a state or federal court at their discretion.

8. Monitor the mediation process if the parties agree to mediate to ensure that mediation is not used to deny or delay the right to a due process hearing, parental rights are protected, and the hearing is concluded within regulatory timelines.

9. Ascertain from the parent or parents whether the hearing will be open.

10. Ensure that the parties have the right to a written or, at the option of the parent or parents, electronic verbatim record of the proceedings, and that the record is forwarded to the local educational agency for the file after making a decision.

11. Receive a list of witnesses and documentary evidence for the hearing (including all evaluations and related recommendations that each party intends to use at the hearing) no later than five business days prior to the hearing. If the hearing is an expedited hearing, receipt must be no later than two business days prior to the hearing.

12. Ensure that the local educational agency has appointed a surrogate parent in accordance with 8 VAC 20-80-64 when the parent, parents, or guardian is not available or cannot be located.

13. Ensure that an atmosphere conducive to impartiality and fairness is maintained at all times in the hearing.

14. Not require the parties or their representatives to submit extensive briefs as a condition of rendering a decision.

15. Make no presumptions in the case and base findings of fact and decisions solely upon the preponderance of the evidence presented at the hearing and applicable state and federal law.

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16. Report findings of fact and decisions in writing to both parties, their attorneys, and the Virginia Department of Education. If the hearing is an expedited hearing, the hearing officer may issue an oral decision at the conclusion of the hearing, followed by a written decision within five business days of the hearing being held.

17. Include in the written findings of a regular due process hearing, a determination of whether or not the:

- a. Requirements of notice to the parent or parents were satisfied;
- b. Child has a disability;
- c. Child needs special education and related services; and
- d. Local educational agency is providing a free appropriate public education.

18. Maintain an organized and well-documented record and return the official record to the local educational agency upon conclusion of the case.

19. Determine in hearing regarding a manifestation determination whether the local educational agency has demonstrated that the child's behavior was not a manifestation of the child's disability consistent with the following requirements:

a. The IEP team first considered, in terms of the behavior subject to disciplinary action, all relevant information, including:

- (1) Evaluation and diagnostic results, including such results or other relevant information supplied by the parent or parents of the child;
- (2) Observations of the child; and
- (3) The child's IEP and placement; and

b. The IEP team then determined that:

- (1) In relationship to the behavior subject to disciplinary action, the child's IEP and placement were appropriate and the special education services, supplementary aids and services, and behavior intervention strategies were provided consistent with the child's IEP and placement;
- (2) The child's disability did not impair the ability of the child to understand the impact and consequences of the behavior subject to disciplinary action; and
- (3) the child's disability did not impair the ability of the child to control the behavior subject to disciplinary action.

c. If the IEP team determined that any of these standards were not met, the behavior must be considered a manifestation of the child's disability.

20. In hearing a case regarding the authority of local educational agency personnel to change the child's placement to an interim alternative educational placement for up to 45 days:

a. Consider the appropriateness of the child's current placement;

b. Consider whether the local educational agency has made reasonable efforts to minimize the risk of harm in the child's current placement, including the use of supplementary aids and services;

c. Determine that the local educational agency has demonstrated by substantial evidence that maintaining the current placement of such child is substantially likely to result in injury to the child or to others; and

d. Determine that the interim alternative educational setting meets the following requirements:

(1) Is selected so as to enable the child to continue to participate in the general curriculum, although in another setting, and to continue to receive those services and modifications, including those described in the child's current IEP, that will enable the child to meet the goals set out in that IEP; and

(2) Includes services and modifications designed to address the behavior so that it does not recur, such as a functional assessment and a positive behavior support plan.

K. Authority of the hearing officer. The hearing officer has the authority to:

1. Exclude any documentary evidence which was not provided and exclude testimony of witnesses who were not identified at local educational agencies five business days prior to the hearing unless the hearing is an expedited hearing, in which case the information must be received and witnesses identified at least two business days prior to the hearing.

2. Bar any party from introducing evaluations or recommendations at the hearing that have not been disclosed to all other parties at least five business days prior to the hearing (two business days if an expedited hearing) without the consent of the other party.

3. Issue subpoenas requiring testimony or the productions of books, papers, and physical or other evidence.

a. The hearing officer may request an order of enforcement for a subpoena in the circuit court of the jurisdiction in which the hearing is to be held.

b. Any person so subpoenaed may petition the circuit court for a decision regarding the validity of such subpoena if the hearing officer does not quash or modify the subpoena after objection thereto.

4. Stop hostile or irrelevant pursuits in questioning and require that the parties and their attorneys, advocates, or advisors comply with the hearing officer's rules and with relevant laws and regulations.

5. Excuse witnesses after they testify to limit the number of expert witnesses present at the same time or sequester witnesses during the hearing.

6. Refer the matter in dispute to a conference between the parties when informal resolution and discussion appear to be desirable and constructive. This action shall not be used to deprive the parties of their rights and shall be exercised only when the hearing officer determines that the best interests of the child will be served.

7. Require an independent educational evaluation of the child. This evaluation shall be at public expense and shall be conducted in accordance with the regulations governing evaluation and assessment.

8. At the request of either party, grant specific extensions of time beyond the periods set out in this chapter, if in the best interest of the child. This action shall in no way be used to deprive the parties of their rights and should be exercised only when the requesting party has provided sufficient information that the best interests of the child will be served. The hearing officer may grant such requests for cause, but not attorney convenience. Changes in hearing dates or timeline extensions are to be noted in writing and shall be sent to all parties, their attorneys, and to the Virginia Department of Education.

9. Take action to move the case to conclusion, including dismissing the pending proceeding if either party refuses to comply in good faith with the hearing officer's orders.

10. Determine during the prehearing conference whether individuals who are advising the parties, other than counsel, have special knowledge or training with respect to the problems of children with disabilities and document and communicate any concerns regarding the qualifications of such individuals to the parties.

11. Set guidelines regarding media coverage if the hearing is open.

12. Identify and determine the prevailing party on each issue that was decided.

13. Order a change in the placement of a child with a disability to an appropriate interim alternative educational setting for not more than 45 days if the hearing is an expedited hearing, and after:

a. Determining that the public agency has demonstrated by substantial evidence (i.e., beyond a preponderance of the evidence) that maintaining the current placement of such child is substantially likely to result in injury to the child or to others;

b. Considering the appropriateness of the child's current placement;

c. Considering whether the local educational agency has made reasonable efforts to minimize the risk of harm in the child's current placement, including the use of supplementary aids and services; and

d. Determining that the interim alternative educational setting meets the following requirements:

(1) Is selected so as to enable the child to continue to participate in the general curriculum, although in another setting, and to continue to receive those services and modifications, including those

described in the child's current IEP, that will enable the child to meet the goals set out in the IEP; and

(2) Includes services and modifications designed to address the behavior so that it does not recur.

14. In an expedited hearing, determine whether it is dangerous for a child to remain in the current placement (placement prior to removal to the interim alternative educational setting) during the pendency of due process proceedings. In determining whether the child may be placed in the alternative educational setting or in another appropriate placement ordered by the hearing officer, the hearing officer shall apply the following standards:

a. Determine that the local educational agency has demonstrated by substantial evidence that maintaining the current placement of such child is substantially likely to result in injury to the child or to others;

b. Consider the appropriateness of the child's current placement;

c. Consider whether the local educational agency has made reasonable efforts to minimize the risk of harm in the child's current placement, including the use of supplementary aids and services; and

d. Determine that the interim alternative educational setting was determined by the IEP team and meets the following requirements:

(1) Is selected so as to enable the child to continue to participate in the general curriculum, although in another setting, and to continue to receive those services and modifications, including those described in the child's current IEP, that will enable the child to meet the goals set out in that IEP;

(2) Includes services and modifications designed to address the behavior so that it does not recur; and

(3) Is for not longer than 45 calendar days and repeated if proper procedures were followed.

L. Timelines for hearings. The hearing officer shall:

1. Render a final written decision within 45 calendar days after a request for hearing and, in an expedited hearing, render an oral decision at the conclusion of the hearing, followed by a written decision within five business days of the expedited hearing being held.

2. Grant an extension only when it serves the best interests of the child.

3. Document in writing within five business days, changes in hearing dates or extensions and within two business days for an expedited hearing and send documents to all parties, and the Virginia Department of Education.

M. Costs of due process hearing and attorney's fees.

1. The costs of an independent educational evaluation, hearing officer, court reporters, and transcripts which are incidental to the hearing are shared equally by the local educational agency and the Virginia Department of

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*Education. Costs for any of these services initiated by a party for the specific benefit of that party's case are covered by that party.*

*2. The local educational agency is responsible for its own attorney's fees.*

*3. The parent or parents are responsible for their attorney's fees. If the parent or parents are the prevailing party, they have the right to petition either a state circuit court or a federal district court for an award of attorney's fees.*

*4. A state circuit court or a federal district court may award reasonable attorneys' fees as part of the costs to the parent or parents of a child with a disability who is the prevailing party.*

*5. The court may award reasonable attorneys' fees only if the award is consistent with the limitations, exclusions, exceptions, and reductions set forth in the Individuals with Disabilities Education Act 1997 (20 USC §§ 1400 et seq.) and its implementing regulations.*

## *N. Finality of hearing officer's decision.*

*1. A decision by the hearing officer is final and binding unless the decision is appealed by a party to either a state circuit court or a federal district court.*

*2. On appeal, the court shall receive the record, may hear additional evidence, and shall base its decision on a preponderance of evidence.*

*3. In every case within 45 days of the final decision of the hearing officer, an implementation plan must be filed by the local educational agency, with copies to the parties, the Virginia Department of Education and the hearing officer.*

*4. If the hearing officer's decision is appealed in court and properly served within the 45-day period, implementation of the hearing officer's order is held in abeyance except in those cases where the hearing officer has agreed with the child's parent or parents that a change in placement is appropriate (see subsection E of this section). In those cases, the hearing officer's order must be implemented while the case is being appealed.*

*5. If the hearing officer's decision is not implemented as required by this chapter, a complaint may be filed with the Virginia Department of Education for an investigation through the state's complaint system.*

## *O. Special authority of the Virginia Department of Education.*

*1. The Virginia Department of Education may take action to ensure that the hearing officer:*

*a. Has complied with all training requirements.*

*b. Conducts the hearing in a manner that protects the rights of all parties.*

*c. Makes written findings of fact and decisions solely upon the preponderance of the evidence presented at the hearing and applicable state and federal law.*

*d. Provides reports and the decision in writing to both parties and to the Virginia Department of Education.*

*e. Does not require the submission of burdensome legal research of case law or legal briefs from parties before rendering a decision.*

*2. The Virginia Department of Education may impose training and assessment requirements for new and continuing hearing officers as part of the specialized training requirements set by the Supreme Court of Virginia and as otherwise determined by the Virginia Department of Education to be necessary. The Virginia Department of Education may develop training and assessment methodology, including academic or alternative means for completing training requirements. The training requirements may include, but not be limited to, the following topics:*

*a. Knowledge of disabilities and their implications in the education setting;*

*b. Special education law generally, both federal and state;*

*c. Other relevant statutory law;*

*d. Knowledge of special education services and placements including interim alternative educational placements;*

*e. Knowledge of special education standards, procedures and regulations impacting the delivery of educational services to students;*

*f. Skill development and understanding of characteristics unique to disabilities.*

*3. If a special education complaint asserting errors by a hearing officer is received, the Virginia Department of Education may require the hearing officer to respond to the complaint. If the Virginia Department of Education determines that the complainant's allegations are valid, the Virginia Department of Education may disallow any claim for compensation by the hearing officer for responding to the complaint.*

## *P. Management and monitoring of the hearing system.*

*1. The Virginia Department of Education shall conduct an analysis of special education hearing officers' decisions and the hearing system procedures that incorporates input from the parties to the hearing. Summary information developed from the analysis will be provided to the Virginia Supreme Court, upon request, and may be utilized by the Supreme Court in its evaluation of hearing officers as required in the Hearing Officers System Rules of Administration. Upon request, the Virginia Department of Education shall provide to the Supreme Court information regarding the hearing officer's participation in training, management of the hearing process, actual administration of any hearings, and a review of any decisions rendered.*

*2. Review and analysis of special education hearing officers' decisions.*

a. Within 30 calendar days of receipt of the special education hearing officer's decision, the Virginia Department of Education shall review the decision relative to:

- (1) Apparent bias to either party;
- (2) Correct use of citations;
- (3) Readability; and
- (4) Other errors, such as incorrect names or conflicting data, but not including errors of law which are reserved for appellate review.

b. Procedures.

(1) In conducting its internal review, the Virginia Department of Education may be assisted by external resources.

(2) The Virginia Department of Education may inform the hearing officer in writing of any concerns and may require the hearing officer to issue an error correction or a statement of clarification.

Q. Nothing in this chapter prohibits or limits rights under other federal statutes or regulations.

**8 VAC 20-80-78. Complaint procedures.**

A. The Virginia Department of Education maintains and operates a complaint system that provides for the investigation and issuance of findings regarding violations of the rights of parents or children with disabilities. The Superintendent of Public Instruction or his designee is responsible for the operation of the complaints system. The system has the following requirements:

B. A complaint may be filed by any individual, organization, or an individual from another state and must:

1. Be in writing.
2. Be signed by the complainant.
3. Contain a statement that a local educational agency has violated the Individuals with Disabilities Education Act (20 USC §§ 1400 et seq.) or these special education regulations.
4. Address an action that occurred not more than one year prior to the date the complaint is received, unless the Virginia Department of Education determines that a longer period is reasonable because the violation is continuing, or the complainant is requesting compensatory services for a violation that occurred not more than three years prior to the date the complaint is received by the Virginia Department of Education.
5. Contain all relevant documents.

3. C. Upon receipt of a complaint, the Superintendent of Public Instruction or designee Virginia Department of Education shall initiate an investigation to determine whether or not the LEA against whom such complaint has been filed local educational agency is in compliance with applicable law and regulations: in accordance with the following procedures:

4. 1. Within seven administrative business days of the receipt of a written, signed the complaint, the Superintendent of Public Instruction or designee Virginia Department of Education shall send written notification in writing to each complainant and LEA local educational agency against which the violation has been alleged, acknowledging receipt of a complaint with copies to other appropriate SEA Virginia Department of Education personnel.

a. The notification sent to the complainant shall provide the complainant with an opportunity to submit additional information, either orally or in writing, about the allegations in the complaint, either orally or in writing, within 10 business days of the receipt of the letter of notification.

b. The notification sent by the SEA complaint officer to the LEA local educational agency shall include:

- a. (1) A copy of the complaint;
- b. (2) An offer of technical assistance in resolving the complaint; and
- c. (3) A request for written response to the complaint within 10 administrative business days of the receipt of the letter of notification.

5. 2. If a reply from the LEA local educational agency is not filed with the Superintendent of Public Instruction or designee Virginia Department of Education within 10 administrative business days of the receipt of the notice, then the Superintendent of Public Instruction or designee Virginia Department of Education shall send a second notice to the LEA local educational agency advising that failure to respond within seven administrative business days of the date of such notice will result in review by the Superintendent of Public Instruction or assistant superintendent for action regarding appropriate sanctions.

6. The Superintendent of Public Instruction or designee shall take action with respect to the response as follows:

a. 3. The Virginia Department of Education shall review the complaint and reply filed by the LEA local educational agency to determine if further investigation or corrective action needs to be taken.

a. If no further investigation or action is necessary, then the Superintendent of Public Instruction or designee Virginia Department of Education shall notify both parties, in writing, stating the grounds for such finding.

b. b. If further investigation is necessary, the Virginia Department of Education shall conduct an investigation of the complaint which shall include a complete review of all relevant documentation and may include an independent on-site investigation, if necessary.

c. If the complaint is also the subject of a due process hearing or if it contains multiple issues of which one or more are part of that due process hearing, the Virginia Department of Education shall:

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(1) Set aside any part of the complaint that is being addressed in the due process hearing until the conclusion of the hearing; and

(2) Resolve any issue in the complaint that is not a part of the due process hearing involving the same parties.

d. If an issue raised in the complaint has previously been decided in a due process hearing involving the same parties, the local educational agency shall inform the complainant that the due process hearing decision is binding.

4. During the course of the investigation, the Virginia Department of Education shall:

~~e-~~ a. Consider all facts and issues presented and the applicable requirements specified in law, regulations, or standards.

~~e-~~ b. Make a determination of compliance or noncompliance on each issue based upon the facts and applicable law and notify the parties, in writing, of the findings and the bases for such findings.

(1) A time limit of 60 calendar days shall be allowed, after the written complaint is received, to carry out the investigation and to resolve the complaint.

(2) An extension of the 60 calendar days time limit may occur if exceptional circumstances exist with respect to a particular complaint. Both parties to the complaint will be notified in writing by the ~~Superintendent of Public Instruction or designee~~ whenever Virginia Department of Education of the exceptional circumstances exist and specify the extended time limit.

c. Ensure that the Virginia Department of Education's final decision is effectively implemented, if needed, through:

(1) Technical assistance activities;

(2) Negotiations; and

(3) Corrective actions to achieve compliance.

~~e-~~ d. Report findings of noncompliance and corresponding recommendations to the party designated by the Superintendent of Public Instruction for review, or where appropriate, directly to the Superintendent of Public Instruction for further action.

~~7. The Superintendent of Public Instruction or designee will~~ e. Notify the parties in writing of any needed corrective actions and the specific steps which must be taken by the LEA local educational agency to bring it into compliance. The LEA local educational agency will be given 15 ~~administrative~~ business days from the date of notice of noncompliance to respond and initiate corrective action.

5. In resolving a complaint in which a failure to provide appropriate services is found, the Virginia Department of Education must address:

a. How to remediate the denial of those services, including, as appropriate, compensatory services, awarding monetary reimbursement, or other corrective action appropriate to the needs of the child; and

b. Appropriate future provision of services for all children with disabilities.

~~8. Where~~ D. When the LEA local educational agency develops a plan of action to correct the violations, such plan shall include timelines to correct violations not to exceed 30 ~~administrative~~ business days unless circumstances warrant otherwise. The plan of action will also include a description of all changes contemplated and shall be subject to approval of the ~~SEA~~ Virginia Department of Education.

~~9. E.~~ E. If the LEA local educational agency does not come into compliance within the period of time set forth in the notification, ~~then~~ the matter will be referred by to the Superintendent of Public Instruction or designee for an agency review and referral to the Virginia Board of Education for a hearing, if deemed necessary.

~~10. F.~~ F. If the Superintendent of Public Instruction, after reasonable notice and opportunity for a hearing by the Virginia Board of Education, finds that the LEA local educational agency has failed to comply with applicable laws and regulations, and determines that compliance cannot be secured by voluntary means, ~~then he~~ the superintendent shall issue a decision in writing stating that state and federal funds for the education of children with disabilities shall not be made available to that LEA local educational agency until there is no longer any failure to comply with the applicable law or regulation.

~~11. Parties to the complaint procedure shall have the right to request the United States Secretary of Education to review the final decision.~~

G. The Virginia Department of Education's complaint procedures shall be widely disseminated to parents and other interested individuals, including parent training and information centers, protection and advocacy agencies, independent living centers, and other appropriate entities.

## **8 VAC 20-80-80. Requirements for establishing Surrogate parent procedures for LEAs and applicable state agencies and institutions.**

A. Role of surrogate parent. The surrogate parent requirement in both state and federal laws and regulations is intended to ensure appropriate decision making in educational matters. The surrogate parent is an advocate acting to serve the best educational interests of a child who is suspected of having, or is determined to have, a disability. State and federal regulations require that the surrogate parent represent the child in all matters relating to:

1. The identification, evaluation, or educational placement of the child; or
2. The provision of a free appropriate public education to the child.

B. Appointment of surrogate parents.

1. Children (ages two to 21, inclusive) who are suspected of having or determined to have disabilities, ~~whose natural parents or guardians have allowed relatives or private individuals to act as parents to the child,~~ do not require a surrogate parent: *if*:

a. ~~The natural parent or parents or guardians have allowed relatives or private individuals to act as a parent;~~

b. ~~The child is in the custody of the local department of social services or a licensed child placing agency and termination of parental rights has been granted by a juvenile and domestic relations district court of competent jurisdiction pursuant to §§ 16.1-283, 16.1-277.01 or 16.1-277.02 of the Code of Virginia. The foster parent for that child may serve as the parent for the child for the purposes of any special education proceedings.~~

c. ~~The child is in the custody of a local department of social services or a licensed child placing agency and a permanent foster care placement order has been entered by a juvenile and domestic relations district court of competent jurisdiction pursuant to § 63.1-206.1 of the Code of Virginia. The permanent foster parents named in the order for that child may serve as the parent for the child for the purposes of any special education proceedings.~~

2. A surrogate parent shall be appointed for a child, ages two to 21, inclusive, who is suspected of having or determined to have a disability when:

a. ~~No parent or person who has been allowed to act as a parent by the natural parents or guardians, as defined in this chapter, can be identified; or~~

b. ~~The LEA local educational agency, after reasonable efforts, cannot discover the location whereabouts of a parent; or parents.~~

c. ~~The child is a ward of the state.~~

3. ~~A surrogate parent may be appointed for a child who is in the custody of a local social services or other child welfare agency, and the parent or parents are known, but, after invitation by the local school division in accordance with 8 VAC 20-80-62 D, fails to participate in the meetings required by this chapter. The parent or parents shall continue to be notified of all meetings and if the parent or parents attend, the parent or parents shall exercise their own parental rights.~~

2. 4. ~~Each LEA local educational agency shall establish procedures for identifying children in its jurisdiction who are in need of surrogate parents according to the definition determining whether a child needs a surrogate parent.~~

3. 5. ~~Each LEA local educational agency shall establish procedures for assigning a surrogate parent to an eligible child. The surrogate parent shall be appointed by the LEA local educational agency superintendent or designee.~~

a. ~~The appointment having been effected, the LEA local educational agency shall notify in writing:~~

(1) ~~The child with a disability (ages two to 21, inclusive), as appropriate to the disability;~~

(2) ~~The surrogate parent-appointee;~~

(3) ~~The person charged with responsibility for the child; and~~

(4) ~~The public custodial state agency charged with responsibility for the child, when the child is a ward of the state;~~

~~(5) The SEA.~~

b. ~~LEAs are required to send parents' copy of notice to child's guardian or custodial state agency or both. In instances where the LEA has not been able to locate the present whereabouts of the parents, a letter to the parents' last known address is evidence of the LEA's good faith effort to effect this requirement.~~

e. b. ~~The surrogate parent shall serve during, or for the duration of, the school year for which he the surrogate parent is appointed.~~

(1) ~~When it has been determined that the child requires a differentiated instructional program as delineated in the IEP, the surrogate parent shall be appointed to serve for the duration of that current document the child's IEP.~~

(2) ~~Should a the child require the services of a surrogate parent during the summer months, the LEA local educational agency shall extend the appointment as needed, consistent with timelines required by law.~~

e. c. ~~At the conclusion of each school year, appointment of surrogate parents shall be renewed or not renewed following a review by the LEA local educational agency.~~

4. 6. ~~Each LEA local educational agency shall establish procedures which include conditions and methods for changing or terminating the assignment of a surrogate parent before his that surrogate parent's appointment has expired. Established procedures shall provide the right to request a hearing to challenge the qualifications or termination if the latter occurs prior to the end of the term of appointment. The assignment of a surrogate parent may be terminated only when one or more of the circumstances occur as follows:~~

a. ~~The child reaches the age of majority (except those persons who are of the age of majority but who are determined to be legally dependent and subject to a guardianship or for whom an educational representative appointed in accordance with the procedures in 8 VAC 20-80-72 apply);~~

b. ~~The child is found no longer eligible for special education services (except when termination of special education services is being contested) and the~~

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*surrogate parent has consented to the termination of those services;*

c. Legal guardianship ~~responsible~~ for the child is transferred to a person who is able to carry out the role of the parent;

d. A ~~The~~ parent or parents, ~~who was whose whereabouts were previously unknown or unavailable, is~~ are now known or available; or

e. The appointed surrogate parent is no longer eligible ~~(see "Qualifications for Surrogate Parent")~~ according to subsection D of this section.

## C. Identification and recruitment of surrogate parents.

1. The ~~LEA~~ local educational agency shall develop and maintain a list of individuals within its jurisdiction who are qualified to serve as surrogate parents. It may be necessary for ~~LEAs~~ local educational agencies to go beyond jurisdictional limits in generating a list of potentially qualified surrogate parents. It should be noted, however, that geographic proximity is essential to the relationship between the child with a disability and the surrogate parent.

2. Individuals who are not on the ~~LEA~~ local educational agency list may be eligible to serve as surrogate parents, subject to the ~~LEA's~~ local educational agency's discretion. In such situations, the needs of the individual child and the availability of qualified persons who are familiar with the child and who would otherwise qualify shall be considerations in the ~~LEA's~~ local educational agency's determination of surrogate eligibility. Other factors which warrant the ~~LEA's~~ local educational agency's attention are as follows:

a. Consideration of the appointment of a relative to serve as surrogate parent;

b. Consideration of the appointment of a foster parent who has the knowledge and skills to represent the child adequately;

c. Consideration of the appointment of a qualified person of the same racial, cultural, and linguistic background as the child who is suspected of having or has been identified as having a disability; and

d. The appropriateness of the child's participation in the selection of ~~his~~ the surrogate parent.

## D. Qualifications of surrogate parents.

1. Each ~~LEA~~ local educational agency shall ensure that a person appointed as a surrogate:

~~1-~~ a. Has no interest that conflicts with the interest of the child ~~he~~ represents;

~~2-~~ b. Has knowledge and skills that ensure adequate representation of the child. The prospective surrogate parent must have completed ~~an SEA a~~ local educational agency approved training session prior to representing the child. The ~~LEA~~ local educational agency shall provide training, at least annually, for surrogate parents to ensure that they possess

knowledge of special education and related services for children with disabilities, as well as knowledge of the legal requirements necessary to represent the children effectively.

~~3-~~ c. Is not an employee of a ~~the~~ Virginia Department of Education, or any other public agency which is involved in the education or care of the child;

~~4-~~ d. Is an adult and legal citizen of the United States; and

~~5-~~ e. Resides in the same general geographic area as the child, whenever possible.

2. A local educational agency may select as a surrogate a person who is an employee of a nonpublic agency that only provides noneducational care for the child and who meets the above standards.

3. A person who otherwise qualifies to be a surrogate parent is not an employee of the agency solely because ~~he~~ the person is paid by the agency solely to serve as a surrogate parent.

E. Rights of surrogate parents. The surrogate parent, when representing the child's educational interest, has the same rights as those accorded to parents of children determined or suspected to have disabilities.

## 8 VAC 20-80-90. Local educational agency administration and governance.

A. Each local educational agency shall ensure the rights and protections under this chapter are given to children with disabilities for whom it is responsible, including children placed in private schools.

### ~~A-~~ B. Plans, applications and reports.

1. Each ~~LEA~~ local educational agency is required to prepare and submit to the ~~appropriate state authority the following~~ Virginia Department of Education, policies and procedures for the provision of special education and related services that comply with all sections of this chapter and other relevant federal and state statutes and regulations and any revisions to the policies and procedures for the provision of special education and related services. Local school divisions shall first submit these policies and procedures and revisions to policies and procedures to their local school board for approval. The policies and procedures shall include:

~~a-~~ To the SEA, by such data as the board may specify, acceptable annual special education plan/report and funding applications that:

~~(1) Specify plans for providing free appropriate education and related services to all children with disabilities for the following year; and~~

~~(2) Report on the extent to which the plan for the preceding year has been implemented.~~

~~b-~~ To the SEA, a. An application for funding under Part B of Public Law 94-142, 20 USC §§ 1411 et seq., as amended, or Public Law 89-313, 20 USC §§ 236 et seq., as amended, the Individuals with Disabilities



*Education Act (20 USC §§ 1400 et seq.) containing assurances of compliance in accordance with various the requirements of the Act and the procedures outlined by the SEA Virginia Department of Education.*

~~2. Each LEA shall include the following provisions and assurances in the annual special education plan/report and funding applications:~~

~~a. A free appropriate public education will be available for each child with a disability, ages two to 21, inclusive;~~

~~b. All children, ages two to 21, inclusive, residing in the LEA who have disabilities and need special education and related services are identified, located, evaluated, and placed in an appropriate educational program;~~

~~c. Children with disabilities and their parents or guardians are guaranteed procedural safeguards in the process of identification, evaluation, or educational placement, or the provision of a free appropriate public education;~~

~~d. To the maximum extent appropriate, children with disabilities will be educated with children who are nondisabled;~~

~~e. Confidential records of children with disabilities shall be properly maintained;~~

~~f. Testing and evaluative materials used for the purpose of classifying and placing children with disabilities are selected and administered so as not to be racially or culturally discriminatory;~~

~~g. An individualized education program will be maintained for each child with a disability;~~

~~h. A comprehensive system of personnel development to include the in-service training of general and special education instructional and support personnel related to the needs of children with disabilities is provided;~~

~~i. There will be ongoing parent consultation;~~

~~j. A full educational opportunity goal is provided for all children with disabilities, from birth to age 21, inclusive, including appropriate career education, prevocational education, and vocational education; and~~

~~k. Children with disabilities must be given the right of to participate in the Literacy Testing Program (LTP).~~

*b. Progress toward meeting the goals for the performance of children with disabilities set forth in subdivision 10 of 8 VAC 20-80-30 and the comprehensive system of personnel development set forth in subdivision 11 of 8 VAC 20-80-30.*

~~2. Each LEA local educational agency shall also ensure that all required special education plans, applications, reports, and program evaluations are available for public inspection.~~

~~B. C. Personnel development. Each LEA local educational agency shall establish a program and procedures for the development and implementation of a comprehensive system~~

~~of personnel development which shall include: that is consistent with the state improvement plan identified in subdivisions 10 and 11 of 8 VAC 20-80-30.~~

~~1. In-service training for all general and special education instruction, related services, and support personnel; and~~

~~2. Procedures to ensure that all personnel who are responsible for the instructional programs or delivery of related or support services to children with disabilities are properly certified and endorsed.~~

~~D. Interagency disputes regarding provision of or payment for special education. If a participating agency fails to provide or pay for the special education and related services described in 8 VAC 20-80-30, the local educational agency shall provide or pay for such services to the child.~~

~~1. The local educational agency shall use the process developed by the Virginia Department of Education in accordance with 8 VAC 20-80-20 to resolve any disputes regarding provision of or payment for special education and related services.~~

~~2. The local educational agency may claim reimbursement for the services from the public agency that failed to provide for such services and such public agency shall reimburse the local educational agency pursuant to 8 VAC 20-80-30.~~

~~E. Local advisory committee. There shall be a local advisory committee for special education appointed by each local school board to advise the school board through the division superintendent. The composition of the committee shall include parents of children with disabilities.~~

~~1. Local school division personnel shall serve only as consultants to the committee.~~

~~2. The functions of the local advisory committee shall be as follows:~~

~~a. Advise the local school division of unmet needs in the education of children with disabilities;~~

~~b. Assist the local school division in the formulation and development of long-range plans designed to provide needed educational services for children plans for improving performance of students with disabilities;~~

~~c. Participate in the development of priorities and strategies for meeting the identified needs of children with disabilities;~~

~~d. Submit periodic reports and recommendations regarding the education of children with disabilities to the division superintendent for transmission to the local school board; and~~

~~e. Assist the local school division in interpreting plans to the community for meeting the special needs of children with disabilities for educational services.~~

~~3. Public notice shall be published annually listing the names of committee members and including a description of ways in which interested parties may express their views to the committee.~~

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4. Committee meetings shall be held at least quarterly and shall be open to the public.

5. One meeting shall be designated specifically for the review of the ~~annual special education plan/report and funding applications~~ policies and procedures for the provision of special education and related services prior to submission to the local school board and the Virginia Department of Education.

## D. F. Regional programs.

1. Where it becomes necessary for local school divisions to develop regional or cooperative programs to serve ~~their~~ children with disabilities *residing within their jurisdiction*, such regional programs shall be provided in accordance with least restrictive environment requirements specified in 8 VAC 20-80-64.

2. Where ~~LEAs~~ local school divisions elect to participate in an approved regional program for the provision of special education and related services for certain children with disabilities, a joint board shall be established to manage and control the jointly owned or operated program, center or school. Establishment of the joint board, and administration of the jointly operated program shall be conducted in accordance with the Virginia Board of Education regulations governing such programs.

3. ~~The annual special education plan/report and funding applications of each LEA participating in a regional program shall contain a description of its program, activities and supervisory involvement as prescribed by the SEA. Each joint board may submit a composite annual special education plan/report and funding applications which are composed of excerpts from each of the participating LEAs.~~

4. 3. Each joint board shall appoint a qualified director who shall be the administrative head of the cooperative unit. The director shall be responsible for the administration of programs and services which are approved by the governing body.

## G. Transition from infant and toddler programs to early childhood special education programs.

1. Children participating in early intervention programs assisted under Part C of IDEA, and who will participate in preschool programs assisted under Part B of IDEA, shall be afforded a smooth and effective transition to those preschool programs in a manner consistent with the Virginia lead agency's Part C early intervention policies and procedures.

2. The local educational agency shall participate in transition planning conferences when notified by the designated local Part C early intervention agency, in accordance with 34 CFR § 303.148(b).

## H. Programs for children with disabilities in regional or local jails.

1. Each local school division with a regional or local jail in its jurisdiction shall be responsible for the provision of

*special education and related services to all eligible children with disabilities.*

2. Each local educational agency with a regional or local jail in its jurisdiction shall establish an interagency agreement with the sheriff or jail administrator responsible for the regional or local jail. The interagency agreement shall address staffing and security issues associated with the provision of special education and related services in the jail. A copy of this agreement shall be submitted with the policy and procedures specified in subsection A of this section.

## PART IV. FUNDING.

### 8 VAC 20-80-100. ~~Reimbursement to LEAs and state-operated programs~~ Eligibility for funding.

~~A. State and federal funds administered by the SEA are disbursed to LEAs and state-operated programs in accordance with the following requirements:~~

~~1. Compliance with regulations of the Board of Education including those for accreditation;~~

~~2. Education programs for children with disabilities shall be operated pursuant to an approved annual special education plan/report and funding applications;~~

~~3. Special education teachers, speech language pathologists, school psychologists, visiting teachers, school social workers, and supervisors of special education shall meet fully the Board of Education licensure and endorsement requirements for such employment;~~

A. Each local educational agency and state-operated program must maintain current policies and procedures and supporting documentation to demonstrate compliance with the Virginia Board of Education regulations governing the provision of special education and related services, licensure and accreditation. Changes to the local policies and procedures and supporting documentation shall be submitted upon amendment or revision. Changes will be made as determined by local need; as a result of changes in state or federal laws or regulations; or as a result of required corrective action, court cases, or other findings of noncompliance.

4. B. All disbursement is subject to the availability of funds. In the event of insufficient state funds, disbursement may be prorated pursuant to provisions of the Virginia Appropriation Act.

### 8 VAC 20-80-110. State funds for local school divisions.

A. State funds to assist local school divisions with the cost of providing special education and related services for children with disabilities are provided through the SEA's Virginia Department of Education's appropriation as follows: provided in this section.

4. B. Children with disabilities enrolled in programs operated by a local school board:

~~a. Day 1. Public school programs. In addition to the funds received for each pupil from basic aid, LEAs local school divisions will receive payment to support the state share of the number of special education teachers and aides paraprofessionals required by the Standards of Quality.~~

~~b. 2. Homebound instruction. LEAs shall be reimbursed 60% of the hourly payment to teachers employed to provide homebound instruction to eligible children. Such reimbursement shall not exceed 60% of an established hourly rate determined annually by the department, and shall be in addition to basic aid. Subject to availability, funds are available to local educational agencies to assist with the cost of educating students who are temporarily confined for medical or psychological reasons. Such students may continue to be counted in the average daily membership (ADM) while receiving homebound instruction. In addition, costs will be reimbursed based on the composite index, the hourly rate paid to homebound teachers by the local educational agency, and the number of instructional hours delivered. Reimbursement will be made in the year following delivery of instruction.~~

~~e. 3. Transportation. Local educational agencies that transport children with disabilities, ages two to 21, inclusive, transported on approved school buses or on public transit buses to public schools or approved private schools, pursuant to their IEPs, are funded reimbursed in accordance with pupil transportation regulations (8 VAC 20-70-10 et seq.).~~

2. C. Children with disabilities enrolled in regional special education programs:

~~a. 1. Reimbursement is available for a portion of the tuition costs based on the local composite index computed at 60% as specified by the Virginia Appropriation Act. Rates will be approved following procedures established by the Virginia Board of Education. Regional special education programs operated by a joint board, or for LEAs local school divisions operating a residential program accepting eligible children with disabilities from other local school divisions and the Woodrow Wilson Rehabilitation Center are eligible to participate in this program. Reimbursement is available to programs offering services to children who have one or more of the following disabilities:~~

- ~~(1) A a. Severe and profound disability;~~
- ~~(2) A serious b. Emotional disturbance;~~
- ~~(3) c. Autism;~~
- ~~(4) d. Multiple disabilities;~~
- ~~(5) e. Deafness;~~
- ~~(6) A f. Hearing impairment, including deafness;~~
- ~~(7) g. Deaf-blindness; or~~
- ~~(8) A h. Traumatic brain injury.~~

~~b. 2. Such reimbursement shall be in lieu of the per pupil basic operation cost and other state aid otherwise available for each child. Decisions regarding the~~

~~determination of reasonable tuition costs and other reasonable charges may be appealed under procedures prescribed in the Rules of the Interdepartmental Committee on Rate Setting: The Joint Regulations on Rate Setting for Children's Facilities of the Board of Education, the Board of Social Services and the Board of Corrections.~~

~~D. Children with disabilities receiving special education and related services in regional or local jails. Local school divisions will be reimbursed for the instructional costs of providing required special education and related services to children with disabilities in regional or local jails.~~

~~3. E. Funds under the Comprehensive Services Act for At-Risk Youth and Families:~~

~~a. 1. Funds are available under the Comprehensive Services Act for At-Risk Youth and Families to support the state's share of costs for children with disabilities whose IEPs call for require private day or private residential placement, or other purchased services, under the provisions of the Comprehensive Services Act.~~

~~a. Local school divisions shall be responsible for payment of transportation expenses associated with implementing the child's IEP.~~

~~b. Comprehensive Services Act reimbursement requirements shall be applicable.~~

~~c. In the event that there is a dispute between the local school division and the Comprehensive Services Act team regarding implementation of or payment for services in the child's IEP, the local school division shall ensure that services are provided in accordance with the IEP while the dispute is being resolved. The provisions of subdivision 14 of 8 VAC 20-80-30 shall apply.~~

~~b. 2. When a parent unilaterally places a child with a disability in an approved private nonsectarian school for children with disabilities, the LEA local school division shall not be responsible for the cost of the placement. If a hearing officer or reviewing officer or court determines that such placement, rather than the IEP proposed by the LEA local school division, is appropriate and no appeal is perfected from that decision, the LEA local school division is responsible for placement and funds are available under the Comprehensive Services Act to support the state's share of costs.~~

~~4. F. Reimbursement for educating children with disabilities placed in foster care or noncustodial foster care across geographic boundaries shall be made in accordance with procedures established by the SEA Virginia Department of Education.~~

**8 VAC 20-80-120. Federal funds.**

~~A. Federal funds are available under Part B of Public Law 94-142, as amended, 20 USC §§ 1411 et seq., the Individuals with Disabilities Education Act, 20 USC §§ 1400 et seq., to assist local school divisions educational agencies with the excess cost of providing special education and related services for to eligible children with disabilities ages two to 21,~~

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~~inclusive. The application for such funds is submitted local educational agency must submit an annual application to the SEA according to applicable federal requirements Virginia Department of Education describing the use of such funds.~~

B. In order to qualify for Part B funds, a ~~LEA~~ local educational agency must spend as much in state and local funds on elementary children with disabilities as on elementary nondisabled children, ~~and as much on secondary children with disabilities as on secondary nondisabled children without disabilities.~~

C. Part B funds may not be used to supplant state and local expenditures for special education and related services, ~~and shall not be used to reduce the level of expenditures for the education of children with disabilities made by the local educational agency from the local funds below the level of those expenditures for the preceding year, except under certain conditions specified under the Individuals with Disabilities Education Act (20 USC §§ 1400 et seq.).~~

D. The ~~entitlement~~ amount of Part B funds ~~determined to be available~~ for each LEA local educational agency is based upon the ~~unduplicated number of children with disabilities certified by the division superintendent as receiving special education and related services on December 1 of the prior year formula specified under the Individuals with Disabilities Education Act (20 USC §§ 1400 et seq.).~~

E. ~~Children with disabilities transferred from state operated programs to LEAs may be served with funds applied for in accordance with the provisions of Public Law 89-313, as amended, 20 USC §§ 236 et seq. However, no child included in the count for Public Law 94-142, as amended, 20 USC §§ 1411 et seq., is eligible to be counted for funding under Public Law 89-313, as amended, 20 USC §§ 236 et seq.~~

E. A local educational agency may use Part B funds to implement a schoolwide program under § 1114 of the Improving America's School Act (Title I) (20 USC §§1001 et seq.), but the amount of Part B funds used in any fiscal year shall not exceed (i) the amount of total Part B funds received that year, divided by the number of children with disabilities in the jurisdiction, and multiplied by (ii) the number of children with disabilities participating in the schoolwide program. Part B funds used for this purpose are not subject to other Part B funding requirements, but the local educational agency must ensure that all children with disabilities in schoolwide program schools:

1. Receive services in accordance with a properly developed IEP; and
2. Are afforded all of the rights and services guaranteed to children with disabilities under the Individuals with Disabilities Education Act (20 USC §§1400 et seq.).

F. Permissive use of funds. Children without disabilities may benefit from the expenditure of Part B funds when special education and related services and supplementary aids and services are provided in a regular class or other education-related setting to a child with a disability in accordance with the IEP of the child.

G. If the Virginia Department of Education determines that a local school division is adequately providing a free

appropriate education to all children with disabilities residing in the area served by that school division with state and local funds, the department may reallocate any portion of the funds under Part B of the Individuals with Disabilities Education Act (20 USC §§1400 et seq.) that are not needed by the school division to provide a free and appropriate public education to other school divisions in the state that are not adequately providing special education and related services to all children with disabilities residing in the areas they serve.

H. In any fiscal year in which the percentage increase in the state's Part B allocation exceeds the rate of inflation, a portion as defined by the federal regulations of the state's grant must be awarded to the local educational agency to assist them in providing direct services and in making systemic change to improve results for children with disabilities. The state may establish priorities in awarding these subgrants competitively or on a targeted basis.

## **8 VAC 20-80-130. Funds for to assist with the education of children with disabilities residing in state-operated programs.**

~~Funds to assist with the education of children with disabilities residing in state operated facilities are available as follows:~~

1- A. Children in state mental health facilities. State funds for special education and related services for children in state mental health facilities are appropriated to the Virginia Department of Education. Local funds for such education shall be an amount equal to the required local per pupil expenditure for the period during which a local school division has a child in residence at a state mental health facility. Such amount shall be transferred by the Virginia Department of Education from the local school division's basic aid funds. Federal funds are available under the provisions of ~~Public Law 89-313, as amended, 20 USC §§ 236 et seq~~ the Individuals with Disabilities Education Act (20 USC §§ 1400 et seq.).

2- B. Children in state training centers for the mentally retarded. State funds for special education and related services for children with disabilities in state training centers for the mentally retarded are appropriated to the Department of Mental Health, Mental Retardation and Substance Abuse Services. Local funds for such education shall be an amount equal to the required local per pupil expenditure for the period during which a local school division has a child in residence at a state mental retardation facility. Such amount shall be transferred by the Virginia Department of Education from the local school division's basic aid funds. Federal funds are available under the provisions of ~~Public Law 89-313, as amended, 20 USC §§ 236 et seq~~ the Individuals with Disabilities Education Act (20 USC §§ 1400 et seq.).

3- C. Children in state specialized children's hospitals. State funds ~~are provided~~ for special education and related services ~~in the special education appropriation are appropriated to the Virginia Department of Education.~~ Federal funds are available under the provisions of ~~Public Law 89-313, as amended, 20 USC §§ 236 et seq.~~ the Individuals with Disabilities Education Act (20 USC §§ 1400 et seq.).

4. *D. Children in Woodrow Wilson Rehabilitation Center.* State funds for special education and related services for children are derived from the special education appropriation appropriated to the Virginia Department of Education. Federal funds are available under the provisions of Public Law 89-313, as amended, 20 USC §§ 236 et seq the Individuals with Disabilities Education Act (20 USC §§ 1400 et seq.).

5. *E. Children in regional juvenile detention homes.* State funds for special education services are available from the special education appropriation appropriated to the Virginia Department of Education.

6. *F. State-operated diagnostic clinics.* State funds for the employment of educational consultants assigned to child development and other specialty clinics operated by the state Department of Health are derived from the special education appropriation appropriated to the Virginia Department of Education.

7. *G. Virginia Department of Correctional Education.* State funds for the education of children, including children with disabilities, are appropriated to the Virginia Department of Correctional Education for the education of all children residing in state operated adult or juvenile correctional facilities and juveniles committed to the Department of Juvenile Justice and placed in a private facility under contract with the Department of Juvenile Justice. Federal funds are available under the provisions of Public Law 94-142, as amended, 20 USC §§ 236 et seq the Individuals with Disabilities Education Act (20 USC §§ 1400 et seq.).

**8 VAC 20-80-140. Funding, withholding, and recovery of funds.**

A. The SEA Virginia Department of Education shall disburse funds to LEAs local educational agencies for the education of children with disabilities (ages two to 21, inclusive) when they provide documentation of compliance with state and federal laws and regulations.

B. Where documentation of compliance is not submitted or is inadequate, the Superintendent of Public Instruction shall notify the LEA local educational agency that state and federal funds will not be available for reimbursement for special education programs and services.

1. The notification shall include the substance of the alleged violation, and the LEA local educational agency shall be given an opportunity to submit a written response; and

2. The LEA local educational agency shall have the right to appeal to the Virginia Board of Education under 8 VAC 20-80-150 of this part.

C. If the Superintendent of Public Instruction, after reasonable notice and opportunity for a hearing under 8 VAC 20-80-150 of this part, finds that an LEA a local educational agency has failed to comply with the Board of Education state and federal laws and regulations and determines that compliance cannot be secured by voluntary means, then the superintendent shall issue a decision in writing stating that state and federal funds for the education of eligible children with disabilities shall not be made available to that LEA local

educational agency until it complies with the Board of Education state and federal laws and regulations.

D. Where there is evidence that a child has been erroneously classified and thereby counted as eligible for state and federal special education funds and such evidence is challenged by the LEA local educational agency, the foregoing due process procedures shall apply.

E. Where it is determined that such funds have been erroneously claimed, the SEA Virginia Department of Education shall bill the LEA local educational agency for the amount of funds improperly received or withhold an equal amount of state or federal funds for the following year.

**8 VAC 20-80-150. Appeal of administrative decision regarding funding.**

A. The SEA Virginia Department of Education recommendation to disapprove an LEA annual special education plan/report and funding applications local eligibility for funding under Individuals with Disabilities Education Act (20 USC §§ 1400 et seq.) or to withhold special education funds or rates set for regional special education programs may be appealed by an LEA a local educational agency.

B. The procedures for the appeal of administrative decisions are as follows:

1. The LEA local educational agency must request, in writing, a hearing by the SEA Virginia Department of Education within 30 administrative working business days from the receipt of notification from the Superintendent of Public Instruction;

2. Within 10 administrative working business days from the date of request for a hearing, the Superintendent of Public Instruction shall notify the LEA local educational agency in writing of the date, time and location of the hearing;

3. The hearing shall transpire within 15 administrative working business days from the date of notification;

4. The hearing board shall be composed of the following persons: conducted by an independent hearing officer appointed from a list maintained by the Supreme Court of Virginia;

a. Two persons from the SEA who were not participants in the contested decision; these persons shall be appointed by the Superintendent of Public Instruction; and

b. Two members of the State Special Education Advisory Committee to be appointed by the chairman of the committee;

5. Witnesses and attorneys may be present and testify for the SEA Virginia Department of Education or the LEA local educational agency;

6. A written or electronic verbatim record shall be kept of all proceedings of the hearing;

7. The hearing board officer shall review all pertinent evidence presented and shall make a written recommendation to the Board of Education which will

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render a decision based on the preponderance of evidence presented at the hearing and applicable state and federal law, and

~~8. The decision made by the Board of Education is final, unless a party appeals to a state court of competent jurisdiction or federal district court. No later than 10 business days after the hearing, the hearing officer shall issue a written ruling, including findings of fact and reasons for the findings;~~

9. The decision made by the hearing officer is final unless an appeal is requested by a local educational agency;

10. If the Virginia Department of Education does not rescind its final action after a review under this subsection, the applicant may appeal to the U.S. Secretary of Education under the provisions of Education Department General Administrative Regulations; and

11. Notice of appeal must be filed within 30 business days after the local educational agency has been notified by the Virginia Department of Education of the results of the hearing.

## **8 VAC 20-80-152. Use of public and private insurance.**

A. Children with disabilities who are covered by public insurance.

1. A local educational agency may use the Medicaid or other public insurance benefits programs in which a child participates to provide or pay for services required under this chapter and as permitted under the public insurance program.

2. With regard to services required to provide a free appropriate public education to an eligible child with a disability, a local educational agency:

a. May not require the parent or parents to sign up for or enroll in public insurance programs in order for their child to receive a free appropriate public education;

b. May not require the parent or parents to incur any out-of-pocket expense such as the payment of a deductible or copay amount incurred in filing a claim for services provided pursuant to this section, but may pay the cost that the parent or parents otherwise would be required to pay; and

c. May not use a child's benefits under a public insurance program if that use would:

(1) Decrease available lifetime coverage or any other insured benefit;

(2) Result in the family's paying for services that would otherwise be covered by the public insurance program and that are required for the child outside of the time the child is in school;

(3) Increase premiums or lead to the discontinuation of insurance; or

(4) Risk loss of eligibility for home and community-based waivers, based on aggregate health-related expenditures.

B. Children with disabilities who are covered by private insurance.

1. With regard to services required to provide a free appropriate public education to an eligible child under this part, a local educational agency may access a parent's or parents' private insurance proceeds only if the parent or parents provide informed consent.

2. Each time the local educational agency proposes to access the parent's or parents' private insurance proceeds, it must:

a. Obtain parental consent; and

b. Inform the parent or parents that their refusal to permit the local educational agency to access their private insurance does not relieve the local educational agency of its responsibility to ensure that all required services are provided at no cost to the parent or parents.

C. Proceeds from public or private insurance.

1. Proceeds from public or private insurance will not be treated as program income for purposes of the Education Department General Administrative Regulations.

2. If a local educational agency spends reimbursements from federal funds (e.g., Medicaid) for services under this part, those funds will not be considered local funds for purposes of the maintenance of effort provisions.

D. Nothing in this part should be construed to alter the requirements imposed on a state Medicaid agency, or any other agency administering a public insurance program by federal statute, regulations or policy under Title XIX, or Title XXI of the Social Security Act, or any other public insurance program.

## **8 VAC 20-80-155. Attorneys' fees.**

A. In any action or proceeding brought under 8 VAC 20-80-76, the court, in its discretion, may award reasonable attorneys' fees as part of the costs to the parent or parents of a child with a disability who is the prevailing party.

1. Funds under Part B of the Act may not be used to pay attorneys' fees or costs of a party related to an action or proceeding under subpart E of the Individuals with Disabilities Education Act (20 USC §§ 1400 et seq.).

2. This section does not preclude a local educational agency from using funds under the Individuals with Disabilities Education Act (20 USC §§ 1400 et seq.) for conducting an action or proceeding under 8 VAC 20-80-76.

B. A court awards reasonable attorneys' fees under 8 VAC 20-80-76 consistent with the following:

1. Determination of amount of attorneys' fees. Fees awarded under 8 VAC 20-80-76 must be based on rates prevailing in the community in which the action or proceeding arose for the kind and quality of services furnished. No bonus or multiplier may be used in calculating the fees awarded under this subsection.

2. Prohibition of attorneys' fees and related costs for certain services.

a. Attorneys' fees may not be awarded and related costs may not be reimbursed in any action or proceeding under 8 VAC 20-80-76 for services performed subsequent to the time of a written offer of settlement to a parent or parents if:

(1) The offer is made within the time prescribed by Rule 68 of the Federal Rules of Civil Procedure or, in the case of an administrative proceeding, at any time more than 10 days before the proceeding begins;

(2) The offer is not accepted within 10 days; and

(3) The court or administrative hearing officer finds that the relief finally obtained by the parent or parents is not more favorable to the parents than the offer of settlement.

b. Attorneys' fees may not be awarded relating to any meeting of the IEP team unless the meeting is convened as a result of an administrative proceeding or judicial action, or for a mediation described in this chapter that is conducted prior to filing of a request for due process under this chapter.

3. Exception to prohibition on attorneys' fees and related costs. Notwithstanding subdivision 2 of this subsection, an award of attorneys' fees and related costs may be made to a parent or parents who are the prevailing party and who was substantially justified in rejecting the settlement offer.

4. Reduction of amount of attorneys' fees. Except as provided in subdivision 5 of this subsection, the court reduces, accordingly, the amount of the attorneys' fees awarded under this chapter, if the court finds that:

a. The parent or parents, during the course of the action or proceeding, unreasonably protracted the final resolution of the controversy;

b. The amount of the attorneys' fees otherwise authorized to be awarded unreasonably exceeds the hourly rate prevailing in the community for similar services by attorneys of reasonably comparable skill, reputation, and experience;

c. The time spent and legal services furnished were excessive considering the nature of the action or proceeding; or

d. The attorney representing the parent or parents did not provide to the school district the appropriate information in the due process compliant in accordance with this chapter.

5. Exception to reduction in amount of attorneys' fees. The provisions of subdivision 4 of this subsection do not apply in any action or proceeding if the court finds that the state or local educational agency unreasonably protracted the final resolution of the action or proceeding or there was a violation of the Individuals with Disabilities Education Act (20 USC §§ 1400 et seq.).

PART V.

ADDITIONAL RESPONSIBILITIES OF STATE BOARDS, AGENCIES, AND INSTITUTIONS FOR EDUCATION AND TRAINING OF CHILDREN WITH DISABILITIES IN RESIDENCE OR CUSTODY.

**8 VAC 20-80-160. ~~Provision of special education to~~ Additional responsibilities of state boards, agencies, and institutions for education and training of children with disabilities in residence or custody.**

A. Provision of education to children with disabilities in residence or custody.

1. Each state board, agency, and institution having children with disabilities in residence or custody shall provide education pursuant to standards, policies and procedures established by the Virginia Board of Education and at least comparable to that which would be provided to such children in the public school system.

a. The Department of Correctional Education shall establish and maintain schools for persons committed to the state, regional or local correctional facilities operated by the Department of Corrections and the Department of Juvenile Justice and for persons committed to Department of Juvenile Justice and placed in a private facility under contract with the Department of Juvenile Justice.

b. The Superintendent of Public Instruction shall approve the education programs at the Virginia Schools for the Deaf and the Blind.

c. The Department of Mental Health, Mental Retardation and Substance Abuse Services has responsibility for providing the education and training to children with mental retardation in residence in its institutions. The Virginia Board of Education shall supervise the education and training provided to school-age residents in state mental retardation facilities.

d. The Virginia Board of Education shall provide for and direct the education of school age residents in state mental health facilities in cooperation with the Department of Mental Health, Mental Retardation and Substance Abuse Services.

e. The Virginia Board of Education shall prepare and supervise the education and training provided to children in regional and local detention homes.

f. The Virginia Board of Education shall supervise the evaluation, education and training provided to school-age children by the Virginia Department of Health and in the child's teaching hospitals associated with the Medical College of Hampton Roads, The Medical College of Virginia Hospitals, and the University of Virginia Hospitals.

2. The procedures outlined in ~~Part III, Responsibilities of LEAs and State Agencies, of this chapter (8 VAC 20-80-40 et seq.)~~ 8 VAC 20-80-90 are applicable to each state board, agency and institution having children with disabilities in residence and custody.

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~~8 VAC 20-80-170.~~ B. Annual plan. Each state board, agency, and institution having responsibility for providing such education and training shall submit annually to the ~~SEA~~ *Virginia Department of Education* for approval by the *Virginia Board of Education* its program plan for the education and training for children with disabilities in residence or custody. This program plan, to be submitted by the date and in the manner specified by the *Virginia Board of Education*, shall include the provisions and assurances as specified in 8 VAC 20-80-90 ~~of this chapter~~. In addition, the program plan shall include the following:

1. The educational objectives of the state board, agency, or institution;
2. Strategies for achieving the educational objectives, including an organized program for staff development;
3. A system of communication between educational and other personnel, including treatment and residential care staff, to ensure coordination of program objectives;
4. A system of communication to assure service continuity in the transition of the student into and out of the educational program of the facility, *and, where applicable, the requirements for re-enrollment of juveniles committed to the Department of Juvenile Justice, as provided for in the Code of Virginia;*
5. An assessment plan for determining the extent to which the objectives have been achieved including, where practicable, follow-up studies of former students to assist in annual program evaluation;
6. A system of communication between the state board, agency, or institution and its employees, whereby the views of all educational employees may be received in an orderly and constructive manner in matters of concern to them;
7. A cooperatively developed procedure for the evaluation of educational personnel;
8. The grievance procedures regarding educational personnel as prescribed by the state or the appropriate local agency or board;
9. A comprehensive system of personnel development to include the ~~in-service~~ training of general and special education instructional ~~and personnel~~, support personnel, ~~and paraprofessionals related to the educational needs of children in residence is provided as required under 8 VAC 20-80-30;~~ *and paraprofessionals* related to the educational needs of children in residence is provided as required under 8 VAC 20-80-30;
10. At least 5-1/2 hours of education/training per school day or 27-1/2 hours per school week is available for each student to implement his IEP;

- a. Department of Mental Health, Mental Retardation and Substance Abuse Services facilities - attending physician;
- b. Department of Correctional Education - ~~treatment team~~ *central review committee or institute review committee or Department of Juvenile Justice physician or psychologist for medical or psychological conditions; in addition a waiver statement signed by or Department of Juvenile Justice security staff or designee for safety or security conditions;*
- c. School for the deaf and the blind - physician, staffing committee and principal;
- d. Woodrow Wilson Rehabilitation Center - center counselor upon recommendation of the staffing committee;
- e. State medical facilities - attending physicians;
- f. Juvenile detention homes - detention superintendent or designee.

~~42-~~ 11. Each state school for the deaf and the blind shall provide a planned dormitory and a student-life program for each age group of children, including social and daily living skills, recreation, and cultural activities.

~~8 VAC 20-80-180.~~ C. Staff and facility.

~~A-~~ 1. Each state board, agency or institution shall assign personnel to the educational program as follows:

- ~~4-~~ a. Administrative, supervisory, instructional, support and ancillary personnel holding valid professional licenses, certificates and endorsements as appropriate in the area of assignment (national standards may apply in the absence of state licensure or certification requirements).
- ~~2-~~ b. Additional education personnel to provide required related services as delineated in the *child's* IEP.
- ~~3-~~ ~~Teacher aids must~~ c. *Trained and supervised paraprofessionals who shall be high school graduates or equivalent.*

~~B-~~ 2. Each state board, agency or institution shall staff the educational program as follows:

- ~~4-~~ a. A principal, supervisor, education director or lead teacher for the educational program provided at each school or institution, except for juvenile detention homes;
- ~~2-~~ b. Instructional personnel sufficient to maintain pupil-teacher ratios not to exceed the following:
  - ~~a-~~ ~~Serious~~ (1) Emotional disturbance - one teacher for every eight children or one teacher and one ~~aide~~ *paraprofessional* for every 10 children;
  - ~~b-~~ (2) Hearing impairment/deafness - one teacher for every seven children with one ~~aide~~ *paraprofessional* for every three classroom teachers; *at the Virginia Schools for the Deaf and the Blind - one teacher for*



every eight children or one teacher and one paraprofessional for every 10 children;

~~e-~~ (3) Mental retardation - one teacher and one aide paraprofessional for every 10 children;

~~d-~~ (4) Severe and profound disability - one teacher and one aide paraprofessional for every six children or one teacher and two aides paraprofessionals for every 10 children;

~~e-~~ (5) Visual impairment - one teacher for every seven children with one aide paraprofessional for every three classroom teachers;

~~f-~~ (6) Other health impairment - one teacher for every eight children or one teacher and one aide paraprofessional for every 10 children;

~~g-~~ (7) Orthopedic impairment - one teacher for every eight children or one teacher and one aide paraprofessional for every 10 children;

~~h-~~ (8) Specific learning disability - one teacher for every eight children or one teacher and one aide paraprofessional for every 10 children;

~~i-~~ (9) Multiple disabilities/ or deaf-blindness - one teacher and one aide paraprofessional for every six students or one teacher and two aides paraprofessionals for every 10 students;

~~j-~~ (10) Autism - one teacher for every six students or one teacher and one aide paraprofessional for every eight students;

~~k-~~ (11) Department of Correctional Education - no greater than an average of one teacher and one aide paraprofessional for every 10 children;

~~l-~~ (12) Woodrow Wilson Rehabilitation Center - no greater than an average of one teacher for every 10 children;

~~m-~~ (13) Juvenile detention homes - a student/teacher ratio shall be based on the bed capacity of the detention home: one teacher per 12 beds as funded by the Virginia Appropriation Act. Where unusual or extenuating circumstances exist, the agency may apply to the Superintendent of Public Instruction for an exception to the ratio requirements. Such requests shall be supported by sufficient justification.

~~o-~~ 3. Each facility shall have available adequate and appropriate classroom space, within the available resources of the agency housing the education program. Each education program shall have access to a library, and instructional materials and supplies to meet the educational needs of the children.

PART VI.

COMPLIANCE WITH § 504 OF THE REHABILITATION ACT OF 1973, AS AMENDED.

**8 VAC 20-80-190. Public elementary or secondary programs Compliance with § 504 of the Rehabilitation Act of 1973, as amended.**

A. For those public elementary or secondary education programs operated by the Virginia Department of Education, the department shall:

1. Develop ~~an individualized education program~~ a plan for each qualified person who ~~is handicapped~~ has a disability as defined by the Rehabilitation Act of 1973 and its amendments (29 USC §§ 701 et seq.); and
2. Utilize the system of procedural safeguards specified in this chapter to resolve disputes regarding the identification, evaluation or educational placement of persons who ~~are handicapped~~ have a disability as defined by the Rehabilitation Act of 1973 and its amendments (29 USC §§ 701 et seq.).

**8 VAC 20-80-200. Local education agencies.**

B. Local ~~education~~ educational agencies, as defined by this chapter, ~~other than the Virginia Department of Education,~~ may utilize the due process hearing system specified in ~~this chapter~~ 8 VAC 20-80-76 to resolve disputes regarding the identification, evaluation or educational placement of persons who ~~are handicapped~~ have a disability as defined by the Rehabilitation Act of 1973 and its amendments (29 USC §§ 701 et seq.).

Appendix A.

Figure 1. Caseload maximums as funded by the Virginia Appropriation Act.

Caseload Maximums			
Disability Category	Level II		Level I
	With Paraprofessional 100% of the time	Without Paraprofessional 100% of the time	
Autism	8	6	24
Deaf-blind	8	6	
Developmental Delay: age 5 - 9	10	8	
Developmental Delay: age 2 - 5	8 Center Based 10 Combined	12 Home Based and/or Itinerant	
Emotional Disturbance	10	8	24
Hearing Impairment/ Deaf	10	8	24
Learning Disability	10	8	24
Mental Retardation	10	8	24
Multiple Disabilities	8	6	

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Orthopedic Impairment	10	8	24
Other Health Impairment	10	8	24
Severe Disabilities	8	6	
Speech or Language Impairment			70 (itinerant)
Traumatic Brain Injury	May be placed in any program, according to IEP.		
Visual Impairment	Determined on a local or regional basis, jointly with the Virginia Department of Visually Handicapped.		

Va. Code § 22.1-217; Va. Appropriation Act

Figure 2. Values for students receiving Level I services when combined with students receiving Level II services.

Disability Category	Level I Values		Level II Values
	With paraprofessional 100% of the time	Without paraprofessional 100% of the time	
Autism	2.5	3.3	1
Deaf-Blind	2.5	3.3	1
Developmental Delay: age 5 - 9	2.0	2.5	1
Hearing Impairment/ Deaf	2.0	2.5	1
Emotional Disturbance	2.0	2.5	1
Learning Disability	2.0	2.5	1
Mental Retardation	2.0	2.5	1
Multiple Disabilities	2.5	3.3	1
Orthopedic Impairment	2.0	2.5	1
Other Health Impairment	2.0	2.5	1
Visual Impairment	Determined on a local or regional basis, jointly with the Virginia Department of Visually Handicapped.		

VA.R. Doc. Nos. R98-276 and R98-275; Filed December 14, 1999, 10:06 a.m.

## TITLE 9. ENVIRONMENT

### STATE WATER CONTROL BOARD

#### Withdrawal

**Title of Regulation:** 9 VAC 25-260-10 et seq. **Water Quality Standards.**

The State Water Control Board has withdrawn the proposed amendments to 9 VAC 25-260-30 C 3 a, 9 VAC 25-260-30 C 3 b, and 9 VAC 25-260-30 C 3 d of the Water Quality Standards, which appeared in 10:10 VA.R. 2602-2632 February 7, 1994. The board deferred action on these subdivisions, relating to antidegradation of exceptional waters, when it adopted the final regulation. The final regulation was published in 13:14 VA.R. 1567-1568 March 31, 1997, and became effective on April 30, 1997.

VA.R. Doc. No. R97-343; Filed December 14, 1999, 4:15 p.m.

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#### Withdrawal

**Title of Regulation:** 9 VAC 25-440-10 et seq. **Upper Roanoke Subarea Water Quality Management Plan.**

The State Water Control Board has withdrawn the proposed amendments to the Altavista segment of 9 VAC 25-440-150 of the Roanoke Subarea Water Quality Management Plan. The proposal appeared in 14:21 VA.R. 2870-2879 July 6, 1998. The board deferred action on the Altavista segment when it adopted the regulation, which became effective January 6, 1999. The final regulation was published in 15:6 VA.R. 872 December 7, 1998.

VA.R. Doc. No. R97-535; Filed December 14, 1999, 4:15 p.m.

## TITLE 12. HEALTH

### DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

**Title of Regulation:** Program of All-Inclusive Care for the Elderly (PACE).

**12 VAC 30-10-10 et seq. State Plan Under Title XIX of the Social Security Act Medical Assistance Program; General Provisions (amending 12 VAC 30-10-140).**

**12 VAC 30-50-10 et seq. Amount, Duration, and Scope of Medical and Remedial Care Services (amending 12 VAC 30-50-10; adding 12 VAC 30-50-320).**

**12 VAC 30-120-10 et seq. Waivered Services (adding 12 VAC 30-120-61 through 12 VAC 30-120-69).**

**Statutory Authority:** § 32.1-325 of the Code of Virginia.

**Public Hearing Date:** N/A -- Public comments may be submitted until March 17, 2000.

(See Calendar of Events section for additional information)

**Basis:** Section 32.1-325 of the Code of Virginia grants to the Board of Medical Assistance Services (BMAS) the authority to administer and amend the Plan for Medical Assistance. Section 32.1-324 of the Code of Virginia grants to the Director of the Department of Medical Assistance Services (DMAS) the authority to administer and amend the Plan for Medical Assistance in lieu of board action pursuant to the board's requirements. The Administrative Process Act provides for this agency's promulgation of proposed regulations subject to the Governor's review.

DMAS' statutory authority for a PACE program is derived from both state and federal authority. In Chapter 853 of the 1995 Virginia Acts of Assembly, Item 396 Q, the General Assembly directed DMAS to seek a § 1115 (a) (to the Social Security Act) demonstration waiver from HCFA to implement one or more Programs of All-Inclusive Care for the Elderly (PACE) to be effective July 1, 1995. The Balanced Budget Act of 1997, §§ 4802 and 4803, established and defined the PACE program by creating the new § 1934 of the Social Security Act to be an optional Title XIX service.

**Purpose:** The purpose of this proposal is to promulgate permanent regulations for the provision of PACE services for frail, elderly Medicaid recipients. These regulations will link all types of medical care that such individuals might need, through a system of care management to the benefit of the individuals' health, safety, and welfare.

**Substance:** The Program of All-Inclusive Care for the Elderly (PACE) is a nationwide replication of the comprehensive service delivery and financing model of long-term care for the frail elderly pioneered by On Lok Senior Health Services in San Francisco in the 1970s. The various states have been allowed in the past to operate PACE programming through waiver authority from HCFA. The Balanced Budget Act of 1997 (BBA '97) gave states the option of providing PACE services as an optional Title XIX State Plan service which granted provider status to authorized PACE programs. Prior to BBA '97, DMAS had authority to provide pre-PACE services in a long-term care prepaid health plan which offered Medicaid services under Medicaid capitation while Medicare fee-for-service services were coordinated by the pre-PACE site.

PACE provides a community-based health care plan as an alternative to nursing home care unless that is the appropriate level of care. PACE integrates all aspects of care to include primary, medical and specialty care, nursing, social services, personal care, in-home supportive services, rehabilitative therapies, meals and nutritional care, transportation, hospitalization, and nursing home care.

The mission of the PACE model is to:

1. Enhance the quality of life and autonomy of frail, older adults;
2. Maximize the dignity and respect of older adults;
3. Enable frail, older adults to live in their homes and in the community as long as medically and socially feasible;

4. Preserve and support the older adult's family unit.

PACE programs achieve this mission by using a multidisciplinary team approach to manage care while providing a comprehensive range of acute care services and preventive care at a cost that is lower, due to its capitation payment mechanism, than the cost of traditional fee-for-service care.

Cost savings result from the pooling of Medicare (Title XVIII) and Medicaid (Title XIX) funding in a care coordination model that allows the PACE provider to manage the care within the program payment limits while providing a full range of services to include long-term care. Such pooling of funds will be permitted by the Health Care Financing Administration (HCFA) in its approval of the Commonwealth's State Plan Amendment upon the completion of the APA promulgation process.

In order for an individual to qualify for PACE services, he must be age 55 or older; be certified for nursing home care; be residing in the service, or catchment, area; and agree to all the conditions and terms of participation. The services that such PACE individuals will receive are, but may not be limited to:

1. Medical services, including the services of a Primary Care Physician (PCP) and other specialists;
2. Transportation services;
3. Outpatient rehabilitation services, including physical, occupational and speech therapy services;
4. Hospital (acute care) services;
5. Nursing facility (long-term care) services;
6. Prescription drugs;
7. Home health services;
8. Laboratory services;
9. Radiology services;
10. Ambulatory surgery services;
11. Respite care services;
12. Personal care services;
13. Hospice services;
14. Adult day health care services, to include social work services;
15. Multidisciplinary case management services;
16. Outpatient mental health and mental retardation services;
17. Outpatient psychological services;
18. Prosthetics; and
19. Durable medical equipment and other medical supplies.

PACE provides needed care in the most appropriate setting for the frail individual. Services are provided in the PACE

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center, at home, and, if needed, in the hospital or other institutional setting. Specialty and ancillary medical services are provided, as are long-term care services. If nursing home placement is needed, PACE provides the service and maintains the continuity of care by regular monitoring of the enrollee's condition. By providing preventive and rehabilitative services, chronic conditions can be stabilized and complications averted or lessened, thereby enhancing quality of life. An interdisciplinary team, consisting of professional and paraprofessional staff, assesses enrollees' needs, develops care plans, and delivers needed services.

This additional service option will provide to Medicaid recipients another cost-effective choice, to operate in conjunction with existing institutional and community-based services. PACE providers must provide access to all necessary covered services on a 24-hour basis to enrollees without any limitations or conditions. Prior to BBA '97, federal law prevented DMAS from offering PACE services as a State Plan option.

No policy alternatives were discarded in favor of the options proposed here. The Balanced Budget Act of 1997 allows states to choose whether or not to provide PACE services. The Virginia General Assembly has chosen to provide PACE services as an optional State Plan service. This action is to promulgate permanent regulations. The effect of this State Plan amendment and regulatory action on families will be supportive in that their elderly members will be able to remain in their homes longer without having to be institutionalized in nursing facilities. This action is intended to adopt the emergency regulations into the permanent regulations with minor or no changes.

Issues: PACE programs provide integrated community-based health care as an alternative to nursing home care unless that is the appropriate level of care. PACE programs achieve integration by using a multidisciplinary team approach to managing care while providing comprehensive services and preventive care at a lower cost. Program savings result from using a capitated payment model for provider reimbursement rather than a traditional fee-for-service payment model. Program participation (enrollment/disenrollment) in a PACE program is strictly voluntary on the part of the client.

The agency projects no negative issues involved in implementing this proposed change as the entity to be regulated by these regulations (the Sentara Senior Community Care program) has worked directly with DMAS and HCFA to develop its program in compliance with state and federal requirements.

Fiscal/Budget Impact: Virginia's Pre-PACE program began under a partially capitated arrangement and subsequently will make a transition to a fully capitated program pending federal approval. Currently, Virginia has one Pre-PACE under contract with Sentara Senior Community Care. As a Pre-PACE, the capitation rate is initially limited to selected Medicaid covered services, with other Medicaid and Medicare services available under the traditional fee-for-service payment system.

The Pre-PACE program in August 1999 served 105 individuals. This is an increase from 52 individuals served in

January 1998. The projected costs of the program for FY 1999 are \$2,430,088. In the absence of the PACE program, DMAS would incur similar costs for these recipients in Medicaid fee-for-service. This is based on a weighted average of 104 people in the program to date. The average cost per person is \$23,256.66. The capitation rate is actuarially based on the cost to DMAS of providing services to recipients in nursing facilities and home and community based care waivers.

This action has no projected costs for localities. Only entities that volunteer and qualify (by meeting all requirements) to be PACE providers, will become PACE providers. This action will affect one entity currently, Sentara Senior Community Care of Virginia Beach, Virginia, a pre-PACE program that will apply for full PACE program status.

There are no localities that are uniquely affected by these regulations as they apply statewide. HCFA has retained the authority to approve PACE providers.

Funding Source/Cost to Localities/Affected Entities: The Department of Medical Assistance Services is established under the authority of Title XIX of the federal Social Security Act, Public Law 89-97, as amended; and Title 32.1, Chapter 10, of the Code of Virginia. The Virginia Medicaid Program is funded with both federal and state funds. The current federal funding participation (FFP) for medical assistance expenditures is 51.60%, which became effective October 1, 1998. It is estimated that this rate will increase to 51.77% on October 1, 1999.

This program is not expected to have any impact on local departments of social services as it does not affect eligible groups nor the eligibility determination process.

Department of Planning and Budget's Economic Impact Analysis: The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 9-6.14:7.1 G of the Administrative Process Act and Executive Order Number 25 (98). Section 9-6.14:7.1 G requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. The analysis presented below represents DPB's best estimate of these economic impacts.

Summary of the proposed regulation. The proposed regulations add the Program of All-Inclusive Care for the Elderly (PACE) to services provided by Virginia's Medicaid program. PACE is a fully integrated, managed care system that provides long-term care for frail, elderly Medicaid recipients.

Estimated economic impact. The Program of All-Inclusive Care for the Elderly (PACE) is a nationwide replication of the comprehensive service delivery and financing model of long-term care for the frail elderly pioneered by On Lok Senior Health Services in San Francisco in the 1970s. PACE provides a community-based health care plan as an

alternative to nursing home care, unless a nursing home is the appropriate level of care required. PACE integrates all aspects of care including primary, medical and specialty care, nursing, social services, personal care, in-home support services, rehabilitative therapies, meals and nutritional care, transportation, hospitalization, and nursing home care. Services may be provided at home, at a PACE center or licensed adult day care center, or, if needed at a hospital or other institutional setting. Payment for these services is made on a capitated, rather than a fee-for-service, basis using pooled Medicare and Medicaid funds. Participation in the PACE program is voluntary. In order for an individual to qualify for PACE services, he or she must: be age 55 or older; not be eligible for Medicaid under the "medically-needy" provision, be certified for nursing home care; be residing in the PACE provider service area; and agree to all the conditions and terms of participation.

Under waiver authority from the federal Health Care Financing Administration (HCFA), various states have implemented PACE services. The 1997 Balanced Budget Amendment gave states the option of providing PACE services as part of their State Plan for Medical Assistance (State Plan). The 1998 Virginia General Assembly chose to provide PACE services as an optional state plan service, and DMAS promulgated emergency regulations.

The proposed establishment of a PACE program is expected to produce two economic effects: cost savings for DMAS/Commonwealth and improved quality of life for participants.

## Cost Savings

Cost savings result from the pooling of Medicare (Title XVIII) and Medicaid (Title XIX) funding in a care coordination model that allows the PACE provider to manage the care within the program payment limits while providing a full range of services. There are currently 13 PACE sites operating under dual Medicare and Medicaid capitation. According to the National PACE Association, Medicaid capitation payments to PACE yield states an estimated 5.0% to 15% savings relative to their fee-for-service expenditures for a comparable nursing home certified population. In 1998, the median Medicaid capitation rate for PACE was \$2,109 per enrollee per month, with a range of \$1,750 to \$4,301 depending on locale.

DMAS reports that the average Medicaid capitation rate for PACE in Virginia is \$1,938 per enrollee per month. The average cost per person enrolled in PACE is \$23,257 per year. This represents 5.0% savings relative to the average cost for that individual in fee-for-service setting, \$24,419. Given these figures, DMAS can expect to save \$1,163 per year for each Medicaid recipient who enrolls in the proposed PACE program.

## Quality of Life

PACE providers successfully control enrollees' use of high-cost inpatient services by providing preventative and

supportive services. National information from existing PACE programs indicates that<sup>1</sup>:

Despite PACE enrollees' level of frailty, their rate of hospital use is lower than that of the Medicare 65-plus population which includes healthy older persons -- in 1997, 2,158 days/1000 PACE enrollees/annum vs. 2,080 days/1000 Medicare beneficiaries/annum (HCFA Bureau of Data Management and Strategy, 1997).

PACE enrollees have shorter lengths of stay in the hospital than the aged Medicare population as a whole -- 4.5 vs. 6.6 days (HCFA Bureau of Data Management and Strategy, 1996).

Although all PACE enrollees are certified eligible for nursing home care, only 6.0% resided in nursing homes at the end of 1996.

In 1997, Abt Associates, Inc., retained by HCFA to evaluate the PACE replication, reported PACE enrollment to be associated with improved health status and quality of life, including lower mortality rate, increased choice in how time is spent, and greater confidence in dealing with life's problems.

Businesses and entities affected. In order for an individual to qualify for PACE services, he or she must: be age 55 or older; not be eligible for Medicaid under the "medically-needy" provision, be certified for nursing home care; be residing in the PACE provider service area; and agree to all the conditions and terms of participation. In FY 1998, an average of 90,644 aged individuals were eligible for Medicaid services. Of those individuals eligible for services, 32,064 (35%) received nursing facility, personal care, or adult day care services. The number eligible for PACE will be somewhat smaller than this due to the exclusion of the medically needy eligibility category.

There is currently only one Pre-PACE provider under contract -- Sentara Senior Community Care in Virginia Beach. It is unknown how many of the estimated 32,064 elderly Medicaid recipients eligible for PACE enrollment live in the Tidewater area. However, as of August 1999 the Pre-PACE program served 105 individuals.

Localities particularly affected. No localities are particularly affected by the proposed regulation.

Projected impact on employment. The proposed regulation is not anticipated to have a significant effect on employment.

Effects on the use and value of private property. The proposed regulation is not anticipated to have a significant effect on the use and value of private property.

Summary of analysis. The proposed regulations add the Program of All-Inclusive Care for the Elderly (PACE) to services provided by Virginia's Medicaid program. Empirical evidence on PACE programs in other states has shown PACE enrollment to be associated with improved health status and quality of life. Cost savings result from the use of a capitated payment model for provider reimbursement rather

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<sup>1</sup> Source: "Success to Date of the PACE Replication," The National PACE Association, 1997.

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than a traditional fee-for-service payment model. Since program participation in a PACE program is voluntary, we can assume that there exists a net economic benefit for each individual who chooses to enroll. The cost savings alone amount to approximately \$1,163 per year per person. Taking into account the improved health outcomes, the net economic benefit of the program is probably significantly higher than that measured by the cost savings alone.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The agency concurs with the Economic Impact Analysis prepared by the Department of Planning and Budget regarding the regulations concerning Program of All-Inclusive Care for the Elderly (PACE).

## Summary:

*The proposed regulations add the Program of All-Inclusive Care for the Elderly (PACE) to services provided by Virginia's Medicaid program. PACE is a fully integrated, managed care system that provides long-term care for frail, elderly Medicaid recipients.*

## **12 VAC 30-10-140. Amount, duration, and scope of services: Categorically needy.**

Medicaid is provided in accordance with the requirements of 42 CFR 440, Subpart B and § 1902(a), 1902(e), 1905(a), 1905(p), 1915, 1920, and 1925 of the Act.

Services for the categorically needy are described below and in 12 VAC 30-50-10 et seq. These services include:

1. Each item or service listed in § 1905(a)(1) through (5) and (21) of the Act, is provided as defined in 42 CFR 440, Subpart A, or, for EPSDT services, § 1905(r) and 42 CFR Part 411, Subpart B.
2. Nurse-midwife services listed in § 1905(a)(17) of the Act, are provided to the extent that nurse-midwives are authorized to practice under state law or regulation and without regard to whether the services are furnished in the area of management of the care of mothers and babies throughout the maternity cycle. Nurse-midwives are permitted to enter into independent provider agreements with the Medicaid agency without regard to whether the nurse-midwife is under the supervision of, or associated with, a physician or other health care provider.
3. Pregnancy-related, including family planning service, and postpartum services for a 60-day period (beginning on the day pregnancy ends) and any remaining days in the month in which the 60th day falls are provided to women who, while pregnant, were eligible for, applied for, and received medical assistance on the day the pregnancy ends.
4. Services for medical conditions that may complicate the pregnancy (other than pregnancy-related or postpartum services) are provided to pregnant women.
5. Services related to pregnancy (including prenatal, delivery, postpartum, and family planning services) and to other conditions that may complicate pregnancy are

the same services provided to poverty level pregnant women eligible under the provision of § 1902(a)(10)(A)(i)(IV) and 1902(a)(10)(A)(ii)(IX) of the Act.

6. Home health services are provided to individuals entitled to nursing facility services as indicated in 12 VAC 30-10-220 of this plan.

7. Inpatient services that are being furnished to infants and children described in § 1902(l)(1)(B) through (D), or § 1905(n)(2) of the Act, on the date the infant or child attains the maximum age for coverage under the approved State plan will continue until the end of the stay for which the inpatient services are furnished.

8. Respiratory care services are not provided to ventilator dependent individuals as indicated in 12 VAC 30-10-300 of this plan.

9. Services are provided to families eligible under § 1925 of the Act as indicated in 12 VAC 30-10-350 of this plan.

10. Home and community care for functionally disabled elderly individuals is not covered.

*11. Program of All-Inclusive Care for the Elderly (PACE) services as described and limited in Supplement 6 to Attachment 3.1-A (12 VAC 30-50-320).*

12 VAC 30-50-10 et seq. identifies the medical and remedial services provided to the categorically needy, specifies all limitations on the amount, duration, and scope of those service, and lists the additional coverage (that is in excess of established service limits) for pregnancy-related services and services for conditions that may complicate the pregnancy.

## **12 VAC 30-50-10. Services provided to the categorically needy with limitations.**

The following services are provided with limitations as described in 12 VAC 30-50-100 et seq.:

1. Inpatient hospital services other than those provided in an institution for mental diseases.
2. Outpatient hospital services.
3. Rural health clinic services and other ambulatory services furnished by a rural health clinic.
4. Federally Qualified Health Center (FQHC) services and other ambulatory services that are covered under the plan and furnished by an FQHC in accordance with § 4231 of the State Medicaid Manual (HCFA Pub. 45-4).
5. Early and periodic screening and diagnosis of individuals under 21 years of age, and treatment of conditions found.
6. Family planning services and supplies for individuals of child-bearing age.
7. Physicians' services whether furnished in the office, the patient's home, a hospital, a skilled nursing facility, or elsewhere.

8. Medical and surgical services furnished by a dentist (in accordance with § 1905(a)(5)(B) of the Act).

9. Medical care or any other type of remedial care recognized under state law, furnished by licensed practitioners within the scope of their practice as defined by state law: podiatrists, optometrists and other practitioners.

10. Home health services: intermittent or part-time nursing service provided by a home health agency or by a registered nurse when no home health agency exists in the area; home health aide services provided by a home health agency; and medical supplies, equipment, and appliances suitable for use in the home; physical therapy, occupational therapy, or speech pathology and audiology services provided by a home health agency or medical rehabilitation facility.

11. Clinic services.

12. Dental services.

13. Physical therapy and related services, including occupational therapy and services for individuals with speech, hearing, and language disorders (provided by or under supervision of a speech pathologist or audiologist).

14. Prescribed drugs, prosthetic devices, and eyeglasses prescribed by a physician skilled in diseases of the eye or by an optometrist.

15. Other rehabilitative services, screening services, preventive services.

16. Reserved.

17. Nurse-midwife services.

18. Case management services as defined in, and to the group specified in, 12 VAC 30-50-95 et seq. (in accordance with § 1905(a)(19) or § 1915(g) of the Act).

19. Extended services to pregnant women: pregnancy-related and postpartum services for a 60-day period after the pregnancy ends and any remaining days in the month in which the 60th day falls (see 12 VAC 30-50-510). (Note: Additional coverage beyond limitations.)

20. Pediatric or family nurse practitioners' service.

21. Any other medical care and any other type of remedial care recognized by state law, specified by the Secretary: transportation.

22. *Program of All-Inclusive Care for the Elderly (PACE) services as described and limited in Supplement 6 to Attachment 3.1-A (12 VAC 30-50-320).*

**12 VAC 30-50-320. Program of All-Inclusive Care for the Elderly (PACE).**

*The Commonwealth of Virginia has entered into any valid program agreement or agreements with a PACE provider or providers and the Secretary of the U.S. Department of Health and Human Services as follows.*

*Sentara Senior Community Care in Virginia Beach, Virginia. The provider service area includes the cities of Chesapeake, Norfolk, Portsmouth and Virginia Beach. The program does not have a maximum number of enrollees. The maximum number of enrollees at a given program site is only limited by recognized occupancy rates.*

**12 VAC 30-120-61. Definitions.**

*For purposes of 12 VAC 30-120-61 through 12 VAC 30-120-69 and all contracts establishing PACE plans, the following definitions shall apply:*

*“Adult day health care center” means a facility licensed by the Department of Social Services, Division of Licensing Programs, to provide partial day supplementary care and protection to adult individuals who reside elsewhere. Facilities or portions of facilities licensed by the State Board of Health or the State Mental Health, Mental Retardation, and Substance Abuse Services Board and homes or residences of individuals who care solely for persons related by blood or marriage are not adult day health care centers under these regulations.*

*“Applicant” means an individual seeking enrollment in a PACE plan.*

*“Capitation rate” means the negotiated monthly per capita amount paid to a PACE contractor for services provided to enrollees.*

*“Catchment area” means the designated service area for a PACE plan.*

*“Contractor” means the entity contracting with the Department of Medical Assistance Services to operate a PACE plan.*

*“DMAS” means the Department of Medical Assistance Services.*

*“DSS” means the Department of Social Services.*

*“Enrollee” means a Medicaid eligible individual meeting PACE enrollment criteria and receiving services from a PACE plan.*

*“HCFA” means the federal Health Care Financing Administration.*

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

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

*“Nursing home preadmission screening” means the process to: (i) evaluate the medical, nursing, and social needs of individuals referred for preadmission screening, (ii) analyze what specific services the individuals need, (iii) evaluate whether a service or a combination of existing community-based services are available to meet the individuals' needs, and (iv) authorize Medicaid funded nursing*

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facility or community-based care for those individuals who meet nursing facility level of care criteria and require that level of care.

“Nursing Home Preadmission Screening Committee/Team” means an entity contracting with the Department of Medical Assistance Services to perform nursing facility preadmission screenings. For individuals in the community, this entity is a committee comprised of staff from the local departments of health and social services. For individuals in an acute care facility, this entity is a team of nursing and social work staff. Each local committee and acute care team must have a physician member.

“PACE” means a Program of All-Inclusive Care for the Elderly.

“PACE plan” means a comprehensive acute and long-term care prepaid health plan, pursuant to § 32.1-330.3 of the Code of Virginia, operating on a capitated payment basis through which the contractor assumes full financial risk. PACE plans operate under both Medicare and Medicaid capitation.

“PACE plan contract” means a contract, pursuant to § 32.1-330.3 of the Code of Virginia, under which an entity assumes full financial risk for operation of a comprehensive acute and long-term care prepaid health plan with capitated payments for services provided to Medicaid enrollees being made by the Department of Medical Assistance Services. The parties to a PACE plan contract are the entity operating the PACE plan and both the Department of Medical Assistance Services and the federal Health Care Financing Administration.

“PACE plan feasibility study” means a study performed by a research entity approved by the Department of Medical Assistance Services to determine a potential PACE plan contractor’s ability and resources or lack thereof to effectively operate a PACE plan. All study costs are the responsibility of the potential contractor.

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

“PACE site” means the location where the contractor both operates the PACE plan’s adult day health care center and coordinates the provision of core PACE services.

“PCP” means the primary care provider responsible for the coordination of medical care provided to an enrollee under a PACE plan.

“State Plan” means the document containing the covered groups, covered services and their limitations, and provider payment methodologies as provided for under Title XIX of the Social Security Act.

“These regulations” means 12 VAC 30-120-61 through 12 VAC 30-120-69.

“Transitional Advisory Group” means the group established by the Board of Medical Assistance Services pursuant to § 32.1-330.3 of the Code of Virginia. The group is

responsible for advising the Department of Medical Assistance Services on issues of PACE plan license requirements, reviewing regulations, and providing ongoing oversight.

“Uniform Assessment Instrument (UAI)” means the standardized, multidimensional questionnaire used to assess an individual’s physical and mental health and social and functional abilities. Under these regulations, the UAI is used to gather the information needed to determine an individual’s long-term care needs and PACE plan service eligibility, for planning the care to be provided, and for monitoring care as it is provided.

## **12 VAC 30-120-62. General PACE plan requirements.**

A. DMAS, the state agency responsible for administering Virginia’s Medicaid program, shall only enter into PACE plan contracts with approved PACE plan contractors.

B. A PACE plan feasibility study shall be performed before DMAS enters into any PACE plan contract. DMAS shall contract only with those entities it determines to have the ability and resources to effectively operate a PACE plan.

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

D. All enrollees shall meet the nonfinancial and financial Medicaid eligibility criteria established by federal law and these regulations. To the extent federal law or regulations are inconsistent with these regulations, the federal law and regulations shall control.

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

F. Each PACE plan shall offer core PACE services through a coordination site that is licensed as an adult day care center by DSS.

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

H. Each PACE plan shall meet the requirements of §§ 32.1-330.2 and 32.1-330.3 of the Code of Virginia.

## **12 VAC 30-120-63. Criteria for PACE enrollment.**

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

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

1. Individuals who are age 55 or older;
2. Individuals who require nursing facility level of care and are at imminent risk of nursing facility placement as determined by a Nursing Home Preadmission Screening



Team through a Nursing Home Preadmission Screening performed using the UAI;

3. Individuals for whom PACE plan services are medically appropriate and necessary because without the services the individual is at imminent risk of nursing facility placement.

4. Individuals who reside in a PACE plan catchment area;

5. Individuals who meet other criteria specified in a PACE plan contract;

6. Individuals who participate in the Medicaid or Medicare programs as specified in § 32.1-330.3 E of the Code of Virginia; and

7. Individuals who voluntarily enroll in a PACE plan and agree to the terms and conditions of enrollment.

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

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

2. Individuals whose resources are determined by DMAS under the provisions of the State Plan to be equal to or less than the current resource allowance established in the State Plan.

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

E. DMAS shall not pay for services provided to an applicant by a PACE contractor if such services are provided prior to the PACE plan authorization date set by the Nursing Home Preadmission Screening team.

**12 VAC 30-120-64. PACE enrollee rights.**

A. PACE plan contractors shall ensure that enrollees are fully informed of their rights and responsibilities in accordance with all state and federal requirements. These rights and responsibilities shall include, but not be limited to:

1. The right to be fully informed at the time of enrollment that PACE plan enrollment can only be guaranteed for a 30-day period pursuant to § 32.1-330.2 of the Code of Virginia;

2. The right to receive PACE plan services directly from the contractor or under arrangements made by the contractor; and

3. The right to be fully informed in writing of any action to be taken affecting the receipt of PACE plan services.

B. Contractors shall notify enrollees of the full scope of services available under a PACE plan. The services shall include, but not be limited to:

1. Medical services, including the services of a PCP and other specialists;

2. Transportation services;

3. Outpatient rehabilitation services, including physical, occupational and speech therapy services;

4. Hospital (acute care) services;

5. Nursing facility (long-term care) services;

6. Prescription drugs;

7. Home health services;

8. Laboratory services;

9. Radiology services;

10. Ambulatory surgery services;

11. Respite care services;

12. Personal care services;

13. Hospice services;

14. Adult day health care services, to include social work services;

15. Multidisciplinary case management services;

16. Outpatient mental health and mental retardation services;

17. Outpatient psychological services;

18. Prosthetics; and

19. Durable medical equipment and other medical supplies.

C. Contractors shall ensure that PACE plan services are at least as accessible to enrollees as they are to other Medicaid eligible individuals residing in the applicable catchment area.

D. Contractors shall provide enrollees with access to services 24 hours per day every day of the year.

E. Contractors shall provide enrollees with all information necessary to facilitate easy access to services.

F. Contractors shall provide enrollees with identification documents approved by DMAS. PACE plan identification documents shall give notice to others of enrollees' coverage under PACE plans.

G. Contractors shall clearly and fully inform enrollees of their right to disenroll at will upon giving 30 days notice.

H. Contractors shall make available to enrollees a mechanism whereby disputes relating to enrollment and services can be considered. This mechanism shall be one that is approved by DMAS.

I. Contractors shall fully inform enrollees of the individual contractors' policies regarding accessing care generally, and in particular, accessing urgent or emergency care both within and without the catchment area.

J. Contractors shall maintain the confidentiality of enrollees and the services provided to them.

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## **12 VAC 30-120-65. PACE enrollee responsibilities.**

A. Enrollees shall access services through an assigned PCP. Enrollees shall be given the opportunity to choose a PCP affiliated with the applicable PACE plan. In the event an enrollee fails to choose a PCP, one shall be assigned by the contractor.

B. Enrollees shall be responsible for co-payments, if any.

C. Enrollees shall raise complaints relating to PACE plan coverage and services directly with the contractor. The contractor shall have a DMAS approved enrollee complaint process in place at all times.

D. Enrollees shall raise complaints pertaining to Medicaid eligibility and PACE plan eligibility directly to DMAS. These complaints shall be considered under DMAS' Client Appeals regulations (12 VAC 30-110-10 et seq.).

## **12 VAC 30-120-66. PACE plan contract requirements and standards.**

A. DMAS shall, as determined necessary, establish minimum contract requirements and standards for PACE plan contractors.

B. PACE plan contracts shall be governed and construed in accordance with Title 32.1 of the Code of Virginia.

## **12 VAC 30-120-67. PACE catastrophic coverage limitation.**

A. DMAS shall limit contractors' liability for Medicaid covered services required by individual enrollees when the need for services arises from a catastrophic occurrence or disease.

B. If, during a single state fiscal year period (July 1 through June 30), an enrollee receives medically necessary PACE plan services necessitated by a catastrophic occurrence or disease and the cost of those services, calculated using DMAS' applicable provider payment schedules, exceeds the catastrophic coverage limitation established in the PACE plan contract for the Medicaid capitated portion of the payments, DMAS shall compensate the contractor for Medicaid covered services provided beyond the limitation amount.

C. When this provision is invoked, DMAS shall compensate the contractor for Medicaid covered services at the rates established under the applicable Medicaid provider payment schedules.

## **12 VAC 30-120-68. PACE sanctions.**

A. DMAS shall apply sanctions to contractors for violations of PACE contract provisions and federal or state law and regulation.

B. Permissible state sanctions shall include, but need not be limited to, the following:

1. A written warning to the contractor;
2. Withholding all or part of the contractor's capitation payments;
3. Suspension of new enrollment in the PACE plan;

4. Restriction of current enrollment in the PACE plan; and

5. Contract termination.

## **12 VAC 30-120-69. Effective date.**

These regulations shall only be effective upon federal approval, with the concomitant guarantee of federal matching funds, of the Commonwealth's submitted amendment to the State Plan for Medical Assistance.

VA.R. Doc. No. R99-167; Filed December 21, 1999, 11:34 a.m.

\* \* \* \* \*

Title of Regulation: **12 VAC 30-70-10 et seq. Methods and Standards for Establishing Payment Rates--Inpatient Hospital Care (Diagnosis Related Groups) (amending 12 VAC 30-70-400, 12 VAC 30-70-410, 12 VAC 30-70-420, 12 VAC 30-70-450, and 12 VAC 30-70-460; adding 12 VAC 30-70-201, 12 VAC 30-70-205, 12 VAC 30-70-211, 12 VAC 30-70-221, 12 VAC 30-70-231, 12 VAC 30-70-241, 12 VAC 30-70-251, 12 VAC 30-70-261, 12 VAC 30-70-271, 12 VAC 30-70-281, 12 VAC 30-70-291, 12 VAC 30-70-301, 12 VAC 30-70-311, 12 VAC 30-70-321, 12 VAC 30-70-331, 12 VAC 30-70-341, 12 VAC 30-70-351, 12 VAC 30-70-361, 12 VAC 30-70-371, 12 VAC 30-70-381, and 12 VAC 30-70-391; and repealing 12 VAC 30-70-200, 12 VAC 30-70-210, 12 VAC 30-70-220, 12 VAC 30-70-230, 12 VAC 30-70-240, 12 VAC 30-70-250, 12 VAC 30-70-260, 12 VAC 30-70-270, 12 VAC 30-70-280, 12 VAC 30-70-290, 12 VAC 30-70-300, 12 VAC 30-70-310, 12 VAC 30-70-320, 12 VAC 30-70-330, 12 VAC 30-70-340, 12 VAC 30-70-350, 12 VAC 30-70-360, 12 VAC 30-70-370, 12 VAC 30-70-380, and 12 VAC 30-70-390).**

Statutory Authority: § 32.1-325 of the Code of Virginia.

Public Hearing Date: N/A -- Public comments may be submitted until March 17, 2000.

(See Calendar of Events section for additional information)

Basis: Section 32.1-325 of the Code of Virginia grants to the Board of Medical Assistance Services (BMAS) the authority to administer and amend the Plan for Medical Assistance. Section 32.1-324 of the Code of Virginia grants to the Director of the Department of Medical Assistance Services (DMAS) the authority to administer and amend the Plan for Medical Assistance in lieu of board action pursuant to the board's requirements. The Administrative Process Act provides for this agency's promulgation of proposed regulations subject to the Governor's review.

42 CFR Part 447 regulates the reimbursement of all Medicaid-covered services.

Purpose: The purpose of this proposal is to amend the existing inpatient hospital payment methodology regulations to remove transition period rules and to fully implement the new Diagnosis Related Groups methodology which began to be phased in on July 1, 1996. This regulation is essential to protect the health and welfare of the Commonwealth's citizens because it prescribes the methodology by which

DMAS reimburses for the critical, mandatory service of inpatient hospital services.

Substance: On July 1, 1996, the Department of Medical Assistance Services (DMAS) implemented a new prospective payment methodology for hospital services based largely on Diagnosis Related Groups (DRGs). From that date through June 30, 1998, was a transition period, with Medicaid payment transitioning by thirds each year from per diem payment to DRG payment. This allowed hospitals time to adjust to the new methodology. Emergency regulations were adopted prior to July 1, 1996, to govern rate setting during the transition period, and were adopted as final regulations through the Administrative Process Act (APA) during state fiscal year 1997.

The regulations that authorized the new methodology stated that rates must be "rebased" every two years, with the first rebasing scheduled for an effective date of July 1, 1998. Also on July 1, 1998, the DRG methodology was to be fully implemented, and the transition period to be brought to an end. However, the regulations adopted to govern the transition period did not provide the methodology for rebasing, and as a result DMAS sought and obtained legislative authorization (in the 1998 Appropriation Act) to adopt emergency regulations effective July 1, 1998, that would include the rebasing methodology. Emergency regulations were adopted effective July 1, 1998, and the 1999 General Assembly authorized the continuation for one more year of these emergency regulations. These emergency regulations will expire June 30, 2000.

The purpose of the present regulatory proposal is to adopt as a final regulation the methodology that has been in place since July 1, 1998, by the authority of emergency regulations. This regulatory package is presented as an amendment to the existing permanent regulation, which is the regulation for the transition period.

The regulatory package appears to have many changes (many stricken and underlined words). However, this is because this final regulation must be done as an amendment to the previous permanent regulation, which was effective during 1997 and 1998, not as an amendment to the emergency regulation that is currently in effect. The actual language of the proposed regulation is in reality nearly identical to the emergency regulation that is currently in effect and contains no substantive changes from the emergency regulation.

The reimbursement system prior to the emergency regulation was a one-third per diem methodology and two-thirds DRG methodology system for inpatient hospital services. The transitioning from the prospective methodology over to the DRG methodology by one-third each year was prescribed by the Joint Task Force formed by DMAS and the Virginia Hospital and Healthcare Association. The Task Force and enrolled provider hospitals expected a three-thirds DRG system to be effective July 1, 1998, which was implemented by the emergency regulation.

Additional features of this DRG payment system include disproportionate share adjustment payments, medical education costs, capital costs, the handling of psychiatric and

rehabilitation inpatient hospital cases, and state teaching hospital costs. These elements are being addressed as follows. Additional payments to hospitals with a "disproportionate share" of Medicaid patients will continue under these regulations but will be targeted to a smaller group of hospitals that have a very high proportion of Medicaid and low income patients. Medical education and capital costs continue to be paid as they have been in the past -- that is, based on reasonable cost incurred. Psychiatric and rehabilitation inpatient hospital cases will continue to be paid on a per diem basis into the foreseeable future and the current payment methodologies remain unchanged in this package. State teaching hospitals will continue to be treated as a separate peer group in this methodology. In addition, DMAS proposes to define the significant terms that have been used in this suggested permanent regulation.

At the same time that DMAS has been undergoing considerable regulatory activity in this area of DRGs, the agency's computer system has been undergoing modification as well. At the present time, the fiscal agent has not completed the necessary changes and the claims processing system for DRGs is expected to be ready for startup on January 1, 2000.

This regulation's impact on families will be transparent in that DMAS will continue to cover inpatient hospital services.

Issues: The agency projects no negative issues involved in implementing this proposed change as DMAS has worked closely with the regulated industry to design this regulation. The primary advantage of this regulation to the public is the completion of the agency's conversion to the full DRG payment methodology. The complete conversion, supported by the computer claims processing system, will restore automated claims processing by reducing the need for manual intervention, thereby saving those costs.

Department of Planning and Budget's Economic Impact Analysis: The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 9-6.14:7.1 G of the Administrative Process Act and Executive Order Number 25 (98). Section 9-6.14:7.1 G requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. The analysis presented below represents DPB's best estimate of these economic impacts.

Summary of the proposed regulation. The proposed regulations amend the existing inpatient hospital payment methodology regulations to remove transition period rules and fully implement the new Diagnosis Related Grouping (DRG) methodology. These amendments fulfill a directive by the 1996 General Assembly to implement a DRG methodology (Chapter 912, Item 322.J.), and the settlement terms of a case brought under the federal Boren Amendment which required DMAS and the then Virginia Hospital Association to jointly develop a replacement reimbursement method.

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# Proposed Regulations

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**Background.** Historically, the Department of Medical Assistance Services (DMAS) paid hospitals on a per diem basis for inpatient hospital services provided to Medicaid patients. On July 1, 1996 (directed by the General Assembly and the terms of a lawsuit settlement), DMAS implemented a new prospective payment methodology for hospital services based largely on Diagnosis Related Groups (DRGs).

The initial DRG regulations called for a two-year transition period, allowing time for hospitals to adjust to the new methodology. During this time, Medicaid payments transitioned by thirds each year from per diem rates to DRG rates. The initial regulations also provided that the DRG rates be rebased every two years, however, they did not describe the methodology to be used for the first rebasing, which was to be effective July 1, 1998. Consequently, DMAS sought and obtained legislative authorization to adopt emergency regulations effective July 1, 1998, which provided the methodology for rebasing DRG rates. Authorization was obtained to continue the emergency regulations for one more year. These emergency regulations will expire on June 30, 2000.

**Proposed Changes.** The proposed regulation is intended to fully implement the DRG payment system by adopting as a final regulation the rules that have been in place since July 1, 1998, under the authority of an emergency regulation. According to DMAS, the language of the proposed regulation is nearly identical to the emergency regulation that is currently in effect and contains no substantive changes from the emergency regulation. However, as required by the APA, this regulatory package is presented as an amendment to the existing permanent regulation, which was in effect during 1997 and 1998 to govern the transition period. The primary amendments contained in the proposed regulation are as follows:

- A definition section is added;
- Language regarding the phase in of the DRG reimbursement method is deleted;
- Certain technical provisions, such as the version of the Diagnosis Related Group to be used in the DRG payment system and the base year used in calculating operating costs, are updated;
- Payments for direct and indirect medical education costs will be made to hospitals in quarterly lump sum amounts rather than as part of the general payment;
- Provisions regarding prior authorization are amended to delete requirements regarding length of stay assignment, admissions prior to surgical date, and weekend admissions for non-psychiatric admissions, as these requirements are obviated under the DRG system utilization review process; and
- The methodology for rebasing the DRG rates is set forth.

**Estimated economic impact.** Many of the proposed amendments are technical in nature and unlikely to have economic consequences. The following proposed changes may have economic effects, however: (i) the completed

phase-in of a DRG prospective payment system; (ii) the payment of medical education costs on a quarterly basis; (iii) the use of prior authorization for utilization review; and (iv) the rebasing of DRG rates.

**Completed Phase-in of DRG Prospective Payment System.** DRG prospective payment systems are not new. Following the federal Tax Equity and Fiscal Responsibility Act of 1982, Medicare changed its method for reimbursing hospitals to a prospective payment system. Under this system, hospitals receive a fixed-fee prospective payment for each patient based on the patient's diagnostic category. Incentives are created to minimize the length of the hospital stay and to use lower-cost services whenever possible; this has led to concern that the quality of care may be compromised following implementation of a prospective payment system. Evidence so far indicates that efficiency in the provision of inpatient hospital services has increased as expected. Although there is no information available to evaluate the effect of the DRG system on quality of care specifically for Medicaid patients in Virginia, extensive research has been conducted nationally that indicates prospective payment systems do not reduce quality of care. By finalizing the conversion to a DRG payment system, the proposed regulation may encourage continued economic benefits.

**Enhanced Efficiency.** One of the primary benefits of a DRG payment system is that it promotes efficiency. Under the previous per diem payment system used by DMAS to reimburse hospitals for Medicaid patients, hospitals faced a disincentive regarding efficiency-related reductions in medical costs. Efficiency-generated reductions in the average length of patient stays more typically eliminate "low cost" patient days than "high cost" patient days. Because hospitals were reimbursed according to a flat per diem, such efficiency enhancements tended to reduce Medicaid reimbursements more than Medicaid related costs. As a result, hospitals were often actually penalized for efficiency enhancements. Moreover, hospitals faced a perverse incentive to increase Medicaid patient lengths of stay if doing so increased the number of "low cost" days associated with the stay.

In a DRG system, hospitals whose existing costs fall below the system-wide average for specific DRGs are rewarded (i.e., they are reimbursed at the system-wide average even though their current costs are below that average). On the other hand, hospitals whose existing costs exceed the system-wide average for specific DRGs have a continuing economic incentive to lower costs (i.e., they are reimbursed at the system-wide average even though their costs are above that average). This incentive provides a strong inducement for hospitals with high costs of treatment for certain DRGs, relative to their peers, to substantially reduce those costs or, if that option is not achievable, specialize away from the treatment of that particular diagnosis (i.e., quit providing those services). The desirable effect of such specialization is that it reduces overall medical costs by encouraging hospitals to produce only those services that they are able to provide efficiently.

The empirical evidence to date largely substantiates the efficiency enhancing qualities of DRG payment systems. Hospitals subject to DRG systems have been shown to

exhibit greater decreases in average length of patient stay than hospitals subject to other payment systems.<sup>1</sup> In fact, this effect has already begun to be observed in Virginia. Between 1993 and 1997, DMAS reports that the average length of stay per case declined 12.6%.

**Distributional Equity.** Another economic benefit of shifting from a per diem to a DRG payment method is that it is intended to enhance distributional equity in hospital reimbursements for Medicaid patients. DMAS's current per diem ceilings were calculated in 1981 and were subsequently adjusted only for inflationary increases. This implies that under a per diem payment system, hospitals experiencing significant changes in case mix, and consequently significant changes in average costs, were compensated at rates that no longer reflected their actual costs. Depending on the circumstances, some hospitals benefited by this error while others did not. Because DRG payment systems specifically recognize that not all cases cost the same to treat, and because they control for the case mix of individual hospitals by disaggregating reimbursements according to case category, they more accurately compensate hospitals for the true costs of their Medicaid patient loads. Thus, a DRG payment system will serve to eliminate distributional inequities that may have been present in a per diem payment system.

**Incentive to Undertreat.** A widely cited criticism of DRG prospective payment systems is that shorter lengths of stay result from incentives for hospitals to undertreat patients and release them "quicker and sicker" instead of resulting from more efficiently-delivered care. Given the strong incentives for cost reduction in DRG systems, this is a valid concern. Some empirical studies have demonstrated, however, that even though DRG systems are generally associated with reduced lengths of stay, they are also associated with increased levels of hospital and doctor service intensity.<sup>2</sup> One implication of this finding is that observed reduced lengths of stay in hospitals subject to DRG payment systems are, potentially, reflective of increased levels of service intensity rather than undertreatment. In addition, competitive pressures and liability concerns should also serve to mitigate incentives to reduce costs at the expense of patient well being.

While specific evidence on Virginia's Medicaid program is not available, research on quality of care has been conducted nationally and those results can be extended to other prospective payment systems with a high degree of confidence. A study sponsored by the Health Care Financing Administration (HCFA) examined the effects of Medicare's prospective payment system (PPS) on the quality of hospital care and found that, overall, PPS had no negative effect on

patient outcomes and did not alter an already existing trend toward improved process of care. The only negative post-PPS change was an increase in the number of patients discharged in unstable condition. However, the impact on mortality of discharge in unstable condition did not outweigh other quality improvements, because overall mortality fell.<sup>3</sup>

**Dumping.** Another common disadvantage of prospective payment systems is that they create an incentive for hospitals to "dump" --- either refuse to treat or transfer --- patients with relatively high costs of care. Because hospitals are reimbursed according to the average cost for each diagnosis related group, they have an incentive to avoid treating patients whose cost of care significantly exceeds the average. There are two reasons to believe that the proposed regulation is unlikely to produce such adverse effects. First, it is very unlikely that a hospital would be able to accurately identify patients in advance who would have a high cost of treatment relative to their DRG category, even if the hospital had a policy that encouraged such identification. The second reason that the proposed regulation is unlikely to generate dumping is that it provides a mechanism that allows hospitals to receive additional compensation in the case of "outliers." Allowing hospitals to recoup the additional costs imposed by outliers weakens the incentive for hospitals to dump these patients.

Research conducted on Medicare's prospective payment system examined whether the change in financial incentives resulted in fewer sick patients being admitted to the hospital. The study found that hospitalized patients were more ill on average than they used to be, leading the authors to hypothesize that better paramedical services may keep more ill people alive to be hospitalized, and financial incentives to increase admission of patients who are not as ill may be less important than are activities of professional review organizations, increased external review of appropriateness of hospitalizations, or shifts from inpatient to outpatient settings for treatment.<sup>4</sup>

**Direct and Indirect Medical Education Costs.** Another provision of the proposed regulation that is likely to have an economic consequence is the payment of direct and indirect medical education costs on a quarterly basis. Under the prior system, payments for medical education costs were combined with normal per diem payments. Aggregating these payments and disbursing them on a quarterly basis will slightly reduce hospital revenue (put simply, a dollar today is worth more than a dollar three months from now because a dollar today can earn interest over those three months). A representative of the Virginia Hospital and Healthcare Association (VHHA), contacted by DPB to obtain input from the regulated community, agreed that the quarterly payment

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<sup>1</sup> See Judy Feder, Jack Hadley, and Stephen Zuckerman, "How Did Medicare's Prospective Payment System Affect Hospitals?," *New England Journal of Medicine*, vol. 317 (October 1 1987) pp. 867-73; or Stuart Guterman and Allen Dobson, "Impact of the Medicare Prospective Payment System for Hospitals," *Health Care Financing Review*, vol. 7 (Spring 1987) pp. 97-114; for examples of empirical studies that demonstrate this point.

<sup>2</sup> See Richard J. Willke, William S. Custler, James S. Moser, and Robert A. Musacchio, *Collaborative Production and Resource Allocation: The Consequences of Prospective Payment for Hospital Care*, Quarterly Review of Economics and Business, vol. 31, no. 1 (Spring 1991) pp. 28-47.

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<sup>3</sup> The complete results of this study are documented in a series of articles by Katherine L. Kahn, Lisa V. Rubenstein, David Draper, Jacqueline Kosecoff, William H. Rogers, Emmett B. Keeler, and Robert H. Brook in the October 17, 1990, issue of JAMA, Vol. 264, No. 15, pp. 1956-1994.

<sup>4</sup> See Emmett B. Keeler, Katherine L. Kahn, Marjorie J. Sherwood, Lisa V. Rubenstein, Ellen J. Reinisch, Jacqueline Kosecoff, and Robert H. Brook, "Changes in Sickness at Admission Following the Introduction of the Prospective Payment System," *The Journal of the American Medical Association*, vol. 264 (October 17, 1990) pp. 1962-69.

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# Proposed Regulations

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of medical education costs would slightly reduce hospital revenue. Overall, however, he felt that due to the enhanced efficiency and distributional equity provided by a DRG system, the net financial effect of the proposed regulation would likely be positive.<sup>5</sup>

**Prior Authorization.** Provisions regarding prior authorization are amended to delete requirements regarding length of stay assignment, admissions prior to surgical date, and weekend admissions for non-psychiatric admissions. These requirements are unnecessary under the DRG system utilization review process, which requires prior authorization of all admissions. Under the per diem payment system, hospitals were required to obtain authorization only after seven days. However, if an admission was determined to be medically unnecessary, the hospital received no reimbursement.

Requiring authorization prior to admission reduces some of the risk faced by hospitals but also may affect access to inpatient hospital care. Given that the same criterion was used to determine the medical appropriateness of hospitalization under both payment systems (per diem and DRG), the change in utilization review will only have a negative impact on patients if hospitals were routinely admitting individuals whose hospitalization was later determined to be medically unnecessary. DMAS reports that, of the 51,879 admissions for medical/surgical reasons between October 1998 and September 1999, only 4.9% were denied. Since these cases become charity care, the proposed regulation may actually even increase access to inpatient care, as there is less risk associated with admissions for hospitals.

**Rebasing of DRG Rates.** When DMAS initiated the DRG payment methodology for hospital services effective July 1, 1996, the rates were calculated to be cost neutral with respect to the per diem payment system. The new DRG methodology was implemented in stages. In FY97, hospitals were paid 2/3 per diem, 1/3 DRG. In FY98, the reimbursement shifted to 1/3 per diem and 2/3 DRG. During the phase-in period, DMAS continued to process claims exclusively according to the per diem methodology and conducted end of the year cost settlements where the DRG rates were retroactively applied.

During the transition period (FY97- FY98) payments exceeded what would have been made solely under the per diem system. According to DMAS, the additional expenditure appears to be the result of two things. First declining length of stay caused payments under the per diem interim rates to fall, while declining lengths of stay do not reduce DRG payments. The 12.6% reduction in average LOS per case between 1993 to 1997 may have been due to a combination of previous policies initiated by the General Assembly (e.g., case management measures) and efficiency improvements resulting from implementation of the DRG system.

Secondly, the DRG "case-mix" index increased after the implementation of DRGs. The case mix index measures the average complexity of cases under given DRG case codes.

The initial DRG rates were set using 1993 data. Data indicates that between 1993 and 1997, the case mix index rose by 8.3%. According to DMAS, this increase does not necessarily mean that patients are actually sicker. When a DRG system is first implemented, it is expected that measured case-mix (as opposed to real case-mix) will increase as hospitals report diagnosis and procedure codes more consistently and thoroughly.

The proposed regulation sets the methodology for the DRG rates to be periodically "rebased" (updating the base year on which the DRG rates are calculated on) to reflect current costs. It is expected that this rebasing will neutralize the effects of changes in the length of stay and case-mix index. In the short term, the move to a DRG payment system may increase inpatient hospital expenditures. However, in the long term, if experience with the federal Medicare program holds for Virginia, we would expect to find that the transition to a prospective payment system would have a moderating influence on Medicaid hospital expenditures.<sup>6</sup>

**Businesses and entities affected.** The proposed regulation will affect any of the 99 hospitals in Virginia that provide inpatient care to Medicaid patients.

**Localities particularly affected.** No localities are particularly affected by the proposed regulation.

**Projected impact on employment.** The proposed regulation is not anticipated to have a significant effect on employment.

**Effects on the use and value of private property.** The proposed regulation is not anticipated to have a significant effect on the use and value of private property.

**Summary of Analysis.** The proposed regulation amends existing regulations governing the method used by DMAS to reimburse hospitals for Medicaid patients to complete the transition to a Diagnosis Related Grouping (DRG) methodology. DPB anticipates that the primary economic impact of completing the transition to a DRG payment method will be to enhance economic efficiency in the provision of inpatient hospital services and enhance distributional equity among hospitals with respect to payment for Medicaid patient services. In the short term, the move to a DRG payment system may increase inpatient hospital expenditures. However, in the long term, if experience with the federal Medicare program holds for Virginia, empirical evidence suggests that the transition to a prospective payment system would have a moderating influence on Medicaid hospital expenditures without causing any significant reduction in the quality of care provided.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The agency concurs with the Economic Impact Analysis prepared by the Department of Planning and Budget regarding the regulations concerning Methods and Standards for Establishing Payment Rates-Inpatient Hospital Services: Diagnosis Related Groups (DRG).

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<sup>5</sup> This information was provided by Chris Bailey, VHHA Executive Vice President, in a telephone interview with DPB staff.

<sup>6</sup> See Gail R. Wilensky, "Medicare at 25: Better Value and Better Care," *The Journal of the American Medical Association*, vol. 264 (October 17, 1990) pp. 1996-7.

Summary:

The proposed regulations amend the existing inpatient hospital payment methodology regulations to remove transition period rules and fully implement the new Diagnosis Related Grouping (DRG) methodology. These amendments fulfill a directive by the 1996 General Assembly to implement a DRG methodology (Chapter 912, Item 322 J), and the settlement terms of a case brought under the federal Boren Amendment which required DMAS and the then Virginia Hospital Association to jointly develop a replacement reimbursement method.

CHAPTER 70.  
METHODS AND STANDARDS FOR ESTABLISHING  
PAYMENT RATES; INPATIENT HOSPITAL CARE.

PART V.  
INPATIENT HOSPITAL PAYMENT SYSTEM.

Article 1.  
Application of Payment Methodologies.

**12 VAC 30-70-200. Application of payment methodologies. (Repealed.)**

The state agency will pay for inpatient hospital services under the methodologies and during the time periods specified in this part. During state fiscal years (SFY) 1997 and 1998, the state agency's methodology for inpatient hospital services in general acute care hospitals will transition from a per diem methodology to a DRG-based methodology. Article 2 (12 VAC 30-70-210) describes the special rules that apply during the transition period. Article 3 (12 VAC 30-70-220 et seq.) describes the DRG methodology that will apply (at a specified transition percentage) during the transition period and that will remain after the transition is over. Article 4 (12 VAC 30-70-400 et seq.) describes the revised per diem methodology that will apply in part during the transition, but that will cease to apply after the transition is over.

For inpatient hospital services in general acute care hospitals and rehabilitation hospitals occurring before July 1, 1996, reimbursement shall be based on the methodology described in Supplement 3 (12 VAC 30-70-10 through 12 VAC 30-70-130), which language, until July 1, 1996, was Attachment 4.19-A of the State Plan for Medical Assistance Services. The provisions contained in Supplement 3 (12 VAC 30-70-10 through 12 VAC 30-70-130) shall not be effective after June 30, 1996, except as otherwise provided in this part.

For inpatient hospital services that are psychiatric or rehabilitation services and that are provided in general acute care hospitals, distinct part units of general acute care hospitals, freestanding psychiatric facilities licensed as hospitals, or rehabilitation hospitals on and after July 1, 1996, reimbursement shall be based on a methodology described in Articles 2, 3 and 4 of this part. This methodology implements a transition from revised per diem rates taken from the previous methodology (12 VAC 30-70-10 through 12 VAC 30-70-130) to different per diem rates that will be used in the context of the DRG methodology. These services shall not be reimbursed by means of DRG per case rates. For freestanding psychiatric facilities licensed as hospitals there

shall be no transition period, but the new per diem rates are to be implemented effective July 1, 1996. Also effective for those services rendered on or after July 1, 1996, the professional component for the care rendered in such freestanding psychiatric facilities licensed as hospitals may be billed separately by the attending professional who is enrolled in Medicaid. Inpatient hospital services that are provided in long stay hospitals and state-owned rehabilitation hospitals shall be subject to the provisions of 12 VAC 30-70-10 through 12 VAC 30-70-130, which until July 1, 1996, was Attachment 4.19-A of the State Plan for Medical Assistance Services.

Transplant services shall not be subject to the provisions of this part. They shall continue to be subject to 12 VAC 30-50-100 through 12 VAC 30-50-310 and 12 VAC 30-50-540.

Article 2.  
Transition Period.

**12 VAC 30-70-210. Transition period reimbursement rules. (Repealed.)**

A. Effective July 1, 1996, the state agency's reimbursement methodology for inpatient hospital services shall begin a transition from a prospective per diem to a prospective diagnosis related groupings (DRG) methodology. During the transition period, reimbursement of operating costs shall be a blend of a prospective DRG methodology (described in Article 3 of this part) and a revised prospective per diem methodology (described in Article 4 of this part). The transition period shall be SFY1997 and 1998, after which a DRG methodology alone shall be used.

B. Tentative payment during the transition period. During the transition period claims will be tentatively paid on the basis of the revised per diem methodology only. Payment of claims based on DRG rates shall begin July 1, 1998.

C. Final operating reimbursement during the transition period. During the transition period settlement of each hospital fiscal year will be carried out as provided in 12 VAC 30-70-460. Each hospital's final reimbursement for services that accrue to each state fiscal year of the transition shall be based on a blend of the prospective DRG methodology and the revised per diem methodology. For services to patients admitted and discharged in SFY1997 the blend shall be 1/3 DRG and 2/3 revised per diem. For services to patients admitted after June 30, 1996, and discharged during SFY1998 the blend shall be 2/3 DRG and 1/3 revised per diem. Settlements shall be completed according to hospital fiscal years, but after June 30, 1996, changes in rates and in the percentage of reimbursement that is based on DRGs vs. per diem rates, shall be according to state fiscal year. Services in freestanding psychiatric facilities licensed as hospitals shall not be subject to the transition period phase-in of new rates, or to settlement at year end; the new system rates for these providers shall be fully effective on July 1, 1996. In hospital fiscal years that straddle the implementation date (years starting before and ending after July 1, 1996) operating costs must be settled partly under the old and partly under the new methodology:

1. Days related to discharges occurring before July 1, 1996, shall be settled under the previous reimbursement

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methodology (see 12 VAC 30-70-10 through 12 VAC 30-70-130).

2. ~~Stays with admission date before July 1, 1996, and discharge date after June 30, 1996, shall be settled in two parts, with days before July 1, 1996, settled on the basis of the previous reimbursement methodology (see 12 VAC 30-70-10 through 12 VAC 30-70-130), and days after June 30, 1996, settled at 100% of the hospital's revised per diem rate as described in Article 4 (12 VAC 30-70-400 et seq.) of this part. The DRG reimbursement methodology shall not be used in the settlement of any days related to a stay with an admission date before July 1, 1996.~~

3. ~~Stays with admission dates on and after July 1, 1996, shall be settled under the transition methodology. All cases admitted from July 1, 1996, onward shall be settled based on the rates and transition rules in effect in the state fiscal year in which the discharge falls. The only exception shall be claims for rehabilitation cases with length of stay sufficient that one or more interim claims are submitted. Such claims for rehabilitation cases shall be settled based on rates and rules in effect at the time of the end date ("through" date) of the claim, whether or not it is the final or discharge claim.~~

D. ~~Capital cost reimbursement. During the transition period capital cost shall be reimbursed as a pass-through as described in 12 VAC 30-70-10 through 12 VAC 30-70-130, except that paid days and charges used to determine Medicaid allowable cost in a fiscal period for purposes of capital cost reimbursement shall be the same as those accrued to the fiscal period for operating cost reimbursement. Effective July 1, 1998, capital cost shall be reimbursed as described in Article 4 (12 VAC 30-70-400 et seq.) of this part. Until capital costs are fully included in prospective rates the provisions of 12 VAC 30-70-70 regarding recapture of depreciation shall remain in effect. Reimbursement of capital cost for freestanding psychiatric facilities licensed as hospitals shall be included in their per diem rates as provided in Article 4 (12 VAC 30-70-400 et seq.) of this part, and shall not be treated as a pass-through during the transition period or afterward.~~

E. ~~Disproportionate Share Hospital (DSH) payments during the transition. Effective July 1, 1996, DSH payments shall be fully prospective amounts determined in advance of the state fiscal year to which they apply, and shall not be subject to settlement or revision based on changes in utilization during the year to which they apply. Payments prospectively determined for each state fiscal year shall be considered payment for that year, and not for the year from which data used in the calculation was taken. Payment of DSH amounts determined under this methodology shall be made on a quarterly basis.~~

~~For patient days occurring before July 1, 1996, DSH reimbursement shall be determined under the previous methodology and settled accordingly (12 VAC 30-70-10 through 12 VAC 30-70-130). Effective for days occurring July 1, 1996, and after, DSH reimbursement made through prospective lump sum amounts as described in this section shall be final and not subject to settlement except when~~

~~necessary due to the limit in subdivision 2 c of this subsection. After July 1, 1998, DSH reimbursement shall be as provided in Article 4 (12 VAC 30-70-400 et seq.) of this part.~~

1. ~~Definition. A disproportionate share hospital shall be a hospital that meets the following criteria:~~

a. ~~A Medicaid utilization rate in excess of 15%, or a low-income patient utilization rate exceeding 25% (as defined in the Omnibus Budget Reconciliation Act of 1987 and as amended by the Medicare Catastrophic Coverage Act of 1988); and~~

b. ~~At least two obstetricians with staff privileges at the hospital who have agreed to provide obstetric services to individuals entitled to such services under a state Medicaid plan. In the case of a hospital located in a rural area (that is, an area outside of a Metropolitan Statistical Area as defined by the Executive Office of Management and Budget), the term "obstetrician" includes any physician with staff privileges at the hospital to perform nonemergency obstetric procedures.~~

c. ~~Subdivision 1 b of this subsection does not apply to a hospital:~~

(1) ~~At which the inpatients are predominantly individuals under 18 years of age; or~~

(2) ~~Which does not offer nonemergency obstetric services as of December 21, 1987.~~

2. ~~Payment adjustment.~~

a. ~~A disproportionate share hospital's additional payment shall be based on the type of hospital and on the hospital's Medicaid utilization percentage. There shall be two types of hospitals: (i) Type One, consisting of hospitals that were state-owned teaching hospitals on January 1, 1996, and (ii) Type Two, consisting of all other hospitals. The Medicaid utilization percentage is equal to the hospital's total Medicaid inpatient days divided by the hospital's total inpatient days. Each eligible hospital with a Medicaid utilization percentage above 15% shall receive a disproportionate share payment.~~

b. ~~For Type One hospitals, the disproportionate share payment shall be equal to the sum of (i) the hospital's Medicaid utilization percentage in excess of 15%, times 11, times the hospital's Medicaid operating reimbursement, times 1.3186 in SFY1997, and 1.3782 in SFY1998 and (ii) the hospital's Medicaid utilization percentage in excess of 30%, times 11, times the hospital's Medicaid operating reimbursement, times 1.3186 in SFY1997, and 1.3782 in SFY1998.~~

c. ~~For Type Two hospitals, the disproportionate share payment shall be equal to the sum of (i) the hospital's Medicaid utilization percentage in excess of 15%, times the hospital's Medicaid operating reimbursement, times 1.0964 in SFY1997, and 1.1476 in SFY1998 and (ii) the hospital's Medicaid utilization percentage in excess of 30%, times the hospital's Medicaid operating~~



reimbursement, times 1.0964 in SFY1997, and 1.1476 in SFY1998.

d. For hospitals which do not qualify under the 15% inpatient Medicaid utilization rate, but do qualify under the low-income patient utilization rate, exceeding 25% in subdivision 1 a of this subsection, the disproportionate share payment amount for Type One hospitals shall be equal to the product of the hospital's low-income utilization in excess of 25%, times 11, times the hospital's Medicaid operating reimbursement. For Type Two hospitals, the disproportionate share payment adjustment shall be equal to the product of the hospital's low-income utilization in excess of 25%, times the hospital's Medicaid operating reimbursement.

e. OBRA 1993 § 13621 Disproportionate Share Adjustment Limit.

(1) Limit on amount of payment. No payments made under subdivision E 2 of this section shall exceed any applicable limitations upon such payments established by federal law or regulations and OBRA 1993 § 13621. A payment adjustment during a fiscal year shall not exceed the sum of:

(a) Medicaid allowable costs incurred during the year less Medicaid payments, net of disproportionate share payment adjustments, for services provided during the year, and

(b) Costs incurred in serving persons who have no insurance less payments received from those patients or from a third party on behalf of those patients. Payments made by any unit of the Commonwealth or local government to a hospital for services provided to indigent patients shall not be considered to be a source of third party payment.

(2) During state fiscal year 1995, the limit in this section shall apply only to hospitals which are owned or operated by a state or an instrumentality or unit of government within the state. During this year such a hospital, if it is one whose Medicaid inpatient utilization rate is at least one standard deviation above the mean inpatient utilization rate in the state or if it has the largest number of Medicaid days of any such hospital in the Commonwealth for the previous state fiscal year, shall be allowed a limit that is 200% of the limit described above which the Governor certifies to the Secretary of the U.S. Department of Health and Human Services that such amount (the amount by which the hospital's payment exceeds the limit described above) shall be used for health services during the year.

3. Source data for calculation of eligibility and payment adjustment. Each hospital's eligibility for DSH payment, and the amount of the DSH payment in state fiscal year 1997, shall be based upon Medicaid utilization in hospital fiscal years ending in calendar year 1994, and on projected operating reimbursement in state fiscal year 1997, estimated on the basis of 1994 utilization. After state fiscal year 1997, each new year's DSH payments

shall be calculated using the most recent reliable utilization and projection data available. For the purpose of calculating DSH payments, each hospital with a Medicaid recognized Neonatal Intensive Care Unit (NICU) (a unit having had a unique NICU operating cost limit under subdivision 6 of 12 VAC 30-70-60), shall have its DSH payment calculated separately for the NICU and for the remainder of the hospital as if the two were separate and distinct providers.

For freestanding psychiatric facilities licensed as hospitals, DSH payment shall be based on the most recent filed Medicare cost report available before the beginning of the state fiscal year for which a payment is being calculated.

F. Direct medical education (DMedEd). During the transition period (July 1996 through June 1998), DMedEd costs shall be reimbursed in the same way as under the previous methodology (12 VAC 30-70-10 through 12 VAC 30-70-130). This methodology does not and shall not include the DMedEd reimbursement limitation enacted for the Medicare program effective July 1, 1985. Reimbursement of DMedEd shall include an amount to reflect DMedEd associated with services to Medicaid patients provided in hospitals but reimbursed by capitated managed care providers. This amount shall be estimated based on the number of days of care provided by the hospital that are reimbursed by capitated managed care providers. Direct medical education shall not be a reimbursable cost in freestanding psychiatric facilities licensed as hospitals. DMedEd will be paid in estimated quarterly lump sum amounts and settled at the hospital's fiscal year end settlement.

G. Final payment adjustment fund (PAF) payment for certain hospitals. Hospitals receiving payments for Medicaid patients from managed care providers enrolled in Modallion II shall be paid a separate lump sum amount, based on the continuation of capitation rates during July 1, 1996, through December 31, 1996, that do not reflect adjustments made to hospital per diem and DRG payments on July 1, 1996. Each of these hospitals shall be paid a final PAF amount. It shall be equal to a hospital specific PAF per diem times the number of Modallion II days that occur in the hospital in July 1, 1996, through December 31, 1996. The PAF per diem shall be based on a revision of the PAF calculation that was carried out for the SFY1996 PAF payment that was made in August 1995. The revision shall be the hospital ceiling, DSH per diem, and cost report data used in the calculation from the cost reports that would be used under the PAF methodology if a SFY1997 PAF calculation were to be done. The "paid days" data used in this calculation shall be the same as that used in the SFY1996 calculation. Pending the calculation of the final PAF payment in the settlement of the relevant time period for the affected hospitals, an interim payment shall be made. The interim payment shall be equal to 1/2 the PAF payment made to the same hospitals for SFY1996.

H. Adjusting DRG rates for length of stay (LOS) reductions from 1995 Appropriations Act. If it is demonstrated that there are savings directly attributable to LOS reductions resulting from utilization initiatives directed by the 1995 Appropriations Act as agreed to and evaluated by the Medicaid Hospital

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Payment Policy Advisory Council, these savings, up to a maximum of \$16.9 million in SFY1997, shall be applied as a reduction to SFY1997 and 1998 DRG rates used for settlement purposes.

I. ~~Service limits during the transition period. The limit of coverage for adults of 21 days in a 60-day period for the same or similar diagnosis shall continue to apply in the processing of claims and in the per diem portion of settlement during the transition period. This limit shall not apply in the DRG portion of reimbursement, except for covered psychiatric cases. Psychiatric cases are cases with a principal diagnosis that is a mental disorder as specified in the ICD-9-CM. Not all mental disorders are covered. For coverage information, see 12 VAC 30-50-100 through 12 VAC 30-50-310.~~

~~Article 3.  
Diagnosis Related Groups (DRG) Reimbursement  
Methodology.~~

**12 VAC 30-70-220. General. (Repealed.)**

A. ~~Reimbursement of operating costs for cases which are subject to DRG rates shall be equal to the relative weight of the DRG in which the patient falls, times the hospital specific operating rate per case. Reimbursement of outliers, transfer cases, cases still subject to per diem reimbursement, capital costs, and medical education costs shall be as provided in this article.~~

B. ~~The All Patient Diagnosis Related Groups (AP-DRG) Grouper shall be used in the DRG reimbursement methodology. Effective July 1, 1996, and until notification of a change is given, Version 12 of this grouper shall be used. DMAS shall notify hospitals by means of a Medicaid memo when updating the system to later grouper versions.~~

**12 VAC 30-70-230. Calculation of DRG weights and hospital case mix indices. (Repealed.)**

A. ~~The relative weight measures the cost and, therefore, the reimbursement level of each DRG relative to all other DRGs. The hospital case mix index measures the hospital's average case mix complexity (costliness) relative to all other hospitals.~~

B. ~~The relative weight for each DRG was determined by calculating the average standardized cost for cases assigned to that DRG, divided by the average standardized cost for cases assigned to all DRGs. For the purpose of calculating relative weights, groupable cases (cases having coding data of sufficient quality to support DRG assignment) and transfer cases (groupable cases where the patient was transferred to another hospital) were used. Ungroupable cases and rehabilitation, psychiatric, and transplant cases were not used. DMAS' hospital computerized claims history file for discharges in hospital fiscal years ending in calendar year 1993 was used. All available data from all enrolled, cost-reporting general acute care hospitals were used, including data from state-owned teaching hospitals. Cost report data from hospital fiscal years ending in calendar year 1993 were also used.~~

C. ~~Before relative weights were calculated for each DRG, each hospital's total charges were disaggregated into operating charges and capital charges, based on the ratio of~~

~~operating and capital cost to total cost. Operating charges and capital charges were standardized for regional variation, and then both operating charges and capital charges were reduced to costs using ratios of costs to charges (RCCs) obtained from the Medicaid cost report database. Direct medical education costs were eliminated from the relative weight calculations since such costs will be addressed outside the DRG rates. These steps, detailed in subsection D of this section, were completed on a case-by-case basis using the data elements identified in the following table.~~

~~Data Elements for Relative Weight and Case Mix Index  
Calculations~~

<del>Data Elements</del>	<del>Source</del>
<del>Total charges for each groupable case</del>	<del>Claims Database</del>
<del>Ratio of operating costs to total costs for each hospital</del>	<del>Medicaid Cost Report Database</del>
<del>Ratio of capital costs to total costs for each hospital</del>	<del>Medicaid Cost Report Database</del>
<del>Ratio of direct medical education costs to total costs for each hospital</del>	<del>Medicaid Cost Report Database</del>
<del>Statewide average labor portion of operating costs</del>	<del>Virginia Health Services Cost Review Council</del>
<del>Medicare wage index for each hospital</del>	<del>Federal Register</del>
<del>Medicare Geographic Adj. Factor (GAF) for each hospital</del>	<del>Federal Register</del>
<del>RCC for each hospital</del>	<del>Medicaid Cost Report Database</del>

~~D. Steps in calculation of relative weights.~~

- ~~1. The total charges for each case were split into operating charges, capital charges, and direct medical education charges using hospital specific ratios obtained from the cost report database.~~
- ~~2. The operating charges obtained in Step 1 were standardized for regional variations in wages. This involved three substeps.
  - ~~a. The operating charges were multiplied by 59.77% yielding the labor portion of operating charges.~~
  - ~~b. The labor portion of operating charges was divided by the hospital specific Medicare wage index yielding the standardized labor portion of operating charges.~~
  - ~~c. The standardized labor portion of operating charges was added to the nonlabor portion of operating charges (40.23%) yielding standardized operating charges.~~~~
- ~~3. The standardized operating charges were multiplied by the hospital specific RCC yielding standardized operating costs.~~
- ~~4. The capital charges obtained in Step 1 were divided by the hospital specific Medicare geographic adjustment factor (GAF) yielding standardized capital charges.~~

5. The standardized capital charges were multiplied by the hospital specific cost-to-charge ratio yielding standardized capital costs.

Total number of ungroupable cases Claims Database  
 Total number of transfer cases Claims Database

These five steps were repeated for all groupable cases and transfer cases. Once this was done, the cases were sorted by DRG category resulting in the total cases and the total standardized cost of each DRG. Total cost divided by total cases yielded the average standardized cost of each DRG. The average standardized cost of each DRG was divided by the average standardized cost across all DRGs yielding the relative weight for each DRG. To address the unavailability of charge data related to adult hospital days beyond 21 days, an adjustment was estimated for certain DRGs and added to the weights as calculated above. This adjustment for adult days over 21 is necessary only until the first recalibration of weights becomes effective in July 1998 (see 12 VAC 30-70-380).

**B. Steps in calculation of standardized cost per case.**

The relative weights were then used to calculate a case-mix index for each hospital. The case-mix index for a hospital was determined by summing for all DRGs the product of the number of groupable cases and transfer cases in each DRG and the relative weight for each DRG. This sum was then divided by the total number of cases yielding the case-mix index. This process was repeated on a hospital-by-hospital basis.

1. The total charges for each case were split into operating charges, capital charges, and direct medical education charges using hospital specific ratios obtained from the cost report database.

2. The operating charges obtained in Step 1 were standardized for regional variations in wages. This involved three substeps.

a. The operating charges were multiplied by 59.77% yielding the labor portion of operating charges.

b. The labor portion of operating charges was divided by the hospital specific Medicare wage index yielding the standardized labor portion of operating charges.

c. The standardized labor portion of operating charges was added to the nonlabor portion of operating charges (40.23%) yielding standardized operating charges.

3. The standardized operating charges were multiplied by the hospital specific RCC yielding standardized operating costs.

4. The capital charges obtained in Step 1 were divided by the hospital specific Medicare geographic adjustment factor (GAF) yielding standardized capital charges.

5. The standardized capital charges were multiplied by the hospital specific cost-to-charge ratio yielding standardized capital costs.

6. The standardized operating costs obtained in Step 3 were divided by the hospital specific case-mix index yielding case-mix neutral standardized operating costs.

7. The standardized capital costs obtained in Step 5 were divided by the hospital specific case-mix index yielding case-mix neutral standardized capital costs.

**12 VAC 30-70-240. Calculation of standardized costs per case. (Repealed.)**

A. Standardized costs per case were calculated using all DRG cases (groupable, ungroupable, and transfer cases). Cases entirely subject to per diem rather than DRG reimbursement and cases from state owned teaching hospitals were not used. Using the data elements identified in the following table, the seven steps outlined in subsection B of this section were completed on a case-by-case basis.

**Data Elements for Standardized Costs Per Case Calculations**

Data Elements	Source
Total charges for each groupable case	Claims Database
Total charges for each ungroupable case	Claims Database
Total charges for each transfer case	Claims Database
Ratio of operating costs to total costs for each hospital	Medicaid Cost Report Database
Ratio of capital costs to total costs for each hospital	Medicaid Cost Report Database
Ratio of direct medical education costs to total costs for each hospital	Medicaid Cost Report Database
Statewide average labor portion of operating costs	Virginia Health Services Cost Review Council
Medicare wage index for each hospital	Federal Register
Medicare GAF for each hospital	Federal Register
RCC for each hospital	Medicaid Cost Report Database
Case-mix index for each hospital	Calculated
Total number of groupable cases	Claims Database

These seven steps were repeated for all DRG cases. Once this was done, the case-mix neutral standardized operating costs for all DRG cases were summed and an average was calculated. This yielded what is referred to as standardized operating costs per case. A similar average was computed for capital yielding standardized capital costs per case.

**12 VAC 30-70-250. Calculation of statewide operating rate per case for SFY1997. (Repealed.)**

The statewide operating rate per case that shall be used to calculate the DRG portion of operating reimbursement for cases admitted and discharged in state fiscal year 1997 is equal to the standardized operating cost per case, updated to the midpoint of SFY1997 and multiplied by an additional factor. The update shall be done by multiplying the standardized operating cost per case by the DRI-Virginia moving average value as compiled and published by DRI/McGraw-Hill under contract with DMAS. The additional factor is equal to 0.6247. This factor is the ratio of two numbers:

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~~1. The numerator of the factor is the aggregate amount of operating reimbursement for hospitals included in the data base used for the calculations described above that DMAS and the Virginia Hospital and Healthcare Association (VHHA) jointly determined would be made by Medicaid in state fiscal year 1997 if the rate methodology in effect on June 30, 1996, were to continue. This amount was further adjusted by agreement between DMAS and the VHHA to carry out specific policy agreements with respect to various elements of reimbursement.~~

~~2. The denominator of the factor is the estimated aggregate operating amount for the same hospitals identified in subdivision 1 of this section, calculated using the standardized operating cost per case and standardized operating cost per day as calculated in 12 VAC 30-70-230 and 12 VAC 30-70-320, and adjusted for inflation as in subdivision 1.~~

## **12 VAC 30-70-260. [Reserved] (Repealed.)**

## **12 VAC 30-70-270. Hospital specific operating rate per case. (Repealed.)**

~~Each hospital specific operating rate per case shall be the labor portion of the statewide operating rate per case multiplied by the Medicare wage index applicable to the hospital's geographic location plus the nonlabor portion of the statewide operating rate per case. The Medicare wage index shall be the one in effect for Medicare in the base period used in the calculation of the standardized costs per case (1993 for the calculation of 1997 rates).~~

## **12 VAC 30-70-280. [Reserved] (Repealed.)**

## **12 VAC 30-70-290. Outliers. (Repealed.)**

~~A. An outlier case shall be one whose estimated cost exceeds the applicable DRG payment plus the applicable fixed loss threshold.~~

~~B. Total payment for an outlier case shall be calculated according to the following methodology (an example of the application of this methodology is found in 12 VAC 30-70-500):~~

~~1. The operating cost for the case shall be estimated. Operating cost for the case shall be the charges for the case times the hospital's operating cost-to-charge ratio based on the hospital's cost report data in the base period used to establish the rates in effect in the period for which outlier payment is being calculated.~~

~~2. The hospital specific operating cost amount for the DRG shall be calculated. This shall be equal to the sum of the labor portion of the standardized operating cost per case times the Medicare wage index, and the nonlabor portion of the standardized operating cost per case, multiplied by the relative weight applicable to the case.~~

~~3. The hospital specific operating cost outlier threshold is calculated as follows:~~

~~a. An outlier fixed loss threshold times the statewide average labor portion of operating cost times the Medicare wage index for the hospital, plus~~

~~b. The nonlabor portion of the fixed loss threshold, plus~~

~~c. The DRG operating cost amount for the case (subdivision 2 of this subsection).~~

~~4. The case specific excess over the hospital specific operating outlier threshold is calculated. This shall be equal to the difference between the estimated operating cost for the case (subdivision 1 of this subsection) and the hospital specific operating cost outlier threshold (subdivision 3 of this subsection), multiplied by the cost adjustment factor for outliers.~~

~~5. The total payment for the case is calculated. This shall be equal to the sum of the DRG operating cost amount for the case (subdivision 2 of this subsection) and the case specific excess over the hospital specific operating threshold (subdivision 4 of this subsection), multiplied by the factor that is used to adjust the standardized operating cost per case in 12 VAC 30-70-250.~~

~~C. Data element definitions. Factors and variables used in the above calculation and not already defined are defined as follows:~~

~~1. The "outlier fixed loss threshold" is a fixed dollar amount in SFY1997, applicable to all hospitals, that shall be adjusted each year. It shall be calculated each year, based on the most recent available estimates so as to result in a total operating expenditure for outliers equal to 5.1% of total operating expenditures, including outliers. In SFY1997, this amount shall be \$15,483. If in any year revised estimates are unavailable the previous year's value shall be used updated for inflation using the same factor applied to hospital rates.~~

~~2. The "statewide average labor proportion of operating cost" is a fixed percentage, equal to .5977. This figure may be updated with revised data when rates are rebased/recalibrated.~~

~~3. The "adjustment factor for outliers" is a fixed factor, published by Medicare in the Federal Register, and equal to 0.80. This figure shall be updated based on changes to the Medicare factor, upon the next rebasing of the system described in this part.~~

~~4. The "Medicare wage index applicable to the hospital" is as published by the Health Care Financing Administration in the year used as the base period.~~

## **12 VAC 30-70-300. Transfers and readmissions. (Repealed.)**

~~A. Transfer cases shall be defined as (i) patients transferred from one general acute care hospital to another and (ii) patients discharged from one general acute care hospital and admitted to another for the same or similar diagnosis (similar diagnoses shall be defined as ones with the first three digits the same) within five days of that discharge.~~

~~B. Readmissions shall be defined as cases readmitted to the same hospital for the same or similar diagnosis within five days of discharge. Such cases shall be considered a continuation of the same stay and shall not be treated as a~~

new admission or case (a separate DRG payment shall not be made).

**C. Exceptions.**

1. Cases falling into DRGs 456, 639, or 640 shall not be treated as transfer cases, but the full DRG rate shall be paid to the transferring hospital. These DRGs are designed to be populated entirely with transfer patients.

2. Cases transferred to or from a distinct part psychiatric or rehabilitation units of a general acute care hospital shall not be treated as transfer cases.

**D. Transfer methodology.** When two general acute care hospitals provide inpatient services to a patient defined as a transfer case:

1. The transferring hospital shall receive the lesser of (i) a per diem payment equal to the DRG payment for the transferring hospital, divided by the arithmetic mean length of stay for the DRG in all hospitals for which data are available, times the patient's length of stay at the transferring hospital or (ii) the full DRG payment for the transferring hospital. The transferring hospital shall be eligible for outlier payments if the applicable criteria are met.

2. The receiving hospital, if it is the final discharging hospital, shall receive DRG payment. A receiving hospital that later transfers the patient to another hospital, including the first transferring hospital, shall be reimbursed as a transferring hospital. Only the final discharging hospital shall receive DRG payment. The receiving hospital shall be eligible for outlier payments if the applicable criteria are met.

**12 VAC 30-70-310. Per diem reimbursement in the DRG methodology. (Repealed.)**

Cases that will continue to be reimbursed on a per diem basis are (i) covered psychiatric cases in general acute care hospitals and psychiatric units of general acute care hospitals, (ii) covered psychiatric cases in freestanding psychiatric facilities licensed as hospitals, and (iii) rehabilitation cases in both general acute care and rehabilitation hospitals. Psychiatric cases are cases with a principal diagnosis that is a mental disorder as specified in the ICD-9-CM. Not all mental disorders are covered. For coverage information, see the Amount, Duration, and Scope of Services, Supplement 1 to Attachment 3-1A&B (12 VAC 30-50-95 through 12 VAC 30-50-310).

**12 VAC 30-70-320. Calculation of standardized costs per day. (Repealed.)**

A. Standardized operating costs per day and standardized capital costs per day were calculated separately, but using the same calculation methodology, for psychiatric cases in general acute care hospitals, psychiatric acute care in freestanding psychiatric facilities licensed as hospitals, and rehabilitation cases (per diem cases). Using the data elements identified in the following table, the first five steps outlined below were completed on a case-by-case basis.

**Data Elements for Calculating Total Costs for Per-Diem Cases**

Data Elements	Source
Total charges for each acute care psychiatric case	Claims Database
Total charges for each freestanding acute care psychiatric case	Claims Database
Total charges for each rehabilitation case	Claims Database
Ratio of operating costs to total costs for each hospital	Medicaid Cost Report Database
Ratio of capital costs to total costs for each hospital	Medicaid Cost Report Database
Ratio of direct medical education costs to total costs for each hospital	Medicaid Cost Report Database
Statewide average labor portion of operating costs	Virginia Health Services Cost Review Council
Medicare wage index for each hospital	Federal Register
Medicare GAF for each hospital	Federal Register
RCC for psychiatric distinct part unit for each hospital	Medicaid Cost Report Database
RCC for each hospital	Medicaid Cost Report Database
Number for acute care psychiatric days at each hospital	Claims Database
Number of freestanding acute care psychiatric days at freestanding psychiatric facilities licensed as hospitals	Claims Database
Number of rehabilitation days at each acute care hospital and freestanding rehabilitation hospital	Claims Database

**B. Steps in calculation of standardized cost per day.**

1. The total charges for the case were split into operating charges, capital charges, and direct medical education charges using hospital specific ratios obtained from the cost report database.

2. The operating charges obtained in Step 1 were standardized for regional variations in wages. This involved three substeps.

a. The operating charges were multiplied by 59.77% yielding the labor portion of operating charges.

b. The labor portion of operating charges was divided by the hospital specific Medicare wage index yielding the standardized labor portion of operating charges.

c. The standardized labor portion of operating charges was added to the nonlabor portion of operating charges (40.23%) yielding standardized operating charges.

3. The standardized operating charges were multiplied by the hospital specific RCCs yielding standardized operating costs.

4. The capital charges obtained in Step 1 were divided by the hospital specific Medicare geographic adjustment factor (GAF) yielding standardized capital charges.

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5. The standardized capital charges were multiplied by the hospital-specific RCCs yielding standardized capital costs.

These five steps were repeated for all per diem cases. The standardized operating costs for per diem cases were then summed and divided by the total number of per diem days yielding the standardized operating costs per day for per diem cases. Similarly, the standardized capital costs for per diem cases were summed and divided by the total number of per diem days yielding the standardized capital costs per day for per diem cases. These two calculations were done separately for psychiatric cases in freestanding psychiatric facilities licensed as hospitals, for psychiatric cases in general acute care hospitals (including distinct part units) and for rehabilitation cases.

~~G. Where general acute care hospitals had psychiatric distinct part units (DPUs) reported on their cost reports, separate RCCs were calculated for the DPUs and used in lieu of the hospital-specific RCCs. Since DPU-specific RCCs are generally higher than hospital-specific RCCs, this had the effect of increasing the estimated costs of acute care psychiatric cases. Overall hospital RCCs were used for freestanding acute care psychiatric cases and rehabilitation cases, as well as for psychiatric cases at general acute care hospitals without a psychiatric DPU.~~

## **12 VAC 30-70-330. Calculation of statewide operating rate per day. (Repealed.)**

~~The statewide hospital operating rate per day that shall be used to calculate the DRG system portion of operating reimbursement for psychiatric and rehabilitation cases admitted and discharged in SFY1997 is equal to the standardized operating cost per day updated to the midpoint of SFY1997 and multiplied by an additional factor. The update shall be done by multiplying the standardized operating cost per day by the DRI-Virginia moving average value as compiled and published by DRI/McGraw-Hill under contract with DMAS. The additional factor for per diem cases in general acute care hospitals and rehabilitation hospitals is equal to 0.6290, and 0.6690 for freestanding psychiatric facilities licensed as hospitals. These factors were calculated so that per diem cases will be reimbursed the same percentage of cost as DRG cases based on the data used for rate calculation.~~

~~Per diem rates used for acute care hospitals during the transition shall be operating rates only and capital shall be reimbursed on a pass-through basis. Per diem rates used for freestanding psychiatric facilities licensed as hospitals shall be inclusive of capital. The capital-inclusive statewide per diem rate for freestanding psychiatric facilities licensed as hospitals shall be the standardized cost per day calculated for such hospitals adjusted for the wage index and the geographic adjustment factor (GAF) and multiplied by the factor above.~~

## **12 VAC 30-70-340. Calculation of hospital specific operating rate per day. (Repealed.)**

~~Each hospital-specific operating rate per day shall be the labor portion of the statewide operating rate per day multiplied by the Medicare wage index applicable to the hospital's~~

~~geographic location plus the nonlabor portion of the statewide operating rate per day. The Medicare wage index shall be the one in effect for Medicare in the base period used in the calculation of the standardized costs per case (1993 for the calculation of 1997 rates).~~

~~The hospital-specific rate per day for freestanding psychiatric facilities licensed as hospitals shall be inclusive of capital cost, and shall have a capital portion which shall be adjusted by the GAF and added to the labor and nonlabor operating elements calculated as described above. The geographic adjustment factor shall be taken from the same time period as the Medicare wage index.~~

## **12 VAC 30-70-350. [Reserved] (Repealed.)**

## **12 VAC 30-70-360. Indirect medical education (IME). (Repealed.)**

~~Hospitals with programs in graduate medical education shall receive a rate adjustment for associated indirect costs. This reimbursement for IME costs recognizes the increased use of ancillary services associated with the educational process and the higher case mix intensity of teaching hospitals. The IME adjustment shall employ the equation shown below.~~

$$\text{IME percentage} = 1.89X((1+r)^{0.405} - 1)$$

~~In this equation, r is the ratio of interns and residents to staffed beds. The IME adjustment shall be the IME percentage, times 0.4043, times operating reimbursement for DRG cases and per diem cases.~~

## **12 VAC 30-70-370. Updating rates for inflation. (Repealed.)**

~~DRG system rates in SFY1997 shall be as provided in 12 VAC 30-70-270 and 12 VAC 30-70-340. Rates for state fiscal years after SFY1997 shall be updated for inflation as follows:~~

~~1. The statewide operating rate per case as calculated in 12 VAC 30-70-250 and the statewide rates per day as calculated in 12 VAC 30-70-310 shall be converted to a price level at the midpoint of state fiscal year 1993, using the same inflation values as were used to establish the amounts used in subdivision 1 of 12 VAC 30-70-250. The resulting rates are the base period operating rates per case and the base period rates per day.~~

~~2. Rates shall be updated each July first by increasing the 1993 base period rates to the midpoint of the upcoming state fiscal year using the DRI-Virginia moving average value as compiled and published by DRI/McGraw-Hill under contract with DMAS. The most current table available prior to the effective date of the new rates shall be used. By means of this method, each year, corrections made by DRI/McGraw-Hill in the moving averages that were used to update rates for previous years shall automatically be incorporated as adjustments to the update calculation used for the upcoming year. For each new year's rate calculation that uses a base year prior to 1997, the inflation values shall be the DRI/McGraw-Hill values plus two percentage points for each year through SFY1997.~~

**12 VAC 30-70-380. Recalibration/rebasing policy. (Repealed.)**

~~DMAS recognizes that claims experience during the transition period or modifications in federal policies may require adjustment to the DRG system policies provided in this part. The state agency shall recalibrate (evaluate and adjust the weights assigned to cases) and rebase (review and update as appropriate the cost basis on which the rate is developed) the DRG system at least every other year. The first such recalibration and rebasing shall be done prior to full implementation of the DRG methodology in SFY1999. Recalibration and rebasing shall be done in consultation with the Medicaid Hospital Payment Policy Advisory Council noted in 12 VAC 30-70-490.~~

**12 VAC 30-70-390. [Reserved] (Repealed.)**

~~Article 4.  
Revised Per Diem Methodology.~~

**12 VAC 30-70-201. Application of payment methodologies.**

A. The state agency will pay for inpatient hospital services in general acute care hospitals, rehabilitation hospitals, and freestanding psychiatric facilities licensed as hospitals under a prospective payment methodology. This methodology uses both per case and per diem payment methods. Article 2 (12 VAC 30-70-221 et seq.) describes the prospective payment methodology, including both the per case and the per diem methods.

B. Article 3 (12 VAC 30-70-400 et seq.) describes a per diem methodology that applied to a portion of payment to general acute care hospitals during state fiscal years 1997 and 1998, and that will continue to apply to patient stays with admission dates prior to July 1, 1996. Inpatient hospital services that are provided in long stay hospitals and state-owned rehabilitation hospitals shall be subject to the provisions of Supplement 3 (12 VAC 30-70-10 through 12 VAC 30-70-130). Until claims can be processed and paid by the DRG payment methodology, interim payments to hospitals will continue to be made by the per diem payment methodology described in Article 3 (12 VAC 30-70-400 et seq.) and cost settled at the DRG amount when the hospitals' cost reports are settled at year end. The limit of coverage for adults of 21 days in a 60-day period for the same or similar diagnosis shall continue to apply in the processing of claims (interim payments).

C. Transplant services shall not be subject to the provisions of this part. These services shall continue to be subject to 12 VAC 30-50-100 through 12 VAC 30-50-310 and 12 VAC 30-50-540.

**12 VAC 30-70-205. Prior notice of onset of claims processing system.**

DMAS shall provide prior notice to the onset of the DRG claims process system by direct notices to all affected hospitals.

Article 2.

Prospective (DRG-Based) Payment Methodology.

**12 VAC 30-70-211. (Reserved.)**

**12 VAC 30-70-221. General.**

A. Effective July 1, 1999, the prospective (DRG-based) payment system described in this article shall apply to inpatient hospital services provided in enrolled general acute care hospitals, rehabilitation hospitals, and freestanding psychiatric facilities licensed as hospitals, unless otherwise noted.

B. The following methodologies shall apply under the prospective payment system:

1. As stipulated in 12 VAC 30-70-231, operating payments for DRG cases that are not transfer cases shall be determined on the basis of a hospital specific operating rate per case times relative weight of the DRG to which the case is assigned.

2. As stipulated in 12 VAC 30-70-241, operating payments for per diem cases shall be determined on the basis of a hospital specific operating rate per day times the covered days for the case with the exception of payments for per diem cases in freestanding psychiatric facilities. Payments for per diem cases in freestanding psychiatric facilities licensed as hospitals shall be determined on the basis of a hospital specific rate per day that represents an all-inclusive payment for operating and capital costs.

3. As stipulated in 12 VAC 30-70-251, operating payments for transfer cases shall be determined as follows: (i) the transferring hospital shall receive an operating per diem payment, not to exceed the DRG operating payment that would have otherwise been made and (ii) the final discharging hospital shall receive the full DRG operating payment.

4. As stipulated in 12 VAC 30-70-261, additional operating payments shall be made for outlier cases. These additional payments shall be added to the operating payments determined in subdivisions 1 and 3 of this subsection.

5. As stipulated in 12 VAC 30-70-271, payments for capital costs shall be made on an allowable cost basis.

6. As stipulated in 12 VAC 30-70-281, payments for direct medical education costs shall be made on an allowable cost basis.

7. As stipulated in 12 VAC 30-70-291, payments for indirect medical education costs shall be made quarterly on a prospective basis.

8. As stipulated in 12 VAC 30-70-301, payments to hospitals that qualify as disproportionate share hospitals shall be made quarterly on a prospective basis.

C. The terms used in this article shall be defined as provided in this subsection:

"Base year" means the state fiscal year for which data is used to establish the DRG relative weights, the hospital case-

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*mix indices, the base year standardized operating costs per case, and the base year standardized operating costs per day. The base year will change when the DRG payment system is rebased and recalibrated. In subsequent rebasing, the Commonwealth shall notify affected providers of the base year to be used in this calculation. For State Fiscal Year 1999, the base year shall be State Fiscal Year 1997. In subsequent rebasings, the Commonwealth shall notify affected providers of the base year to be used in this calculation.*

*"Base year standardized costs per case" reflects the statewide average hospital costs per discharge for DRG cases in the base year. The standardization process removes the effects of case-mix and regional variations in wages and geography from the claims data and places all hospitals on a comparable basis.*

*"Base year standardized costs per day" reflects the statewide average hospital costs per day for per diem cases in the base year. The standardization process removes the effects of regional variations in wages and geography from the claims data and places all hospitals on a comparable basis. Base year standardized costs per day were calculated separately, but using the same calculation methodology, for the different types of per diem cases identified in this subsection under the definition of "per diem cases."*

*"Cost" means allowable cost as defined in Supplement 3 (12 VAC 30-70-10 through 12 VAC 30-70-130) and by Medicare principles of reimbursement.*

*"Disproportionate share hospital" means a hospital that meets the following criteria:*

- 1. A Medicaid utilization rate in excess of 15%, or a low-income patient utilization rate exceeding 25% (as defined in the Omnibus Budget Reconciliation Act of 1987 and as amended by the Medicare Catastrophic Coverage Act of 1988); and*
- 2. At least two obstetricians with staff privileges at the hospital who have agreed to provide obstetric services to individuals entitled to such services under a state Medicaid plan. In the case of a hospital located in a rural area (that is, an area outside of a Metropolitan Statistical Area as defined by the Executive Office of Management and Budget), the term "obstetrician" includes any physician with staff privileges at the hospital to perform nonemergency obstetric procedures.*
- 3. Number 2 of this definition does not apply to a hospital:*
  - a. At which the inpatients are predominantly individuals under 18 years of age; or*
  - b. Which does not offer nonemergency obstetric services as of December 21, 1987.*

*"DRG cases" means medical/surgical cases subject to payment on the basis of DRGs. DRG cases do not include per diem cases.*

*"DRG relative weight" means the average standardized costs for cases assigned to that DRG divided by the average standardized costs for cases assigned to all DRGs.*

*"Groupable cases" means DRG cases having coding data of sufficient quality to support DRG assignment.*

*"Hospital case-mix index" means the weighted average DRG relative weight for all cases occurring at that hospital.*

*"Medicaid utilization percentage" is equal to the hospital's total Medicaid inpatient days divided by the hospital's total inpatient days for a given hospital fiscal year. The Medicaid utilization percentage includes days associated with inpatient hospital services provided to Medicaid patients but reimbursed by capitated managed care providers.*

*"Medicare wage index" and the "Medicare geographic adjustment factor" are published annually in the Federal Register by the Health Care Financing Administration. The indices and factors used in this article shall be those in effect in the base year.*

*"Operating cost-to-charge ratio" equals the hospital's total operating costs, less any applicable operating costs for a psychiatric DPU, divided by the hospital's total charges, less any applicable charges for a psychiatric DPU. In the base year, this ratio shall be calculated for each hospital by (i) calculating the average of the ratio over the most recent five years for which data are available and (ii) trending the hospital specific average forward from the mid-point of the five-year period with a statewide trend factor. The statewide trend factor shall be the average of the four annual statewide aggregate factors of change that occurred in the five-year period. This trend factor shall be compounded from the mid point of the five-year period to the base year. The separate treatment of DRG costs and charges provided in this section shall begin when those data become available through the cost report. Until then, a single all-inclusive ratio shall be used for each hospital.*

*"Outlier adjustment factor" means a fixed factor published annually in the Federal Register by the Health Care Financing Administration. The factor used in this article shall be the one in effect in the base year.*

*"Outlier cases" means those DRG cases, including transfer cases, in which the hospital's adjusted operating cost for the case exceeds the hospital's operating outlier threshold for the case.*

*"Outlier operating fixed loss threshold" means a fixed dollar amount applicable to all hospitals that shall be calculated in the base year so as to result in an expenditure for outliers operating payments equal to 5.1% of total operating payments for DRG cases. The threshold shall be updated in subsequent years using the same inflation values applied to hospital rates.*

*"Per diem cases" means cases subject to per diem payment and include (i) covered psychiatric cases in general acute care hospitals and distinct part units (DPUs) of general acute care hospitals (hereinafter "acute care psychiatric cases"), (ii) covered psychiatric cases in freestanding psychiatric facilities licensed as hospitals (hereinafter "freestanding psychiatric cases"), and (iii) rehabilitation cases*



in general acute care hospitals and rehabilitation hospitals (hereinafter “rehabilitation cases”).

Psychiatric cases are cases with a principal diagnosis that is a mental disorder as specified in the ICD-9-CM. Not all mental disorders are covered. For coverage information, see Amount, Duration, and Scope of Services, Supplement 1 to Attachment 3.1 A&B (12 VAC 30-50-95 through 12 VAC 30-50-310). The limit of coverage of 21 days in a 60-day period for the same or similar diagnosis shall continue to apply to adult psychiatric cases.

“Psychiatric operating cost-to-charge ratio” for the psychiatric DPU of a general acute care hospital means the hospital’s operating costs for a psychiatric DPU divided by the hospital’s charges for a psychiatric DPU. In the base year, this ratio shall be calculated as described in the definition of “operating cost-to-charge ratio” in this subsection, using data from psychiatric DPUs.

“Readmissions” occur when patients are readmitted to the same hospital for the same or a similar diagnosis within five days of discharge. Such cases shall be considered a continuation of the same stay and shall not be treated as a new case. Similar diagnoses shall be defined as ICD-9-CM diagnosis codes possessing the same first three digits.

“Rehabilitation operating cost-to-charge ratio” for a rehabilitation unit or hospital means the provider’s operating costs divided by the provider’s charges. In the base year, this ratio shall be calculated as described in the definition of “operating cost-to-charge ratio” in this subsection, using data from rehabilitation units or hospitals.

“Statewide average labor portion of operating costs” means a fixed percentage applicable to all hospitals. The percentage shall be periodically revised using the most recent reliable data from the Virginia Health Information (VHI), or its successor.

“Transfer cases” means DRG cases involving patients (i) who are transferred from one general acute care hospital to another for related care or (ii) who are discharged from one general acute care hospital and admitted to another for the same or a similar diagnosis within five days of that discharge. Similar diagnoses shall be defined as ICD-9-CM diagnosis codes possessing the same first three digits.

“Type One” hospitals means those hospitals that were state-owned teaching hospitals on January 1, 1996. “Type Two” hospitals means all other hospitals.

“Ungroupable cases” means cases assigned to DRG 469 (principal diagnosis invalid as discharge diagnosis) and DRG 470 (ungroupable) as determined by the AP-DRG Grouper.

D. The All Patient Diagnosis Related Groups (AP-DRG) Grouper shall be used in the DRG payment system. [As of the effective date of these regulations] and until notification of a change is given, Version 14.0 of this grouper shall be used. DMAS shall notify hospitals when updating the system to later grouper versions.

E. The primary data sources used in the development of the DRG payment methodology were the department’s hospital computerized claims history file and the cost report

file. The claims history file captures available claims data from all enrolled, cost-reporting general acute care hospitals, including Type One hospitals. The cost report file captures audited cost and charge data from all enrolled general acute care hospitals, including Type One hospitals. The following table identifies key data elements that were used to develop the DRG payment methodology and that will be used when the system is recalibrated and rebased.

*Data Elements for DRG Payment Methodology*

Data Elements	Source
Total charges for each groupable case	Claims history file
Number of groupable cases in each DRG	Claims history file
Total number of groupable cases	Claims history file
Total charges for each DRG case	Claims history file
Total number of DRG cases	Claims history file
Total charges for each acute care psychiatric case	Claims history file
Total number of acute care psychiatric days for each acute care hospital	Claims history file
Total charges for each freestanding psychiatric case	Claims history file
Total number of psychiatric days for each freestanding psychiatric hospital	Claims history file
Total charges for each rehabilitation case	Claims history file
Total number of rehabilitation days for each acute care and freestanding rehabilitation hospital	Claims history file
Operating cost-to-charge ratio for each hospital	Cost report file
Operating cost-to-charge ratio for each freestanding psychiatric facility licensed as a hospital	VHI
Psychiatric operating cost-to-charge ratio for the psychiatric DPU of each general acute care hospital	Cost report file
Rehabilitation cost-to-charge ratio for each rehabilitation unit or hospital	Cost report file
Statewide average labor portion of operating costs	VHI
Medicare wage index for each hospital	Federal Register
Medicare geographic adjustment factor for each hospital	Federal Register
Outlier operating fixed loss threshold	Claims History File
Outlier adjustment factor	Federal Register

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## **12 VAC 30-70-231. Operating payment for DRG cases.**

A. The operating payment for DRG cases that are not transfer cases shall be equal to the hospital specific operating rate per case, as determined in 12 VAC 30-70-311, times the DRG relative weight, as determined in 12 VAC 30-70-381.

### **B. Exceptions.**

1. Special provisions for calculating the operating payment for transfer cases are provided in 12 VAC 30-70-251.
2. Readmissions shall be considered a continuation of the same stay and shall not be treated as a new case.

## **12 VAC 30-70-241. Operating payment for per diem cases.**

A. The operating payment for acute care psychiatric cases and rehabilitation cases shall be equal to the hospital specific operating rate per day, as determined in subsection A of 12 VAC 30-70-321, times the covered days for the case.

B. The payment for freestanding psychiatric cases shall be equal to the hospital specific rate per day for freestanding psychiatric cases, as determined in subsection B of 12 VAC 30-70-321, times the covered days for the case.

## **12 VAC 30-70-251. Operating payment for transfer cases.**

A. The operating payment for transfer cases shall be determined as follows:

1. A transferring hospital shall receive the lesser of (i) a per diem payment equal to the hospital's DRG operating payment for the case, as determined in 12 VAC 30-70-231, divided by the arithmetic mean length of stay for the DRG into which the case falls times the length of stay for the case at the transferring hospital or (ii) the hospital's full DRG operating payment for the case, as determined in 12 VAC 30-70-231. The transferring hospital shall be eligible for an outlier operating payment, as specified in 12 VAC 30-70-261, if applicable criteria are satisfied.
2. The final discharging hospital shall receive the hospital's full DRG operating payment, as determined in 12 VAC 30-70-231. The final discharging hospital shall be eligible for an outlier operating payment, as specified in 12 VAC 30-70-261, if applicable criteria are satisfied.

### **B. Exceptions.**

1. Cases falling into DRG 456, 639, or 640 shall not be treated as transfer cases. Both the transferring hospital and the final discharging hospital shall receive the full DRG operating payment.
2. Cases transferred to or from a psychiatric or rehabilitation DPU of a general acute care hospital, a freestanding psychiatric facility licensed as a hospital, or a rehabilitation hospital shall not be treated as transfer cases.

## **12 VAC 30-70-261. Outlier operating payment.**

A. An outlier operating payment shall be made for outlier cases. This payment shall be added to the operating

payments determined in 12 VAC 30-70-231 and 12 VAC 30-70-251. Eligibility for the outlier operating payment and the amount of the outlier operating payment shall be determined as follows:

1. The hospital's adjusted operating cost for the case shall be estimated. This shall be equal to the hospital's total charges for the case times the hospital's operating cost-to-charge ratio, as defined in subsection C of 12 VAC 30-70-221, times the adjustment factor specified in 12 VAC 30-70-331 B.

2. The adjusted outlier operating fixed loss threshold shall be calculated as follows:

- a. The outlier operating fixed loss threshold shall be multiplied by the statewide average labor portion of operating costs, yielding the labor portion of the outlier operating fixed loss threshold. Hence, the nonlabor portion of the outlier operating fixed loss threshold shall constitute one minus the statewide average labor portion of operating costs times the outlier operating fixed loss threshold.

- b. The labor portion of the outlier operating fixed loss threshold shall be multiplied by the hospital's Medicare wage index, yielding the wage adjusted labor portion of the outlier operating fixed loss threshold.

- c. The wage adjusted labor portion of the outlier operating fixed loss threshold shall be added to the nonlabor portion of the outlier operating fixed loss threshold, yielding the wage adjusted outlier operating fixed loss threshold.

3. The hospital's outlier operating threshold for the case shall be calculated. This shall be equal to the wage adjusted outlier operating fixed loss threshold times the adjustment factor specified in 12 VAC 30-70-331 B plus the hospital's operating payment for the case, as determined in 12 VAC 30-70-231 or 12 VAC 30-70-251.

4. The hospital's outlier operating payment for the case shall be calculated. This shall be equal to the hospital's adjusted operating cost for the case minus the hospital's outlier operating threshold for the case. If the difference is less than or equal to zero, then no outlier operating payment shall be made. If the difference is greater than zero, then the outlier operating payment shall be equal to the difference times the outlier adjustment factor.

B. An illustration of the above methodology is found in 12 VAC 30-70-500.

C. The outlier operating fixed loss threshold shall be recalculated using base year data when the DRG payment system is recalibrated and rebased. The threshold shall be calculated so as to result in an expenditure for outlier operating payments equal to 5.1% of total operating payments, including outlier operating payments, for DRG cases. The methodology described in subsection A of this section shall be applied to all base year DRG cases on an aggregate basis, and the amount of the outlier operating fixed loss threshold shall be calculated so as to exhaust the available pool for outlier operating payments.

**12 VAC 30-70-271. Payment for capital costs.**

A. Until regulations for prospective payment of capital costs are promulgated, capital costs shall continue to be paid on an allowable cost basis and settled at the hospital's fiscal year end, following the methodology described in Supplement 3 (12 VAC 30-70-10 through 12 VAC 30-70-130).

B. The exception to the policy in subsection A of this section is that the hospital specific rate per day for services in freestanding psychiatric facilities licensed as hospitals, as determined in 12 VAC 30-70-321 B, shall be an all-inclusive payment for operating and capital costs.

C. DMAS plans to implement prospective payment for capital costs for all DRG cases, acute care psychiatric cases, and rehabilitation cases. The implementation date will be determined later. Under prospective payment for capital costs, the department will calculate a hospital specific capital rate and a statewide capital rate, and the two rates will be blended during a transition period. In successive years of the transition period, the statewide capital rate will comprise an increasing portion of the blended rate, until payment for capital costs is entirely based on the statewide capital rate. The two rates will be calculated as follows:

1. The hospital specific capital rate will approximate the hospital's average capital cost per case for DRG cases or the hospital's average capital cost per day for per diem cases. Initially, this rate will be based on settled cost reports for hospital fiscal years ending in a state fiscal year to be established in future regulations. Capital obligated after July 1, 1997, shall not be included in the calculation of the hospital specific capital rate.
2. The statewide capital rate will approximate the statewide average capital cost per case for DRG cases or the statewide average capital cost per day for per diem cases. Initially, this rate will be based on settled cost reports for hospital fiscal years ending in state Fiscal Year 1997.

D. Until prospective payment for capital costs is implemented, the provisions of 12 VAC 30-70-70 regarding recapture of depreciation shall remain in effect.

**12 VAC 30-70-281. Payment for direct medical education costs.**

A. Until the department notifies hospitals otherwise, direct medical education shall continue to be paid on an allowable cost basis. Payments for direct medical education costs shall be made in estimated quarterly lump sum amounts and settled at the hospital's fiscal year end.

B. Final payment for direct medical education costs shall be equal to the hospital's Medicaid utilization percentage times the hospital's total direct medical education costs. As defined in subsection C of 12 VAC 30-70-221, the Medicaid utilization percentage includes days associated with inpatient hospital services provided to Medicaid patients but reimbursed by capitated managed care providers.

C. Direct medical education shall not be a reimbursable cost in freestanding psychiatric facilities licensed as hospitals.

**12 VAC 30-70-291. Payment for indirect medical education costs.**

A. Hospitals shall be eligible to receive payments for indirect medical education. These payments recognize the increased use of ancillary services associated with the educational process and the higher case-mix intensity of teaching hospitals. The payments for indirect medical education shall be made in estimated quarterly lump sum amounts and settled at the hospital's fiscal year end.

B. Final payment for IME shall be determined as follows:

1. Type One hospitals shall receive an IME payment equal to the hospital's Medicaid operating reimbursement times an IME percentage determined as follows:

$$\text{IME Percentage for Type One Hospitals} = [1.89 \times ((1 + r)^{0.405} - 1)]$$

2. Type Two hospitals shall receive an IME payment equal to the hospital's Medicaid operating reimbursement times an IME percentage determined as follows:

$$\text{IME Percentage for Type Two Hospitals} = [1.89 \times ((1 + r)^{0.405} - 1)] \times 0.4043$$

In both equations, r is the ratio of full-time equivalent residents to staffed beds, excluding nursery beds. The IME payment shall be calculated each year using the most recent reliable data regarding the number of full-time equivalent residents and the number of staffed beds, excluding nursery beds.

C. An additional IME payment shall be made for inpatient hospital services provided to Medicaid patients but reimbursed by capitated managed care providers. This payment shall be equal to the hospital's hospital specific operating rate per case, as determined in 12 VAC 30-70-311, times the hospital's HMO paid discharges times the hospital's IME percentage, as determined in subsection B of this section.

**12 VAC 30-70-301. Payment to disproportionate share hospitals.**

A. Payments to disproportionate share hospitals (DSH) shall be prospectively determined in advance of the state fiscal year to which they apply. The payments shall be made on a quarterly basis, shall be final, and shall not be subject to settlement except when necessary due to the limit in subsection E of this section.

B. Hospitals qualifying under the 15% inpatient Medicaid utilization percentage shall receive a DSH payment based on the hospital's type and the hospital's Medicaid utilization percentage.

1. Type One hospitals shall receive a DSH payment equal to the sum of (i) the hospital's Medicaid utilization percentage in excess of 15%, times 11, times the hospital's Medicaid operating reimbursement, times 1.4433 and (ii) the hospital's Medicaid utilization percentage in excess of 30%, times 11, times the hospital's Medicaid operating reimbursement, times 1.4433.

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2. Type Two hospitals shall receive a DSH payment equal to the sum of (i) the hospital's Medicaid utilization percentage in excess of 15%, times the hospital's Medicaid operating reimbursement, times 1.2074 and (ii) the hospital's Medicaid utilization percentage in excess of 30%, times the hospital's Medicaid operating reimbursement, times 1.2074.

C. Hospitals qualifying under the 25% low-income patient utilization rate shall receive a DSH payment based on the hospital's type and the hospital's low-income utilization rate.

1. Type One hospitals shall receive a DSH payment equal to the product of the hospital's low-income utilization in excess of 25%, times 11, times the hospital's Medicaid operating reimbursement.

2. Type Two hospitals shall receive a DSH payment equal to the product of the hospital's low-income utilization in excess of 25%, times the hospital's Medicaid operating reimbursement.

3. Calculation of a hospital's low-income patient utilization percentage is defined in 42 USC § 1396r-4(b)(3).

D. No DSH payments shall exceed any applicable limitations upon such payments established by federal law or regulations and OBRA 1993 §13621. A DSH payment during a fiscal year shall not exceed the sum of:

1. Medicaid allowable costs incurred during the year less Medicaid payments, net of disproportionate share payment adjustments, for services provided during the year. Costs and payments for Medicaid recipients enrolled in capitated managed care programs shall be considered Medicaid costs and payments for the purposes of this section.

2. Costs incurred in serving persons who have no insurance less payments received from those patients or from a third party on behalf of those patients. Payments made by any unit of the Commonwealth or local government to a hospital for services provided to indigent patients shall not be considered to be a source of third party payment.

E. Each hospital's eligibility for DSH payment and the amount of the DSH payment shall be calculated each year using the most recent reliable utilization data and projected operating reimbursement data available. The utilization data used to determine eligibility for DSH payment and the amount of the DSH payment shall include days for Medicaid recipients enrolled in capitated managed care programs.

1. Each hospital with a Medicaid-recognized Neonatal Intensive Care Unit (NICU), a unit having had a unique NICU operating cost limit under subdivision 6 of 12 VAC 30-70-50, shall have its DSH payment calculated separately for the NICU and for the remainder of the hospital as if the two were separate and distinct providers. This calculation shall follow the methodology provided in 12 VAC 30-70-300.

2. For freestanding psychiatric facilities licensed as hospitals, DSH payment shall be based on the most

recently settled Medicare cost report available before the beginning of the state fiscal year for which a payment is being calculated.

### **12 VAC 30-70-311. Hospital specific operating rate per case.**

The hospital specific operating rate per case shall be equal to the labor portion of the statewide operating rate per case, as determined in 12 VAC 30-70-331, times the hospital's Medicare wage index plus the nonlabor portion of the statewide operating rate per case.

### **12 VAC 30-70-321. Hospital specific operating rate per day.**

A. The hospital specific operating rate per day shall be equal to the labor portion of the statewide operating rate per day, as determined in subsection A of 12 VAC 30-70-341, times the hospital's Medicare wage index plus the nonlabor portion of the statewide operating rate per day.

B. The hospital specific rate per day for freestanding psychiatric cases shall be equal to the hospital specific operating rate per day, as determined in subsection A of this section plus the hospital specific capital rate per day for freestanding psychiatric cases.

C. The hospital specific capital rate per day for freestanding psychiatric cases shall be equal to the Medicare geographic adjustment factor for the hospital's geographic area, times the statewide capital rate per day for freestanding psychiatric cases.

D. The statewide capital rate per day for freestanding psychiatric cases shall be equal to the weighted average of the GAF-standardized capital cost per day of freestanding psychiatric facilities licensed as hospitals.

E. The capital cost per day of freestanding psychiatric facilities licensed as hospitals shall be the average charges per day of psychiatric cases times the ratio total capital cost to total charges of the hospital, using data available from VHI.

### **12 VAC 30-70-331. Statewide operating rate per case.**

A. The statewide operating rate per case shall be equal to the base year standardized operating costs per case, as determined in 12 VAC 30-70-361, times the inflation values specified in 12 VAC 30-70-351 times the adjustment factor specified in subsection B of this section.

B. The adjustment factor shall be determined separately for Type One and Type Two hospitals and shall be the ratio of the following two numbers:

1. The numerator of the factor is the aggregate total Medicaid operating payments to affected hospitals in hospital fiscal years ending in the calendar year ending six months prior to the start of the state fiscal year used as the base year. For example, for state Fiscal Year 1999, the base year shall be state Fiscal Year 1997, and the calendar year that ends six months prior to the start of state Fiscal Year 1997 is Calendar Year 1995.

2. The denominator of the factor is the aggregate total Medicaid allowable operating cost as determined from

settled cost reports from the same hospitals in the same year.

**12 VAC 30-70-341. Statewide operating rate per day.**

A. The statewide operating rate per day shall be equal to the base year standardized operating costs per day, as determined in subsection B of 12 VAC 30-70-371, times the inflation values specified in 12 VAC 30-70-351 times the adjustment factor specified in subsection B of this section.

B. The adjustment factor for acute care psychiatric cases and rehabilitation cases shall be the one specified in subsection B of 12 VAC 30-70-331.

**12 VAC 30-70-351. Updating rates for inflation.**

Each July, the DRI-Virginia moving average values as compiled and published by DRI/McGraw-Hill under contract with the department shall be used to update the base year standardized operating costs per case, as determined in 12 VAC 30-70-361, and the base year standardized operating costs per day, as determined in 12 VAC 30-70-371, to the midpoint of the upcoming state fiscal year. The most current table available prior to the effective date of the new rates shall be used to inflate base year amounts to the upcoming rate year. Thus, corrections made by DRI/McGraw-Hill in the moving averages that were used to update rates for previous state fiscal years shall be automatically incorporated into the moving averages that are being used to update rates for the upcoming state fiscal year.

**12 VAC 30-70-361. Base year standardized operating costs per case.**

A. For the purposes of calculating the base year standardized operating costs per case, base year claims data for all DRG cases, including outlier cases, shall be used. Base year claims data for per diem cases shall not be used. Separate base year standardized operating costs per case shall be calculated for Type One and Type Two hospitals. In calculating the base year standardized operating costs per case, a transfer case shall be counted as a fraction of a case based on the ratio of its length of stay to the arithmetic mean length of stay for cases assigned to the same DRG as the transfer case.

B. Using the data elements identified in subsection E of 12 VAC 30-70-221, the following methodology shall be used to calculate the base year standardized operating costs per case:

1. The operating costs for each DRG case shall be calculated by multiplying the hospital's total charges for the case by the hospital's operating cost-to-charge ratio, as defined in subsection C of 12 VAC 30-70-221.
2. The standardized operating costs for each DRG case shall be calculated as follows:
  - a. The operating costs shall be multiplied by the statewide average labor portion of operating costs, yielding the labor portion of operating costs. Hence, the nonlabor portion of operating costs shall constitute one minus the statewide average labor portion of operating costs times the operating costs.

b. The labor portion of operating costs shall be divided by the hospital's Medicare wage index, yielding the standardized labor portion of operating costs.

c. The standardized labor portion of operating costs shall be added to the nonlabor portion of operating costs, yielding standardized operating costs.

3. The case-mix neutral standardized operating costs for each DRG case shall be calculated by dividing the standardized operating costs for the case by the hospital's case-mix index.

4. The base year standardized operating costs per case shall be calculated by summing the case-mix neutral standardized operating costs for all DRG cases and dividing by the total number of DRG cases.

5. The base year standardized operating costs per case shall be reduced by 5.1% to create a pool for outlier operating payments. Eligibility for outlier operating payments and the amount of the outlier operating payments shall be determined in accordance with 12 VAC 30-70-261.

C. Because the current cost report format does not separately identify psychiatric costs, claims data shall be used to calculate the base year standardized operating costs per case, as well as the base year standardized operating costs per day described in 12 VAC 30-70-321. At such time as the cost report permits the separate identification of psychiatric costs and the DRG payment system is recalibrated and rebased, cost report data shall be used to calculate the base year standardized operating costs per case and base year standardized operating costs per day.

**12 VAC 30-70-371. Base year standardized operating costs per day.**

A. For the purpose of calculating the base year standardized operating costs per day, base year claims data for per diem cases shall be used. Base year claims data for DRG cases shall not be used. Separate base year standardized operating costs per day shall be calculated for Type One and Type Two hospitals.

B. Using the data elements identified in subsection E of 12 VAC 30-70-221, the following methodology shall be used to calculate the base year standardized operating costs per day:

1. The operating costs for each per diem case shall be calculated by multiplying the hospital's total charges for the case by the hospital's operating cost-to-charge ratio, as defined in subsection C of 12 VAC 30-70-221.
2. The standardized operating costs for each per diem case shall be calculated as follows:
  - a. The operating costs shall be multiplied by the statewide average labor portion of operating costs, yielding the labor portion of operating costs. Hence, the nonlabor portion of operating costs shall constitute one minus the statewide average labor portion of operating costs times the operating costs.

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# Proposed Regulations

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b. The labor portion of operating costs shall be divided by the hospital's Medicare wage index, yielding the standardized labor portion of operating costs.

c. The standardized labor portion of operating costs shall be added to the nonlabor portion of operating costs, yielding standardized operating costs.

3. The base year standardized operating costs per day for acute care psychiatric cases shall be calculated by summing the standardized operating costs for acute care psychiatric cases and dividing by the total number of acute care psychiatric days. This calculation shall be repeated separately for freestanding psychiatric cases and rehabilitation cases.

C. For general acute care hospitals with psychiatric DPUs, the psychiatric operating cost-to-charge ratio shall be used in the above calculations.

## **12 VAC 30-70-381. DRG relative weights and hospital case-mix indices.**

A. For the purposes of calculating DRG relative weights and hospital case-mix indices, base year claims data for all groupable cases shall be used. Base year claims data for ungroupable cases and per diem cases shall not be used. In calculating the DRG relative weights, a transfer case shall be counted as a fraction of a case based on the ratio of its length of stay to the arithmetic mean length of stay for cases assigned to the same DRG as the transfer case.

B. Using the data elements identified in subsection E of 12 VAC 30-70-221, the following methodology shall be used to calculate the DRG relative weights:

1. The operating costs for each groupable case shall be calculated by multiplying the hospital's total charges for the case by the hospital's operating cost-to-charge ratio, as defined in subsection C of 12 VAC 30-70-221. Similarly, the capital costs for each groupable case shall be calculated by multiplying the hospital's total charges for the case by the hospital's capital cost-to-charge ratio, as defined in subsection C of 12 VAC 30-70-221.

2. The standardized operating costs for each groupable case shall be calculated as follows:

a. The operating costs shall be multiplied by the statewide average labor portion of operating costs, yielding the labor portion of operating costs. Hence, the nonlabor portion of operating costs shall constitute one minus the statewide average labor portion of operating costs times the operating costs.

b. The labor portion of operating costs shall be divided by the hospital's Medicare wage index, yielding the standardized labor portion of operating costs.

c. The standardized labor portion of operating costs shall be added to the nonlabor portion of operating costs, yielding the standardized operating costs.

3. The standardized capital costs for each groupable case shall be calculated by dividing the capital costs for the case by the hospital's Medicare geographic adjustment factor.

4. The average standardized cost per DRG shall be calculated by summing the standardized operating costs and the standardized capital costs for all groupable cases in the DRG and dividing that amount by the number of groupable cases classified in the DRG.

5. The average standardized cost per case shall be calculated by summing the standardized operating costs and standardized capital costs for all groupable cases and dividing that amount by the total number of groupable cases.

6. The average standardized cost per DRG shall be divided by the average standardized cost per case to determine the DRG relative weight.

C. Statistical outliers shall be eliminated from the calculation of the DRG relative weights. Within each DRG, cases shall be eliminated if (i) their standardized costs per case are outside of 3.0 standard deviations of the mean of the log distribution of the standardized costs per case and (ii) their standardized costs per day are outside of 3.0 standard deviations of the mean of the log distribution of the standardized costs per day. To eliminate a case, both conditions must be satisfied.

D. In calculating the DRG relative weights, a threshold of five cases shall be set as the minimum number of cases required to calculate a reasonable DRG relative weight. In those instances where there are five or fewer cases, the department's Medicaid claims data shall be supplemented with Medicaid claims data from another state or other available sources. The DRG relative weights calculated according to this methodology will result in an average case weight that is different from the average case weight before the supplemental claims data was added. Therefore, the DRG relative weights shall be normalized by an adjustment factor so that the average case weight after the supplemental claims data were added is equal to the average case weight before the supplemental claims data were added.

E. The DRG relative weights shall be used to calculate a case-mix index for each hospital. The case-mix index for a hospital is calculated by summing, across all DRGs, the product of the number of groupable cases in each DRG and the relative weight for each DRG and dividing this amount by the total number of groupable cases occurring at the hospital.

## **12 VAC 30-70-391. Recalibration and rebasing policy.**

The department recognizes that claims experience or modifications in federal policies may require adjustment to the DRG payment system policies provided in this part. The state agency shall recalibrate (evaluate and adjust the DRG relative weights and hospital case-mix indices) and rebase (review and update the base year standardized operating costs per case and the base year standardized operating costs per day) the DRG payment system at least every other year. Recalibration and rebasing shall be done in consultation with the Medicaid Hospital Payment Policy Advisory Council noted in 12 VAC 30-70-490. When rebasing is carried out, if new rates are not calculated before their required effective date, hospitals required to file cost reports and freestanding psychiatric facilities licensed as hospitals shall be settled at the new rates, for discharges on and after the effective date of

those rates, at the time the hospitals' cost reports for the year in which the rates become effective are settled.

Article 3.

Other Provisions for Payment of Inpatient Hospital Services.

**12 VAC 30-70-400. Determination of per diem rates.**

This article shall be applicable to only those claims for discharges prior to July 1, 1999. Each hospital's revised per diem rate or rates to be used during the transition period (SFY 1997 and SFY 1998) shall be based on the hospital's previous peer group ceiling or ceilings that were established under the provisions of 12 VAC 30-70-10 through 12 VAC 30-70-130, with the following adjustments:

1. All operating ceilings will be increased by the same proportion to effect an aggregate increase in reimbursement of \$40 million in SFY 1997. This adjustment incorporates in per diem rates the systemwide aggregate value of payment that otherwise would be made through the payment adjustment fund. This adjustment will be calculated using estimated 1997 rates and 1994 days.

2. Starting July 1, 1996, operating ceilings will be increased for inflation to the midpoint of the state fiscal year, not the hospital fiscal year. Inflation shall be based on the DRI-Virginia moving average value as compiled and published by DRI/McGraw-Hill under contract with DMAS, increased by two percentage points per year. The most current table available prior to the effective date of the new rates shall be used.

For services to be paid at SFY 1998 rates, per diem rates shall be adjusted consistent with the methodology for updating rates under the DRG methodology (~~42 VAC 30-70-370~~ 12 VAC 30-70-351).

3. There will be no disproportionate share hospital (DSH) per diem.

4. To pay capital cost through claims, a hospital specific adjustment to the per diem rate will be made. At settlement of each hospital fiscal year, this per diem adjustment will be eliminated and capital shall be paid as a pass-through.

5. This methodology shall be used after the transition period to reimburse days of hospital stays with admission dates before July 1, 1996.

6. This methodology shall be used after the transition period to make interim payments until such time as the DRG payment methodology is operational.

**12 VAC 30-70-410. State university teaching hospitals.**

For hospitals that were state owned teaching hospitals on January 1, 1996, all the calculations which support the determination of hospital specific rate per case and rate per day amounts under the ~~DRG reimbursement~~ prospective payment methodology shall be carried out separately from other hospitals, using cost data taken only from state university teaching hospitals. Rates to be used effective July 1, 1996, shall be determined on the basis of cost report and other applicable data ~~pertaining to the facility fiscal year~~

~~ending June 30, 1993 from the most recent year for which reliable data are available at the time of rebasing. For these hospitals the factors used to establish rates shall be as listed below according to the section in Article 3 (12 VAC 30-70-220 et seq.) of this part where corresponding factors for other hospitals are set forth:~~

~~1. 12 VAC 30-70-250. 0.8432~~

~~2. 12 VAC 30-70-330. 0.8470~~

**12 VAC 30-70-420. Reimbursement of ~~nonenrolled~~ noncost-reporting general acute care hospital providers.**

~~During the transition period, nonenrolled general acute care hospitals (general acute care hospitals that are not required to file cost reports) shall be reimbursed according to the previous methodology for such hospitals (12 VAC 30-70-120 A). Effective with discharges after June 30, 1998, these hospitals shall be paid based on DRG rates unadjusted for geographic variation. Noncost-reporting general acute care hospitals (general acute care hospitals that are not required to file cost reports) shall be paid based on the methodology specified in 12 VAC 30-70-120 until such time as the department can implement the DRG claims payment methodology. Once the DRG claims payment methodology is operational, noncost-reporting general acute care hospitals shall be paid based on the statewide operating rate per case (12 VAC 30-70-331) increased by the average capital percentage among hospitals filing cost reports in a recent year. Effective with discharges after the operational date of the DRG claims payment system, these hospitals shall be paid based on DRG rates unadjusted for geographic variation.~~ General acute care hospitals shall not file cost reports if they have less than 1,000 days per year (in the most recent provider fiscal year) of inpatient utilization by Virginia Medicaid recipients, inclusive of patients in managed care capitation programs.

Prior approval must be received from DMAS when a referral has been made for treatment to be received from a nonenrolled acute care facility (in-state or out-of-state), except in the case of an emergency or because medical resources or supplementary resources are more readily available in another state.

**12 VAC 30-70-450. Cost reporting requirements.**

Except for ~~nonenrolled~~ noncost-reporting general acute care hospitals and freestanding psychiatric facilities licensed as hospitals, all hospitals shall submit cost reports. All cost reports shall be submitted on uniform reporting forms provided by the state agency and by Medicare. Such cost reports shall cover a 12-month period. Any exceptions must be approved by the state agency. The cost reports are due not later than 150 days after the provider's fiscal year end. All fiscal year end changes must be approved 90 days prior to the beginning of a new fiscal year. If a complete cost report is not received within 150 days after the end of the provider's fiscal year, the program shall take action in accordance with its policies to ensure that an overpayment is not being made. When cost reports are delinquent, the provider's interim rate shall be reduced to zero. The reductions shall start on the first day of the following month when the cost report is due. After the delinquent cost report is received, desk reviewed, and a

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# Proposed Regulations

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new prospective rate established, the amounts withheld shall be computed and paid. If the provider fails to submit a complete cost report within 180 days after the fiscal year end, a penalty in the amount of 10% of the balance withheld shall be forfeited to the state agency. The cost report will be judged complete when the state agency has all of the following:

1. Completed cost reporting form or forms provided by DMAS, with signed certification or certifications.
2. The provider's trial balance showing adjusting journal entries.
3. The provider's financial statements including, but not limited to, a balance sheet, a statement of income and expenses, a statement of retained earnings (or fund balance), a statement of changes in financial position, and footnotes to the financial statements. Multi-level facilities shall be governed by subdivision 5 of this subsection.
4. Schedules which reconcile financial statements and trial balance to expenses claimed in the cost report.
5. Hospitals which are part of a chain organization must also file:
  - a. Home office cost report;
  - b. Audited consolidated financial statements of the chain organization including the auditor's report in which he expresses his opinion or, if circumstances require, disclaims an opinion based on generally accepted auditing standards, the management report, and footnotes to the financial statements;
  - c. The hospital's financial statements including, but not limited to, a balance sheet, a statement of income and expenses, a statement of retained earnings (or fund balance), and a statement of cash flows;
  - d. Schedule of restricted cash funds that identify the purpose of each fund and the amount;
  - e. Schedule of investments by type (stock, bond, etc.), amount, and current market value.
6. Such other analytical information or supporting documents requested by the state agency when the cost reporting forms are sent to the provider.

## **12 VAC 30-70-460. Hospital settlement.**

A. During the transition period claims will be processed and tentative payment made using per diem rates. Settlements will be carried out to ensure that the correct blend of DRG and per diem-based payment is received by each general acute care and rehabilitation hospital and to settle reimbursement of pass-through costs. There shall be no settlement of freestanding psychiatric facilities licensed as hospitals except with respect to disproportionate share hospital (DSH) payment, if necessary (see ~~12 VAC 30-70-240~~ 12 VAC 30-70-301 E 3).

B. The transition blend percentages which determine the share of DRG system and of revised per diem system reimbursement that is applicable in a given period shall

change with the change of the state fiscal year, not the hospital fiscal year.

C. If a hospital's fiscal year does not end June 30, its first year ending after June 30, 1996, contains one or more months under the previous methodology, a "split" settlement shall be done of that hospital's fiscal year. Services rendered through June 30, 1996, shall be reimbursed under the previous reimbursement methodology and services rendered after June 30, 1996, will be reimbursed as described in subsection G of this section.

D. For cases subject to settlement under the blend of DRG and per diem methodologies (cases with an admission date after June 30, 1996), the date of discharge determines the year in which any inpatient service or claim related to the case shall be settled. This shall be true for both the DRG and the per diem portions of settlement. Interim claims tentatively paid in one hospital fiscal year that relate to a discharge in a later hospital fiscal year, shall be voided and reprocessed in the latter year so that the interim claim shall not be included in the settlement of the first year, but in the settlement of the year of discharge. An exception to this shall be rehabilitation cases, the claims for which shall be settled in the year of the "through" date of the claim.

E. A single group of cases with discharges in the appropriate time period shall be the basis of both the DRG and the per diem portion of settlement. These cases shall be based on claims submitted and, if necessary corrected by 120 days after the providers FYE. Cases which are based on claims that lack sufficient information to support grouping to a DRG category, and which the hospital cannot correct, shall be settled for purposes of the DRG portion of settlement based on the lowest of the DRG weights.

F. Reimbursement for services in freestanding psychiatric facilities licensed as hospitals shall not be subject to settlement.

G. During the transition period settlements shall be carried out according to the following formulas.

1. Settlement of a hospital's first fiscal year ending after July 1, 1996:

a. Operating reimbursement shall be equal to the sum of the following:

(1) Paid days occurring in the hospital's fiscal year before July 1, 1996, times the per diem in effect before July 1, 1996.

(2) Paid days occurring after June 30, 1996, but in the hospital fiscal year, that are related to admissions that occurred before July 1, 1996, times the revised system per diem that is effective on July 1, 1996.

(3) DRG system payment for DRG and psychiatric cases admitted after June 30, 1996, and discharged within the hospital fiscal year times 1/3.

(4) DRG system payment for rehabilitation claims having a "from" date of July 1, 1996, or later and a



**TITLE 20. PUBLIC UTILITIES AND TELECOMMUNICATIONS**

**STATE CORPORATION COMMISSION**

"through" date within the hospital fiscal year times 1/3.

(5) Paid days from the cases and claims in subdivisions 1 a (3) and (4) of this subsection, times the revised system per diem that is effective on July 1, 1996, times 2/3.

b. DSH reimbursement shall be equal to paid days from the start of the hospital fiscal year through June 30, 1996, times the DSH per diem effective before July 1, 1996. There shall be no settlement of DSH after July 1, 1996, as the lump sum amount shall be final.

c. Pass-throughs shall be settled as previously based on allowable cost related to days paid in subdivisions 1 a (1), (2), and (5) of this subsection.

2. Settlement of a hospital's second fiscal year ending after July 1, 1996:

a. Operating reimbursement shall be equal to the sum of the following:

(1) Days occurring in the hospital fiscal year related to admissions that occurred before July 1, 1996, times the revised system per diem that is effective at the time.

(2) DRG system payment for DRG and psychiatric cases discharged in the hospital fiscal year, but before July 1, 1997, times 1/3.

(3) DRG system payment for rehabilitation claims having a "through" date within the hospital fiscal year but before July 1, 1997, times 1/3.

(4) Covered days from the cases and claims and in subdivisions 2 b and c of this subsection, times the revised system per diem that is effective on July 1, 1996, times 2/3.

(5) DRG system payment for DRG and psychiatric cases discharged from July 1, 1997, through the end of the hospital fiscal year, times 2/3.

(6) DRG system payment for rehabilitation claims having a "through" date from July 1, 1997, through the end of the hospital fiscal year, times 2/3.

(7) Covered days from the cases and claims and in subdivisions 2 a (5) and (6) of this subsection, times the revised system per diem that is effective on July 1, 1997, times 1/3.

b. DSH reimbursement shall be the predetermined lump sum amount.

c. Pass-throughs shall be settled as previously, based on allowable cost related to days paid in subdivisions 2 a (1), (4), and (7) of this subsection.

VA.R. Doc. No. R00-16; Filed December 21, 1999, 11:33 a.m.

**REGISTRAR'S NOTICE:** The State Corporation Commission is exempt from the Administrative Process Act in accordance with § 9-6.14:4.1 A 2 of the Code of Virginia, which exempts courts, any agency of the Supreme Court, and any agency which by the Constitution is expressly granted any of the powers of a court of record.  
  
The distribution list referenced as Attachment B in the following order is not being published. However, the list is available for public inspection at the State Corporation Commission, Document Control Center, Tyler Building, 1300 East Main Street, 1<sup>st</sup> Floor, Richmond, Virginia 23219, from 8:15 a.m. to 5 p.m., Monday through Friday; or it may be viewed at the Virginia Code Commission, General Assembly Building, 910 Capitol Street, 2<sup>nd</sup> Floor, Richmond, Virginia 23219, during regular office hours.

**Title of Regulation:** 20 VAC 5-315-10 et seq. **Regulations Governing Net Metering.**

**Statutory Authority:** §§ 12.1-13 and 56-594 of the Code of Virginia.

**Summary:**

*The proposed regulations establish requirements intended to facilitate net energy metering for customers owning and operating an electrical generator that uses as its total fuel source solar, wind or hydro energy. These regulations will serve to standardize the interconnection requirements for such facilities and will govern the metering, billing and contract requirements between net metering customers, electric distribution companies and energy service providers.*

*The regulations contain provisions pertaining to (i) company notification, (ii) conditions of interconnection, (iii) metering, billing and tariff considerations, (iv) liability insurance, (v) additional controls and test, and (vi) waivers.*

**Agency Contact:** Please direct questions to Tommy Oliver, Division of Economics and Finance, State Corporation Commission, P.O. Box 1197, Richmond, Virginia 23218, telephone (804) 371-9295.

AT RICHMOND, DECEMBER 22, 1999

COMMONWEALTH OF VIRGINIA

At the relation of the

STATE CORPORATION COMMISSION

CASE NO. PUE990788

Ex Parte: In the matter of establishing regulations for net energy metering pursuant to Va. Code § 56-594

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# Proposed Regulations

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## ORDER ESTABLISHING PROCEEDING

As part of the Virginia Electric Utility Restructuring Act ("the Act"), § 56-594 of the Code of Virginia directs the Commission to establish by regulation a program, to begin no later than July 1, 2000, which affords eligible customer-generators the opportunity to participate in net energy metering. The Act provides that a customer owning and operating an electrical generating facility that meets specified conditions may interconnect such a facility with a utility's electric grid and receive credit for electricity generated by the customer and fed back to the electric grid.

The Commission is of the opinion and finds that it should establish a proceeding to adopt regulations governing a net energy metering program. The Commission's Staff, after receiving input from numerous stakeholders and interested parties, has developed proposed regulations to govern net energy metering and has prepared a report that discusses the proposed regulations. The proposed regulations are attached to this Order as Attachment A, and the Staff's report has been filed in this docket and served on those persons on the service list for this Order. Accordingly,

### IT IS ORDERED THAT:

(1) This case is docketed and assigned Case No. PUE990788.

(2) On or before February 2, 2000, any person desiring to participate in this proceeding for the promulgation of Commission regulations for net energy metering shall file an original and fifteen (15) copies of its Comments with the Clerk of the Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218-2118. The Comments should set forth parties' interests in this proceeding, and if such parties object to certain terms in the proposed regulations, proposed alternative language should be included in the Comments.

(3) Any person desiring a hearing in this matter shall file such a request with its Comments on or before February 2, 2000, and shall state in detail why a hearing is necessary. Such a request should identify the factual issues likely in dispute upon which the party seeks hearing together with the evidence expected to be introduced at any hearing. If no sufficient request for hearing is received, the Commission may enter an order promulgating regulations upon the basis of the written pleadings filed.

(4) On or before January 5, 2000, the Commission will cause to be published the following notice as classified advertising in newspapers of general circulation throughout the Commonwealth of Virginia:

**NOTICE TO THE PUBLIC OF A PROCEEDING  
TO ESTABLISH REGULATIONS FOR NET  
ENERGY METERING PURSUANT TO § 56-594  
OF THE CODE OF VIRGINIA  
CASE NO. PUE990788**

As part of the Virginia Electric Utility Restructuring Act ("the Act"), § 56-594 of the Code of Virginia directs the State Corporation Commission ("Commission") to establish by regulation a program, to begin no later than July 1, 2000, which affords eligible customer-generators

the opportunity to participate in net energy metering. The Act provides that a customer owning and operating an electrical generating facility that meets specified conditions may interconnect such a facility with a utility's electric grid and receive credit for electricity generated by the customer and fed back to the electric grid.

By Order entered on December 22, 1999, the Commission established a proceeding to adopt net energy metering regulations and issued proposed regulations. Also on that date, the Commission's Staff filed a report that describes the provisions of the proposed regulations. Interested persons should obtain copies of the Commission's December 22, 1999, Order with attached proposed regulations, and the Commission Staff Report. Copies of both the Order and Report may be obtained from the Clerk of the Commission at the address listed below. The Order and proposed regulations will also appear in the January 17, 2000 issue of The Virginia Register of Regulations.

Any person desiring to participate in the Commission's proceeding for the promulgation of Commission regulations for net energy metering shall file, on or before February 2, 2000, an original and fifteen (15) copies of its Comments with the Clerk of the Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218-2118. The Comments should set forth the parties' interest in this proceeding, and if a party objects to certain terms in the proposed regulations, proposed alternative language should be included in its Comments.

Any person desiring a hearing in this matter shall file such a request with its Comments on or before February 2, 2000, and shall state in detail why a hearing is necessary. Such a request should identify the factual issues likely in dispute upon which the party seeks hearing, together with the evidence expected to be introduced at any hearing. If no sufficient request for hearing is received, the Commission may enter an order promulgating regulations upon the basis of the written pleadings filed.

All communication to the Commission should be directed to the Clerk of the State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218-2118, and should refer to Case No. PUE990788.

### VIRGINIA STATE CORPORATION COMMISSION

AN ATTESTED COPY hereof shall be sent by the clerk of the Commission to: All electric cooperatives and electric companies in Virginia as listed in Attachment B to this Order; John F. Dudley, Senior Assistant Attorney General & Chief, Insurance and Utilities Regulatory Section, Office of the Attorney General, 900 East Main Street, Richmond, Virginia 23219; Mike Toalsan, Executive Vice President, Home Builders Association of Virginia, 1108 East Main Street, Suite 700, Richmond, Virginia 23219; MaryJo Fields, Virginia Building & Code Officials Association, P.O. Box 12164, Richmond, Virginia 23218; Harry W. Kincaid, Executive Director, Consulting Engineers Council of Virginia, 611 Research Road, Richmond, Virginia 23236; Todd Foley,

Director-External Affairs, BP Solarex, 1776 I Street N.W., Suite 1000, Washington DC 20006; James J. Ishee, Attorney at Law, 4122 Leonard Drive, Fairfax, Virginia 22030; Kenneth S. Jurman, Renewable Energy Project Manager, Department of Mines, Minerals and Energy, 202 North 9<sup>th</sup> Street, 8<sup>th</sup> Floor, Richmond, Virginia 23219; Leigh Dicks, Executive Director, Virginia Society of Professional Engineers, 9291 Laurel Grove Road, Suite 10, Mechanicsville, Virginia 23116; Stephen S. Kalland, Executive Director, MDVA-SEIA, P.O. Box 10631, Arlington, Virginia 22210-9998; Randall Swisher, Executive Director, American Wind Energy Association, 122 C Street, NW, 4<sup>th</sup> Floor, Washington, DC 20001; Phil Parrish, President, Matsys, 6800 Versar Center, Suite 275, Springfield, Virginia 22151; Jeffrey R. Yago, P.E., CEM, J. R. Yago & Associates, P.O. Box 10, Gum Springs, Virginia 23065; William Stewart, 40101 Highland View Lane, Paeonian Springs, Virginia 20129; John Pollack, P.O. Box 265, Batesville, Virginia 22924; Chris Larsen, Renewable Energy Specialist, North Carolina Solar Center, Box 7401, North Carolina State University, Raleigh, North Carolina 27695-7401; Daniel K. Slone, McGuire, Woods, Battle and Booth, One James Center, Richmond, Virginia 23219; Carlo LaPorta, President, Capital Sun Group, 6503 81<sup>st</sup> Street, Cabin John, Maryland 20818; Jerry Paner, Solar Building Systems, 3131 Mount Hill Drive, Midlothian, Virginia 23113; Michel A. King, President, Old Mill Power Company, 103 Shale Place, Charlottesville, Virginia 22902-6402; Eric Thompson, Earthstar Energy Systems, P.O. Box 59, Schuyler, Virginia 22969; Paul Coughlin, Atlantic Solar Products Inc., 9351-J Philadelphia Road, Baltimore, Maryland 21237, Jerry Broadway, Virginia Economic Development Partnership, 901 East Byrd Street, Richmond, Virginia 23218-0798; Paul Hughes, Environmental Services, Inc., 8929 Colesbury Place, Fairfax, Virginia 22031; Michael Eckart, Solar International Management, Solar Bank Project, 1828 L Street N.W., Suite 1000, Washington DC 20036, Richard S. Corner, AIA, 909 Windsor Road, Virginia Beach, Virginia 23451; Linda Church-Ciucci, Executive Director, National Hydropower Association, One Massachusetts Ave., NW, Suite 720, Washington, DC 20001; Trip Pollard, Southern Environmental Law Center, 201 West Main Street, Suite 14, Charlottesville, Virginia 22902; Fred Morse, Morse & Associates, 1808 Corcoran Street N.W., Washington, DC 20009; Aiden Hathaway, ICF Consulting Group, 9300 Lee Highway, Fairfax, Virginia 22031-1207; Richard Good, President, Solar Services, Inc., 1364 London Bridge Road, Suite 102, Virginia Beach, Virginia 23456-3111; Watt Bradshaw, Blue Ridge Energy Company, Route 3, Box 82A, Broadway, Virginia 22815; Peter Biondo, USA Solar, 1108 Montrose Avenue, Charlottesville, Virginia 22902; Paul Maycock, PV Energy Systems, Inc., 4539 Old Auburn Road, Warrenton, Virginia 20187; Thomas J. Starrs, Principal, Kelso Starrs & Associates, 14503 S.W. Reddings Beach Road, Vashon, Washington 98070; Ken Schall, Commonwealth Solar, 12433 Autumn Sun Lane, Ashland, Virginia 23005; Jody Solell, Solar Electrics, 4060 Trapp Road, Fairfax, Virginia 22032-1137; Duncan Abernathy, American Institute of Architects, 15 South 5<sup>th</sup> Street, Richmond, Virginia 23219; Thomas Nicholson, Esquire, Williams, Mullen, Clark & Dobbins, P.O. Box 1320, Richmond, Virginia 23218-1320;

and the Commission's Divisions of Economics and Finance, Energy Regulation, and Office of General Counsel.

CHAPTER 315.  
REGULATIONS GOVERNING NET METERING.

**20 VAC 5-315-10. Applicability and scope.**

*These regulations are promulgated pursuant to the provisions of § 56-594 of the Virginia Electric Utility Restructuring Act (§ 56-576 et seq. of the Code of Virginia) They establish requirements intended to facilitate net energy metering for customers owning and operating an electrical generator that uses as its total fuel source solar, wind or hydro energy. These regulations will serve to standardize the interconnection requirements for such facilities and will govern the metering, billing and contract requirements between net metering customers, electric distribution companies and energy service providers.*

**20 VAC 5-315-20. Definitions.**

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

*"Billing period" means, as to a particular customer, the time period between the dates on which the electric distribution company or energy service provider, as the case may be, issues the customer's bills.*

*"Electric distribution company" means the company that owns and/or operates the distribution facilities delivering electricity to the net metering customer's premises.*

*"Energy service provider" means the company providing electric energy to a net metering customer, either on a tariffed, competitive, or default basis.*

*"Net metering customer" means a customer owning and operating a renewable fuel generator under a net metering service arrangement.*

*"Net metering period" means each successive 12-month period following the date of final interconnection of the renewable fuel generator with the electric distribution company's facilities.*

*"Net metering service" means measuring the difference, over the net metering period between electricity supplied to a net metering customer from the electric grid and the electricity generated and fed back to the electric grid by the net metering customer, using a single meter.*

*"Renewable fuel generator" means an electrical generating facility that:*

- 1. Has a capacity of not more than 10 kilowatts for residential customers and not more than 25 kilowatts for nonresidential customers;*
- 2. Uses as its total fuel source solar, wind, or hydro energy;*
- 3. Is owned and operated by the net metering customer and is located on the customer's premises;*

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# Proposed Regulations

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4. Is interconnected and operated in parallel with the electric distribution company's facilities; and

5. Is intended primarily to offset all or part of the customer's own electricity requirements.

## **20 VAC 5-315-30. Company notification.**

The prospective net metering customer shall submit a notification form to the electric distribution company and, if different from the electric distribution company, the energy service provider, at least 14 days prior to the date the customer intends to interconnect his renewable fuel generator to the electric distribution company's facilities. A net metering customer shall have all equipment necessary to complete the grid interconnection installed prior to such notification. The electric distribution company shall have 14 days from the date of notification to determine whether the requirements contained in 20 VAC 5-315-40 have been met.

Fifteen days after a net metering customer submits the interconnection form, he may interconnect his renewable fuel generator and begin operation of said renewable fuel generator unless the electric distribution company or the energy service provider requests a waiver of this requirement under the provisions of 20 VAC 5-315-80, prior to said 15<sup>th</sup> day.

The electric distribution company shall file with the commission's Division of Energy Regulation a copy of each completed notification form within 30 days of final interconnection.

## **20 VAC 5-315-40. Conditions of interconnection.**

A. A prospective net metering customer may begin operation of his renewable fuel generator on an interconnected basis when:

1. The customer has properly notified both the electric distribution company and energy service provider (in accordance with 20 VAC 5-315-30) of his intent to interconnect;
2. The customer has certified that his installed renewable fuel generator meets all provisions of all applicable safety and performance standards established by local and national electrical codes including the National Electrical Code, the Institute of Electrical and Electronics Engineers, and Underwriters Laboratories, or other national testing laboratories;
3. The inverter settings have been checked by the electric distribution company for renewable fuel generators exceeding a generating capacity of 10 kilowatts;
4. The customer has complied with the electric distribution company's current interconnection guidelines for nonstatic inverter generators;

B. A prospective net metering customer shall not be allowed to interconnect a renewable fuel generator if doing so will cause the total rated generating capacity of all interconnected renewable fuel generators within that customer's electric distribution company's service territory to

exceed 0.1% of that company's Virginia peak-load forecast for the previous year.

C. Neither the electric distribution company nor the energy service provider shall impose any charges upon a net metering customer for any interconnection requirements specified by this chapter.

## **20 VAC 5-315-50. Metering, billing and tariff considerations.**

Net metered energy shall be measured in accordance with standard metering practices by metering equipment capable of measuring (but not necessarily displaying) power flow in both directions. Each contract or tariff governing the relationship between a net metering customer, electric distribution company or energy service provider shall be identical, with respect to the rate structure, all retail rate components, and monthly charges, to the contract or tariff under which the same customer would be served if such customer was not a net metering customer. Said contract or tariff shall be applicable to both the electric energy supplied to, and consumed from, the grid by that customer.

If electricity generated by the customer and fed back to the electric grid exceeds the electricity supplied to the customer from the grid ("negative net consumption") during a net metering period, the customer shall receive no compensation from the electric distribution company nor the energy service provider unless that net metering customer has entered into a purchase power contract with the electric distribution company and/or the energy service provider.

During any billing period for which a net metering customer has a negative net consumption, the customer shall be required to pay only the nonusage sensitive charges for that month. Such negative net consumption shall be applied against future energy consumption, but not past the end of the net metering period.

## **20 VAC 5-315-60. Liability insurance.**

Net metering customers shall not be required to obtain additional liability insurance as a condition of interconnecting with the electrical grid.

## **20 VAC 5-315-70. Additional controls and tests.**

No net metering customer shall be required to pay for additional metering, testing or controls in order to interconnect with the electric distribution company or energy service provider. However, this chapter shall not preclude a net metering customer, an electric distribution company or an energy service provider from installing additional controls or meters, or from conducting additional tests. The expenses associated with these additional meters, tests or equipment shall be borne by the party desiring the additional meters, tests or equipment.

## **20 VAC 5-315-80. Request for waivers.**

Any request for a waiver of any of the provisions of this chapter shall be considered by the Virginia State Corporation Commission on a case-by-case basis, and may be granted upon such terms and conditions as the commission may impose.

Effective 7/2000

INTERCONNECTION NOTIFICATION

PURSUANT TO COMMISSION REGULATION 20 VAC 5-315-30, APPLICANT HEREBY GIVES NOTICE OF INTENT TO INSTALL AND OPERATE A GENERATING FACILITY.

Section 1. Applicant Information

Name: \_\_\_\_\_

Mail Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_

Facility Location (if different from above): \_\_\_\_\_

Daytime Phone #: \_\_\_\_\_

Distribution Utility: \_\_\_\_\_ Account #: \_\_\_\_\_

Energy Service Provider (ESP) \_\_\_\_\_ Account #: \_\_\_\_\_  
(if different than Distribution Utility)

Section 2. Generating Facility Information

Generator Type (check one): Solar \_\_\_\_\_, Wind \_\_\_\_\_, Hydro \_\_\_\_\_

Generator Manufacturer, Model Name & Number: \_\_\_\_\_

Power Rating in Kilowatts: \_\_\_\_\_

Inverter Manufacturer, Model Name & Number: \_\_\_\_\_

Battery Backup? (yes or no) \_\_\_\_\_

Section 3. Installation Information & Certification

Check if owner-installed

Installation Date: \_\_\_\_\_ Interconnection Date: \_\_\_\_\_

Installing Electrician: \_\_\_\_\_ License #: \_\_\_\_\_

Mail Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_

Daytime Phone #: \_\_\_\_\_

1. The system hardware is listed by Underwriters Laboratories to be in compliance with UL 1741:

Signed (Vendor): \_\_\_\_\_ Date: \_\_\_\_\_

Name (printed): \_\_\_\_\_ Company: \_\_\_\_\_

2. The system has been installed in compliance with the local Building/Electrical Code of \_\_\_\_\_

(City/County)

Signed (Inspector): \_\_\_\_\_ Date: \_\_\_\_\_

In lieu of signature by inspector, a copy of final inspection certificate may be attached.

3. Utility and ESP signatures signify only receipt of this form, in compliance with the Commission's net energy metering regulations, Regulation 20 VAC 5-315-30.

Signed (Utility Representative): \_\_\_\_\_ Date: \_\_\_\_\_

Signed (ESP Representative): \_\_\_\_\_ Date: \_\_\_\_\_

I hereby certify that, to the best of my knowledge, all of the information provided in this Notice is true and correct.

Signature of Applicant \_\_\_\_\_

VA.R. Doc. No. R00-75; Filed December 28, 1999, 9 a.m.

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# FINAL REGULATIONS

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For information concerning Final Regulations, see Information Page.

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## Symbol Key

Roman type indicates existing text of regulations. *Italic type* indicates new text. Language which has been stricken indicates text to be deleted. [Bracketed language] indicates a change from the proposed text of the regulation.

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## TITLE 2. AGRICULTURE

### STATE MILK COMMISSION

**REGISTRAR'S NOTICE:** The Milk Commission is exempt from the Administrative Process Act in accordance with § 9-6.14:4.1 A 7 of the Code of Virginia, which exempts the Milk Commission in promulgating regulations regarding (i) producers' licenses and bases; (ii) classification and allocation of milk, computation of sales and shrinkage; and (iii) class prices for producers' milk, time and method of payment, butterfat testing and differential.

2 VAC 15-20-10 et seq. Regulations for the Control and Supervision of Virginia's Milk Industry, appeared in The Virginia Register of Regulations on September 13, 1999, with the effective date pending the implementation date of the Federal Milk Marketing Order Reform final decision in accordance with § 143 of the federal Agriculture Improvement and Reform Act of 1996 (Farm Bill), 7 USC § 7253. The full text of 2 VAC 15-20-70, 2 VAC 15-20-80 and 2 VAC 15-20-81 can be found in 15:26 VA.R. 3436-3445 September 13, 1999.

**Title of Regulation:** 2 VAC 15-20-10 et seq. Regulations for the Control and Supervision of Virginia's Milk Industry (amending 2 VAC 15-20-70; adding 2 VAC 15-20-81; repealing 2 VAC 15-20-80).

**Statutory Authority:** §§ 3.1-430 and 3.1-437 of the Code of Virginia.

**Effective Date:** January 1, 2000.

**Summary:**

*The amendments (i) change the classification of eggnog from a Class II product to a Class I product and (ii) modify Class I pricing components, definitions of adjacent markets, price issuance dates, formula methodology, and producer settlement dates.*

**Agency Contact:** Copies of the regulation may be obtained from Edward C. Wilson, Jr., Deputy Administrator, State Milk Commission, 200 North 9th Street, Suite 915, Richmond, VA 23219-3414, telephone (804) 786-2013.

VA.R. Doc. No. R00-208; Filed December 28, 1999, 11:42 a.m.

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## TITLE 19. PUBLIC SAFETY

### DEPARTMENT OF STATE POLICE

**REGISTRAR'S NOTICE:** The following regulation is exempt from the Administrative Process Act in accordance with § 9-6.14:4.1 C 4 (c) of the Code of Virginia, which excludes regulations that are necessary to meet the requirements of federal law or regulations, provided such regulations do not differ materially from those required by federal law or regulation. The Department of State Police will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.

**Title of Regulation:** 19 VAC 30-20-10 et seq. Motor Carrier Safety Regulations (amending 19 VAC 30-20-80 and 19 VAC 30-20-150).

**Statutory Authority:** § 52-8.4 of the Code of Virginia.

**Effective Date:** March 15, 2000.

**Summary:**

*Amendment 10 adopts and incorporates by reference changes made by the U.S. Department of Transportation, Office of Motor Carrier Safety, to 49 CFR Parts 390 through 397 promulgated and in effect as of January 2, 1999. 49 CFR Part 393 is amended to require the installation of retroreflective tape or reflex reflectors on the sides and rear of semi-trailers and trailers that were manufactured prior to December 1, 1993, have an overall width of 80 inches or more, and a gross vehicle weight rating (GVWR) of 10,001 pounds or more. Motor carriers are required to install retroreflective tape or reflex reflectors within two years of the effective date (June 1, 1999) of this rule. A certain amount of flexibility in terms of the colors or color combinations during a 10-year period will be allowed, but all older trailers are required to be equipped with conspicuity treatments identical to those mandated for new trailers by June 1, 2009. 49 CFR Part 393 is also amended to require certain trailers and semi-trailers with a gross vehicle rating of 10,001 pounds or more, and manufactured on or after January 26, 1998, be equipped with rear impact guards that meet the requirements of Federal Motor Vehicle Safety Standard (FMVSS) No. 223. The rear impact guards must be installed to ensure that the trailer or semi-trailer meets the rear impact protection requirements of FMVSS No. 224. With regard to trailers and semi-trailers manufactured before January 26, 1998, motor carriers are not required to retrofit a rear impact guard that conforms to FMVSS No. 223. 19 VAC 30-20-150 is amended to delete the word "property-carrying" and add the word "commercial" to be consistent with federal regulations.*

Agency Contact: Copies of the regulation may be obtained from Lieutenant Herbert B. Bridges, Department of State Police, Motor Carrier Safety, P.O. Box 27472, Richmond, VA 23261-7472, telephone (804) 378-3489. There is a charge of \$5.00 for copies.

**19 VAC 30-20-80. Compliance.**

Every person and commercial motor vehicle subject to the Motor Carrier Safety Regulations operating in interstate or intrastate commerce within or through the Commonwealth of Virginia shall comply with the federal Motor Carrier Safety Regulations promulgated by the United States Department of Transportation, Federal Highway Administration, with amendments promulgated and in effect as of January 2, ~~1999~~ 2000, pursuant to the United States Motor Carrier Safety Act found in 49 CFR Parts 390 through 397, which are incorporated in these regulations by reference, with certain exceptions, as set forth below.

**19 VAC 30-20-150. Waiver of certain physical defects--§ 391.49.**

A person who is not physically qualified to drive under 49 CFR 391.41 (b)(1), (b)(2), (b)(3) or (b)(10), and is not subject to Article 7 (§ 10.1-1450 et seq.) of Chapter 14 of Title 10.1 of the Code of Virginia, Regulations Governing the Transportation of Hazardous Materials (9 VAC 20-110-10 et seq.), and who is otherwise qualified to drive a ~~property-carrying~~ *commercial* motor vehicle, may drive a ~~property-carrying~~ *commercial* motor vehicle in intrastate commerce if granted a waiver by the commissioner.



COMMONWEALTH of VIRGINIA

VIRGINIA CODE COMMISSION

General Assembly Building

JANE D. CHAFFIN  
REGISTRAR OF REGULATIONS

910 CAPITOL STREET  
RICHMOND, VIRGINIA 23219  
(804) 786-3591  
FAX (804) 692-0625

December 23, 1999

Colonel M. Wayne Huggins  
Superintendent  
Department of State Police  
P.O. Box 27472  
Richmond, Virginia 23261-7472

Dear Colonel Huggins:

This office has received the amendments to 19 VAC 30-20-10 et seq., Motor Carrier Safety Regulations, submitted by the Department of State Police on December 21, 1999.

As required by § 9-6.14.4.1 C 4(c) of the Code of Virginia, I have determined that these amendments are exempt from Article 2 of the Administrative Process Act since they do not differ materially from those required by federal law or regulation.

Sincerely,

A handwritten signature in cursive script that reads "Jane D. Chaffin".

Jane D. Chaffin  
Registrar of Regulations



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# THE LEGISLATIVE RECORD

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*The Legislative Record* is available on the Internet at <http://dls.state.va.us/legrec99.htm>























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# GENERAL NOTICES/ERRATA

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## STATE CORPORATION COMMISSION

AT RICHMOND, NOVEMBER 29, 1999

JOINT MOTION OF

UNITED TELEPHONE-SOUTHEAST, INC.

And CASE NO. PUC970174

CENTRAL TELEPHONE COMPANY OF VIRGINIA

For approval of Amendment to the  
Companies' Alternative Regulatory Plan

### FINAL ORDER

On November 10, 1997, United Telephone-Southeast, Inc., and Central Telephone Company of Virginia (collectively, "Companies") filed a Joint Motion requesting that the Commission amend the Companies' Alternative Regulatory Plan ("Plan")<sup>1</sup> to conform the Plan to revisions in §§ 56-235.5 E and 56-237.2 of the Code of Virginia. The first revision would allow a proposed telecommunications service to be declared "Competitive" pursuant to the Plan following notice and opportunity for hearing. The second revision would change the minimum number of complaints or requests for hearing on certain of the Companies' rates that would require the Commission to convene a public hearing.

By Order dated March 18, 1998, the Commission directed the Companies to provide notice of their application to customers and established a period in which comments or requests for hearing on the application could be filed. One comment, from Bell Atlantic-Virginia, Inc., was received. Bell-Atlantic recommended that the Commission grant the Joint Motion.

NOW THE COMMISSION, having considered the application, the Plan, the comment received, and the applicable statutes and rules, is of the opinion that the revisions proposed in the Joint Motion are, with one exception, in the public interest and would not cause the Plan to become non-compliant with § 56-235.5 D of the Code of Virginia. The proposed revision to paragraph 4.A.2 (codified as subdivision D1b of Attachment 3 of 20 VAC 5-401-70) of the Companies' Plan is approved with the exception of the proposed removal of the words "must be given to all affected parties," which shall remain in the Plan. The revisions, prepared in Code Commission style, are attached to this Order, with deletions of current language struck through and additions of new language underscored. Accordingly,

IT IS HEREBY ORDERED THAT:

(1) The Joint Motion is granted, and the Plan shall be amended as proposed except as set forth herein; and

(2) There being nothing further to come before the Commission, the matter is dismissed.

AN ATTESTED COPY HEREOF shall be sent by the Clerk of the Commission to: James B. Wright, Senior Attorney, Central Telephone Company of Virginia, 14111 Capital Boulevard, Wake Forest, North Carolina 27587-5900; Judith W. Jagdmann, Esquire, Office of the Attorney General, 900 East Main Street, 2nd Floor, Richmond, Virginia 23219.

ATTACHMENT 3.

### ALTERNATIVE REGULATORY PLAN FOR CENTRAL TELEPHONE COMPANY OF VIRGINIA AND UNITED TELEPHONE SOUTHEAST, INC.

#### A. Applicability of plan.

1. Upon election of the companies, this plan will apply to Central Telephone Company of Virginia and United Telephone-Southeast, Inc. ("the Companies") and will go into effect on January 1, 1995.

We refer to the Companies collectively; however, this does not preclude either Company from seeking singular treatment under the provisions of this Plan.

2. Nothing in this plan shall be deemed to affect the ability or authority of any entity other than the Companies to offer any telecommunications service.

#### B. Changes to plan.

1. Any change to this plan may occur only after an appropriate proceeding is initiated and held under the provisions of § 56-235.5 D of the Code of Virginia.

2. Any such change approved by the Commission shall have prospective effect only.

#### C. Classification of services.

1. Telecommunications services of the Companies will be classified into three categories called Basic Local Exchange Telephone Services ("BLETS"), Discretionary services, and Competitive services, as defined below. Initially, the Companies' existing services will be distributed among these three categories in accordance with Appendix A hereto.

2. Service classifications are defined as follows:

a. "Competitive services" are, pursuant to § 56-235.5 F of the Code of Virginia, telecommunications services for which competition or the potential for competition in the marketplace is or can be an effective regulator of the price of those services as determined by the Commission.

b. "Discretionary services" are telecommunications services which are optional, nonessential enhancements to BLETS, which may or may not be provided by suppliers other than the Companies, but which do not conform to the definition of Competitive services.

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<sup>1</sup> Commonwealth of Virginia, At the relation of the State Corporation Commission, Ex. Parte: In the matter of investigating telephone regulatory methods pursuant to Virginia Code § 56-235.5, etc., Case No. PUC930036, 1994 S.C.C. Ann. Rept. 262.

c. "Basic Local Exchange Telephone Services" ("BLETS") are telecommunications services which are not Competitive or Discretionary and which, due to their nature or legal/regulatory restraints, only the Companies can provide, and other services the Commission determines to be BLETS.

D. Classification of new services and reclassification of existing services.

1. Thirty days prior to offering a new service or reclassifying an existing service, the Companies shall notify, in writing, the Staff, the Attorney General, and all certificated interexchange carriers of the new or reclassified offering and shall provide a tariff and appropriate documentation to the Staff. The Commission may suspend the proposed effective date if it finds that the documentation supporting the classification is insufficient.

a. Simultaneous with such notification, the Companies shall designate the service category into which the service is classified.

b. If the proposed service category is Competitive, notice must be given to all affected parties, and a an opportunity for hearing must be provided conducted in accordance with § 56-235.5 E of the Code of Virginia.

c. Any interested party shall be afforded an opportunity, by timely petition to the Commission, to propose that the service be classified in a different category; however, the filing of such petition shall not result in the postponement of any new service offering unless the Commission, for good cause shown, orders otherwise.

d. Any such proceeding to determine the proper classification of a service offering shall be completed within 90 days following the effective date of the service offering, except that if the proposed classification is Competitive, the proceeding must be completed within 120 days. The Commission, however, for good cause shown, may extend these time periods.

2. Any interested party may petition for the classification or reclassification of a Company service. Any such proceeding must be completed within 90 days unless the reclassification is either to or from the Competitive category, in which case it must be completed within 120 days, unless the Commission should extend these time periods for good cause shown. If the proposed category is Competitive, subparagraph D1b. above applies.

E. Tariff requirements. Tariffs shall continue to be filed for all BLETS and Discretionary services and for any Competitive service that is also offered within the Companies' service territory, pursuant to a Virginia intrastate tariff, by another company that is certificated by this Commission. The prices of Competitive services shall not be regulated by the Commission, except as provided for in Paragraph L. (Competitive safeguards) of this section.

F. Price changes for BLETS. Price changes for BLETS shall be governed by the following rules:

1. Price decreases. If the Companies wish to reduce the price for any BLETS service, they shall file a revised tariff with the Commission. Such tariff shall take effect in accordance with § [56-40](#) of the Code of Virginia.

2. Price increases.

a. No price increase (other than pursuant to Paragraph H. of this section) will be allowed before January 1, 1998, for BLETS services.

b. Beginning in the year 1998, price increases for BLETS services will be allowed pursuant to the notification provisions of § [56-237.1](#) of the Code of Virginia and a showing by the Companies that any individual price increase will not exceed in percentage terms 1/2 the increase in the Gross Domestic Product Price Index (as described in Paragraph J. of this section) for the preceding year. After this initial price increase, any subsequent increase in prices for these services will be allowed pursuant to the notification provisions of § [56-237.1](#) of the Code of Virginia and shall not exceed in percentage terms 1/2 of the increase in the Gross Domestic Product Price Index since the last time the price of the service was increased. If a protest or objection to a price increase is filed by ~~20 or more~~ the lesser of 150 or 5.0% of the customers, the Commission shall, upon reasonable notice, conduct a public hearing concerning the lawfulness of the increase, pursuant to § [56-235.5](#) of the Code of Virginia.

c. No service shall be subject to more than one price increase in any 12-month period.

3. Rate regrouping of exchanges. Nothing in this plan shall be construed to prohibit rate regrouping of exchanges due to growth in access lines. This regrouping process will continue in order to avoid rate discrimination between similarly sized exchanges.

G. Price changes for Discretionary services. Changes to prices for Discretionary services shall be governed by the following rules:

1. Price decreases. If the Companies wish to reduce the price of any Discretionary service, they shall file a revised tariff with the Commission. Such tariff shall take effect in accordance with the requirements of § [56-40](#) of the Code of Virginia.

2. Price increases.

a. Price increases for Discretionary services will be allowed after 30 days' notice to the Commission, 30 days' notice (by individual and solitary bill inserts or imprints) to customers, and a showing by the Companies that no individual price increase for a Discretionary service will exceed the full increase in GDPPI, as defined in Paragraph J. of this section, for the preceding year. If the Companies do not obtain a rate increase during the prior 12-month period, the increase may reflect a cumulative change in GDPPI

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## General Notices/Errata

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since the last increase, but can be no more than two times the change in GDPPI for the preceding year.

b. No service shall be subject to more than one price increase in any 12-month period.

### H. Revenue-neutral price changes.

1. Nothing in this plan shall be construed to prohibit the Companies from proposing changes in the price of any BLETS or Discretionary services that do not result in a net increase in operating revenues. The notification provisions of § [56-237.1](#) of the Code of Virginia will be applied to such proposals, and if a protest or objection to the revenue-neutral restructuring is filed by ~~20 or more~~ the lesser of 150 or 5.0% of the customers, the Commission shall, upon reasonable notice, conduct a public hearing concerning the lawfulness of the restructuring, pursuant to § [56-235.5](#) of the Code of Virginia. The Commission shall approve such rate changes if it finds that they are in the public interest, or the Commission may refuse to approve the filing if it is not in the public interest or otherwise fails to comply with this plan.

2. The Commission will require the Companies to show within the first two years following the implementation of the price changes that the changes are, in fact, revenue neutral. If they are not, the Commission may require a prospective adjustment in the affected prices to ensure revenue neutrality.

I. Individual-Case-Basis pricing. Individual-Case-Basis (ICB) or custom-service-package contract pricing is allowed for BLETS and Discretionary services when the Companies demonstrate that a competitive alternative exists for an individual customer, but where the service does not otherwise satisfy the requirements of Paragraph C2a of this section. The conditions of Paragraph L. (Competitive safeguards) of this section must be met. A copy of any ICB or custom-service-package contract must be filed under proprietary protection with the Commission's Division of Communications with supporting data demonstrating that the rate is above total incremental cost of the service.

J. Gross Domestic Product Price Index Standard. The Gross Domestic Product Price Index used to determine limits on price increases shall be the final estimate of the Chain-Weighted Gross Domestic Product - Price Index as prepared by the U.S. Department of Commerce and published in the Survey of Current Business, or its successor.

K. Financial reporting. To provide the Commission with financial information for it to assure that the financial viability of the Companies has not been adversely affected in such a way as to jeopardize their ability to provide high quality service, the Companies shall file annually, unless otherwise indicated below, with the Commission their stockholder annual reports (if available) and SEC Form 10-K; the stockholders' annual reports and SEC Form 10-K of Sprint, Inc.; FCC/SCC Form M and the FCC Automated Reporting Management Information System Report 43-02 to be filed only with the Division of Public Utility Accounting; a Virginia company, per books, rate-of-return statement that provides

financial data on a total-Virginia, total-service basis, and on a Virginia-intrastate, total-service basis; a 13-month average capital structure statement; and a 13-month average rate base statement. The rate-of-return, capital structure, and rate base statements shall be filed quarterly for the first two years of the plan, and annually thereafter. All of the above statements shall include the aggregate of all services, except for any service that is lawfully, preemptively deregulated by the FCC.

L. Competitive safeguards. The following safeguards relating to fairness of competition will be imposed on the Companies:

1. There will be no increases in the prices for BLETS and Discretionary services other than as outlined in Paragraphs F., G., and H. of this section.

2. Services and/or capabilities of a monopoly nature that are components of Competitive services must be offered on an unbundled basis in the tariffs at the time the Commission determines a service to be Competitive. When these services and/or capabilities are used by Competitive services, revenues shall be attributed to noncompetitive operations based on the tariff rates and quantities used.

Regarding new services, unbundling of all non-competitive components must be accomplished before the Companies can offer a competitive service related to the noncompetitive component(s). If the Companies do not plan to offer a related service before the party requesting unbundling plans to offer its related service, the unbundling must be accomplished within a reasonable time after any reasonable request is made for such unbundling, and with assurances the Companies can recover their related incremental costs.

If the Companies offer a Competitive service using an unbundled noncompetitive component, they shall demonstrate that their price equals or exceeds the incremental costs of the competitive components of the service plus the tariffed rates of any noncompetitive components.

3. Revenues from Competitive services in the aggregate must cover their incremental costs. The Companies shall file data annually to demonstrate this. Also, the price of an individual service must cover its incremental costs. The Companies shall maintain total incremental cost studies for each Competitive service offered demonstrating that a service's price equals or exceeds its incremental costs. These studies shall be filed with the Division of Communications within 30 days of a complaint alleging that an individual service's revenues fail to cover its total incremental costs.

M. Service quality. Service quality results shall be filed by the Companies on a quarterly basis, or as directed by the Staff.

1. These reports shall conform to service rules adopted by the Commission by Final Order of June 10, 1993, in Case No. PUC930009. These reports may be expanded

to include results not contained in the present service reports.

2. The Companies will also file reports showing results related to services provided to interexchange carriers as follows:

- a. On-time performance;
- b. Outage duration; and
- c. Blocking below the tandem.

3. The Staff will analyze service results and take immediate action to resolve any service quality problems.

#### N. Filing of other information.

1. Upon the request of the Staff, the Companies will file such other information with respect to any services or practices as may be required of public service companies under current Virginia law, or any amendments thereto.

2. If the Companies fail to provide, timely and accurately, data required by the plan, including answers to any Staff request for data or information necessary for the execution of this plan, they shall be subject to a Rule to Show Cause hearing for such failure. The Commission will monitor closely all aspects of each Company's performance under the plan.

O. Monitoring of Competitive services. To assist the Commission in fulfilling the requirements of § 56-235.5 G of the Code of Virginia to monitor the competitiveness of Competitive services, the Companies must file, on a proprietary basis, a quarterly schedule reporting units and revenue for Competitive services (to be filed only with the Division of Economics and Finance). Also, the Companies must file an annual price list for Competitive services, excluding Yellow Pages (to be filed only with the Divisions of Communications and Economics and Finance).

P. Access charges. Interexchange carriers' access charges are not included in the categories of services set out in this plan for pricing purposes. Pricing for such services will be considered separately in accordance with procedures adopted in Case No. PUC870012, In re: Investigation of the appropriate methodology to determine intrastate access service costs, and as implemented in Case No. PUC880042, Ex Parte, In re: Investigation of pricing methodologies for intrastate access service. For all other purposes, access services will be included in the categories as shown on Appendix A.

## DEPARTMENT OF ENVIRONMENTAL QUALITY

### Notice of Public Meeting and Public Comment Dry River, Mill Creek and Pleasant Run TMDL

The Department of Environmental Quality (DEQ) and the Department of Conservation and Recreation (DCR) seek written and oral comments from interested persons on the development of a Total Maximum Daily Load (TMDL) for fecal coliform bacteria on segments of Dry River, Mill Creek, and Pleasant Run. The three streams are tributaries of the North

River and are located in Rockingham County. The three segments are identified in Virginia's 1998 § 303(d) TMDL Priority List and Report as impaired due to violations of the state's water quality standard for fecal coliform bacteria.

Section 303(d) of the federal Clean Water Act and § 62.1-44.19:7 C of the Code of Virginia require DEQ to develop TMDLs for pollutants responsible for each impaired water contained in Virginia's § 303(d) TMDL Priority List and Report.

The second public meeting on the development of the North River tributaries fecal coliform bacteria TMDL will be held on Thursday, January 20, 2000, at 7 p.m. at the Pence Middle School Auditorium on Bowman Road in Dayton, Virginia.

The public comment period will end on February 21, 2000. Fact sheets on the development of the TMDL for fecal coliform bacteria on the North River tributaries are available upon request. Questions or information requests should be addressed to Rod Bodkin. Written comments should include the name, address, and telephone number of the person submitting the comments and should be sent to Rod Bodkin, Department of Environmental Quality, 4411 Early Road, Harrisonburg, Virginia 22801, telephone (540) 574-7801, FAX (540) 540-7878, or e-mail [rvbodkin@deq.state.va.us](mailto:rvbodkin@deq.state.va.us).

### Notice of Public Meeting and Public Comment Middle Fork Holston River TMDL

The Department of Environmental Quality (DEQ) and the Department of Conservation and Recreation (DCR) seek written and oral comments from interested persons on the development of a Total Maximum Daily Load (TMDL) for fecal coliform bacteria on four segments in the Middle Fork Holston River watershed. These impaired segments are located in Washington County on Byers Creek, Cedar Creek, Hall Creek, and Hutton Creek.. These four segments are identified in Virginia's 1998 § 303(d) TMDL Priority List and Report as impaired due to violations of the state's water quality standard for fecal coliform bacteria.

Section 303(d) of the federal Clean Water Act and § 62.1-44.19:7 C of the Code of Virginia require DEQ to develop TMDLs for pollutants responsible for each impaired water contained in Virginia's § 303(d) TMDL Priority List and Report.

The second public meeting on the development of the fecal coliform bacteria TMDL for these four segments will be held on Thursday, January 27, 2000, at 7 p.m. in the auditorium of the Patrick Henry High School, 31437 Hillman Highway, in Glade Spring, Virginia.

The public comment period will end on February 25, 2000. A fact sheet on the development of the TMDL for fecal coliform bacteria on the four impaired segments in the Middle Fork Holston River is available upon request. Questions or information requests should be addressed to Nancy Norton. Written comments should include the name, address, and telephone number of the person submitting the comments and should be sent to Nancy Norton, Department of Environmental Quality, 355 Deadmore Street, P.O. Box 1688, Abingdon, Va., 24212, telephone (540) 676-4807, FAX (540) 676-4899, or e-mail [ntnorton@deq.state.va.us](mailto:ntnorton@deq.state.va.us).

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# General Notices/Errata

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## COMMISSION ON LOCAL GOVERNMENT

### Schedule of Assessments of Mandates on Local Government

Pursuant to the provisions of §§ 2.1-7.1 and 15.2-2903 (6) of the Code of Virginia, the following schedule, established by the Commission on Local Government and approved by the Secretary of Administration and Governor Gilmore, represents the timetable which the listed executive agencies will follow in conducting their assessments of certain state and federal mandates on local governments which they administer. Such mandates are either new, newly identified, or have been previously assessed more than four years ago. In conducting these assessments, agencies will follow the process established by Executive Memorandum 1-98 which became effective October 13, 1998, succeeding Executive Memorandum 5-94. These mandates are catalogued in the 1999 Catalog of State and Federal Mandates on Local Government as published by the Commission on Local Government.

For further information call Larry McMillan, Senior Policy Analyst, Commission on Local Government at 786-6508.

<u>AGENCY/MANDATE SHORT TITLE</u>	<u>CODE NUMBER</u>	<u>ASSESSMENT PERIOD</u>
Aging, Department for the		
Area Plan For Aging Services	SHHR.VDA001	May 1, 2000 to June 30, 2000
Agriculture and Consumer Services, Department of		
Enforcement of Comprehensive Animal Laws	SCT.VDACS002	February 1, 2000 to May 31, 2000
USDA Food Program Participation Requirements	SCT.VDACS003	February 1, 2000 to May 31, 2000
Public Animal Holding Facility	SCT.VDACS004	February 1, 2000 to May 31, 2000
Cooperative Gypsy Moth Suppression Program	SCT.VDACS006	February 1, 2000 to May 31, 2000
Arts, Virginia Commission for the		
Local Government Arts Challenge Grant	SOE.VCA001	February 1, 2000 to April 30, 2000
Artist in Residence Grant	SOE.VCA002	February 1, 2000 to April 30, 2000
Aviation, Department of		
Airport Operation Standards	STO.DOAV001	April 1, 2000 to June 30, 2000
Airport Licensing	STO.DOAV002	April 1, 2000 to June 30, 2000
Airport Property Lease	STO.DOAV003	April 1, 2000 to June 30, 2000
Airport Grant Application Approval	STO.DOAV004	April 1, 2000 to June 30, 2000
Airport Grant Assurances	STO.DOAV005	April 1, 2000 to June 30, 2000
Airport Safety Overlay Zoning	STO.DOAV006	April 1, 2000 to June 30, 2000
Based Aircraft Survey	STO.DOAV007	April 1, 2000 to June 30, 2000
Airport Financial Responsibility	STO.DOAV008	April 1, 2000 to June 30, 2000
Community College System, Virginia		
Administration of Apprenticeship-Related Instruction	SOE.VCCS001	January 1, 2001 to March 31, 2001
Compensation Board		
Constitutional Officer Legal Expenses	SOA.CB001	February 1, 2000 to March 31, 2000
Constitutional Officer Annual Budget Request	SOA.CB002	February 1, 2000 to March 31, 2000
Funding Constitutional Officer Expenses	SOA.CB003	February 1, 2000 to March 31, 2000
Comprehensive Services, Office of		
Comprehensive Services For At-Risk Youth and Families	CSA.001	August 1, 2000 to October 31, 2000



## Conservation and Recreation, Department of

Stormwater Management Program	SNR.DCR006	April 1, 2000 to June 30, 2000
Erosion and Sediment Control Program	SNR.DCR008	April 1, 2000 to June 30, 2000
Virginia Water Quality Improvement Fund Nonpoint Source	SNR.DCR010	April 1, 2000 to June 30, 2000

## Corrections, Department of

Correctional Facility Compliance Audit	SPS.DOC005	May 1, 2000 to July 31, 2000
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## Criminal Justice Services, Department of

Alcohol Detoxification Center Program	SPS.DCJS007	August 1, 2000 to October 31, 2000
Training Standards for Criminal Justice Personnel	SPS.DCJS008	October 1, 2000 to December 31, 2000
Intensified Drug Enforcement Assistance Grant	SPS.DCJS010	September 1, 2000 to November 30, 2000
Crime Victim Services Grant	SPS.DCJS011	October 1, 2000 to December 31, 2000
Virginia Weed and Seed Initiative Program	SPS.DCJS018	September 1, 2000 to November 30, 2000
Preliminary Alcohol Analysis of Breath	SPS.DCJS019	September 1, 200 to November 30, 2000
Juvenile Accountability Incentive Block Grant	SPS.DCJS023	August 1, 2000 to October 31, 2000

## Education, Department of

School Board Employee Grievance Procedure	SOE.DOE002	May 1, 2000 to June 30, 2000
Infected Students and Persons with Infectious Diseases	SOE.DOE019	July 1, 2000 to September 30, 2000
Use of Approved Textbooks	SOE.DOE024	May 1, 2000 to June 30, 2000
School Facilities	SOE.DOE032	May 1, 2000 to July 31, 2000
Radon Testing of Public Schools	SOE.DOE035	April 1, 2000 to May 31, 2000
Attendance Guidelines for HIV-Minimum Standards for New...	SOE.DOE047	October 1, 2000 to November 30, 2000
Physical and Health Education	SOE.DOE048	June 1, 2000 to July 31, 2000
Funds for Driver Education Standards	SOE.DOE050	October 1, 2000 to December 31, 2000
Employment Counseling and Placement Services	SOE.DOE057	September 1, 2000 to October 31, 2000
Competency-Based Vocational Education Standards	SOE.DOE065	February 1, 2001 to April 30, 2001
Vocational Advisory Council	SOE.DOE066	February 1, 2001 to April 30, 2001
Vocational Education Student Organizations	SOE.DOE067	February 1, 2001 to April 30, 2001
Vocational Education Program Plan	SOE.DOE068	February 1, 2001 to April 30, 2001
Special Education Services	SOE.DOE070	February 1, 2001 to April 30, 2001
Special Education Plan	SOE.DOE071	February 1, 2001 to April 30, 2001
Special Schools for Students with Disabilities	SOE.DOE072	February 1, 2001 to April 30, 2001
Free Transportation for Students with Disabilities	SOE.DOE073	February 1, 2001 to April 30, 2001
Home Instruction	SOE.DOE094	September 1, 2000 to October 31, 2000
School Divisions	SOE.DOE095	May 1, 2000 to July 31, 2000
Required Local Funding Effort for Fees and Charges	SOE.DOE096	May 1, 2000 to June 30, 2000
Suspension, Expulsion and Exclusion of Pupils	SOE.DOE097	April 1, 2000 to June 30, 2000
Drug Free Schools and Campuses	SOE.DOE098	April 1, 2000 to June 30, 2000
Jointly Owned and Operated Schools or Programs	SOE.DOE099	August 1, 2000 to October 31, 2000
School Activity Funds	SOE.DOE100	May 1, 2000 to June 30, 2000
Title I Programs	SOE.DOE101	October 1, 2000 to December 31, 2000
Student Code of Conduct	SOE.DOE103	April 1, 2000 to May 31, 2000

## Environmental Quality, Department of

Litter Control and Recycling Grant	SNR.DEQ010	April 1, 2000 to June 30, 2000
Solid Waste Management Facility Compliance Notification	SNR.DEQ013	April 1, 2000 to June 30, 2000
Solid Waste Management Plan	SNR.DEQ014	April 1, 2000 to June 30, 2000
Recycling Program	SNR.DEQ015	April 1, 2000 to June 30, 2000
Medical Waste Management	SNR.DEQ017	March 1, 2001 to April 30, 2001
Hazardous Material Transportation	SNR.DEQ018	March 1, 2001 to April 30, 2001
Underground Storage Tank	SNR.DEQ019	March 1, 2001 to April 30, 2001
Above-Ground Storage Tank	SNR.DEQ025	March 1, 2001 to April 30, 2001

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Solid Waste Management Reporting	SNR.DEQ028	April 1, 2000 to June 30, 2000
Virginia Water Quality Improvement Act Wastewater Nutr...	SNR.DEQ029	March 1, 2001 to April 30, 2001
Compliance with Air Emission Standards	SNR.DEQ031	April 1, 2000 to June 30, 2000
Forestry, Department of		
Volunteer Fire Assistance Program Grant	SCT.DOF002	November 1, 2000 to February 28, 2001
Forest Fire Suppression Reimbursement	SCT.DOF003	November 1, 2000 to February 28, 2001
Urban and Community Forestry Assistance Program	SCT.DOF004	November 1, 2000 to February 28, 2001
Game and Inland Fisheries, Department of		
Carrying Loaded Firearm on Public Road	SNR.DGIF001	September 1, 2000 to November 30, 2000
Hunting Damage Stamp	SNR.DGIF002	September 1, 2000 to November 30, 2000
Hunting or Trapping Near Highway	SNR.DGIF003	September 1, 2000 to November 30, 2000
Local Boating Ordinances	SNR.DGIF004	September 1, 2000 to November 30, 2000
Hunting Firearm Restrictions	SNR.DGIF005	September 1, 2000 to November 30, 2000
Historic Resources, Department of		
Historic Preservation Grants	SNR.DHR001	March 1, 2000 to March 31, 2000
Grants to Certified Local Governments	SNR.DHR002	March 1, 2000 to March 31, 2000
Cultural Resource Survey and Planning Cost-Share Program	SNR.DHR003	March 1, 2000 to March 31, 2000
Housing and Community Development, Department of		
Statewide Fire Prevention Code	SCT.DHCD002	March 1, 2000 to May 31, 2000
Small Cities Community Development Block Grant Program	SCT.DHCD004	June 1, 2000 to August 31, 2000
Appalachian Regional Commission Program Participation	SCT.DHCD005	September 1, 2000 to November 30, 2000
Home Investment Partnership Act Program	SCT.DHCD007	March 1, 200 to May 31, 2000
Virginia Enterprise Zone Act	SCT.DHCD010	September 1, 2000 to November 30, 2000
Regional Competitiveness Act	SCT.DHCD011	June 1, 2000 to August 31, 2000
Juvenile Justice, Department of		
Juvenile Correctional Facility Report	SPS.DJJ001	May 1, 2000 to July 31, 2000
Delinquency Prevention	SPS.DJJ002	August 1, 2000 to October 30, 2000
Court Services Unit Standards	SPS.DJJ003	August 1, 2000 to October 30, 2000
Court Services Unit Office Space	SPS.DJJ004	August 1, 2000 to October 30, 2000
Juvenile Detention, Probation, and Court Service Unit...	SPS.DJJ005	August 1, 2000 to October 30, 2000
Transportation of Detained Youth	SPS.DJJ006	August 1, 2000 to October 30, 2000
Community-Based Juvenile Services and Sanctions	SPS.DJJ007	August 1, 200 to October 30, 2000
Labor and Industry, Department of		
Boiler and Pressure Vessel Safety	SCT.DOLI001	July 1, 2000 to September 30, 2000
National Emissions Standards for Hazardous Air Pollution	SCT.DOLI002	July 1, 2000 to September 30, 2000
Occupational Safety and Health Act	SCT.DOLI003	July 1, 2000 to September 30, 2000
Boiler and Pressure Vessel Operator Certification	SCT.DOLI004	July 1, 2000 to September 30, 2000
Voluntary Apprenticeship Programs	SCT.DOLI005	July 1, 2000 to September 30, 2000
Library of Virginia		
State Certified Librarian	SOE.LVA001	February 1, 2001 to April 30, 2001
Library Network	SOE.LVA002	April 1, 2000 to June 30, 2000
Library Operations Standards	SOE.LVA003	February 1, 2001 to April 30, 2001

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Planning and Development Standards for Public Library... Virginia Public Records Act	SOE.LVA004 SOE.LVA005	July 1, 2000 to September 30, 2000 May 1, 2000 to July 31, 2000
Marine Resources Commission		
Wetlands Zoning Ordinance in Tidewater Coastal Primary Sand Dune Zoning Ordinance	SNR.MRC001 SNR.MRC002	February 1, 2001 to April 30, 2001 February 1, 2001 to April 30, 2001
Mental Health, Mental Retardation, and Substance Abuse Services, Department of		
Support Services for Community Services Community Services Board Prescription Team	SHHR.DMHM06 SHHR.DMHMR07	January 1, 2001 to March 31, 2001 January 1, 2001 to March 31, 2001
Mines, Minerals, and Energy, Department of		
Regulation of Coal Surface Mining and Reclamation Regulation of Mineral Mining Operations	SCT.DMME001 SCT.DMME002	May 1, 2000 to July 31, 2000 May 1, 2000 to July 31, 2000
Rail and Public Transportation, Department of		
New Model Bus Testing Vested Interest in Transportation Project Equipment Public Transit System Financial Report Disadvantaged/Minority Business Participation Clean Air Act Amendments Railroad Grant Programs Contracting Regulations for Rail or Public Transport...	STO.DRPT002 STO.DRPT003 STO.DRPT004 STO.DRPT005 STO.DRPT006 STO.DRPT007 STO.DRPT008	July 1, 2000 to September 30, 2000 July 1, 2000 to September 30, 2000 July 1, 2000 to September 30, 2000 July 1, 2000 to September 30, 2000 July 1, 2000 to September 30, 2000 July 1, 2000 to September 30, 2000 July 1, 2000 to September 30, 2000
Rehabilitative Services, Department of		
Establishment of Local Disability Services Board	SHHR.DRS001	July 1, 2000 to September 30, 2000
Social Services, Department of		
Temporary Assistance to Needy Families Virginia Initiative for Employment not Welfare	SHHR.DSS063 SHHR.DSS064	October 1, 2000 to December 31, 2000 January 1, 2001 to March 31, 2001
State Police, Department of		
Uniform Crime Reporting System Missing Children Information Clearinghouse Sex Offender and Crimes Against Minors Registry Youth Gangs Reporting Unserved Felony Warrants or Capias Reporting Registration of Machine Guns	SPS.VSP005 SPS.VSP006 SPS.VSP009 SPS.VSP010 SPS.VSP012 SPS.VSP013	June 1, 2000 to August 31, 2000 September 1, 2000 to November 30, 2000 February 1, 2000 to April 30, 2000 May 1, 2000 to July 31, 2000 August 1, 2000 to October 31, 2000 January 1, 2001 to March 31, 2001
Taxation, Department of		
Business, Professional, and Occupational License Tax...	SFIN.TAX009	August 1, 2000 to October 31, 2000
Transportation, Department of		
Entrance to State Highway Standards Traffic Signs, Signals, and Markings	STO.VDOT012 STO.VDOT013	January 1, 2000 to March 31, 2000 January 1, 2000 to March 31, 2000

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Maintenance and Construction Operations  
Transportation Enhancement Program  
Curb Ramp Standards  
Bridge Safety Inspection Standards  
Conversion to Metric System  
Local Use of Transportation Funds  
Six-Year Secondary Improvement Plan  
Regulation of Truck Traffic  
Americans With Disabilities Act

STO.VDOT014 January 1, 2000 to March 31, 2000  
STO.VDOT016 February 1, 2000 to February 29, 2000  
STO.VDOT017 February 1, 2001 to April 30, 2001  
STO.VDOT018 February 1, 2000 to April 30, 2000  
STO.VDOT019 February 1, 2001 to April 30, 2001  
STO.VDOT022 February 1, 2000 to April 30, 2000  
STO.VDOT023 July 1, 2000 to September 30, 2000  
STO.VDOT024 January 1, 2000 to March 31, 2000  
STO.VDOT027 February 1, 2001 to April 30, 2001

Visually Handicapped, Department for the

Teachers for the Visually Impaired Partial Salary...  
Operation of Vending Stand by Blind Person

SHHR.DVH002 April 1, 2000 to June 30, 2000  
SHHR.DVH003 September 1, 2000 to November 30, 2000

## STATE LOTTERY BOARD

### DIRECTOR'S ORDER NUMBER FIFTY-ONE (99)

"BIN PATROL" VIRGINIA LOTTERY RETAILER TRADE INCENTIVE PROGRAM RULES.

In accordance with the authority granted by Sections 9-6.14:4.1 B (15) and 58.1-4006 A of the Code of Virginia, I hereby promulgate rules for the "Bin Patrol" Virginia Lottery Retailer Trade Incentive Program that will be conducted from Monday, November 15, 1999 through Sunday, December 19, 1999. This program was adopted by the State Lottery Board on October 6, 1999.

These rules amplify and conform to the duly adopted State Lottery Department regulations and are available for inspection and copying during normal business hours at the State Lottery Department headquarters, 900 East Main Street, Richmond, Virginia, and at each of the State Lottery Department regional offices. A copy may be requested by mail by writing to: Public Affairs Office, State Lottery Department, 900 East Main Street, Richmond, Virginia 23219.

This Director's Order becomes effective on the date of its signing and shall remain in full force and effect until December 31, 1999, unless otherwise extended by the Director.

/s/ Penelope W. Kyle, Director  
November 11, 1999

### DIRECTOR'S ORDER NUMBER FIFTY-TWO (99)

VIRGINIA'S INSTANT GAME LOTTERY 170; "JACKPOT," FINAL RULES FOR GAME OPERATION.

In accordance with the authority granted by Sections 9-6.14:4.1 B (15) and 58.1-4006 A of the Code of Virginia, I hereby promulgate the final rules for game operation in Virginia's Instant Game Lottery 170, "Jackpot." These rules amplify and conform to the duly adopted State Lottery Department regulations for the conduct of instant game lotteries.

The rules are available for inspection and copying during normal business hours at the State Lottery Department headquarters, 900 East Main Street, Richmond, Virginia, and

at each of the State Lottery Department regional offices. A copy may be requested by mail by writing to: Public Affairs Division, State Lottery Department, 900 East Main Street, Richmond, Virginia 23219.

This Director's Order becomes effective on the date of its signing and shall remain in full force and effect unless amended or rescinded by further Director's Order.

David L. Norton, Manager, Legal Affairs  
November 8, 1999

### DIRECTOR'S ORDER NUMBER FIFTY-THREE (99)

VIRGINIA'S INSTANT GAME LOTTERY 168; "YEAR 2000 CASH," FINAL RULES FOR GAME OPERATION.

In accordance with the authority granted by Sections 9-6.14:4.1 B (15) and 58.1-4006 A of the Code of Virginia, I hereby promulgate the final rules for game operation in Virginia's Instant Game Lottery 168, "Year 2000 Cash." These rules amplify and conform to the duly adopted State Lottery Department regulations for the conduct of instant game lotteries.

The rules are available for inspection and copying during normal business hours at the State Lottery Department headquarters, 900 East Main Street, Richmond, Virginia, and at each of the State Lottery Department regional offices. A copy may be requested by mail by writing to: Public Affairs Division, State Lottery Department, 900 East Main Street, Richmond, Virginia 23219.

This Director's Order becomes effective on the date of its signing and shall remain in full force and effect unless amended or rescinded by further Director's Order.

/s/ David L. Norton, Manager, Legal Affairs  
November 15, 1999

### DIRECTOR'S ORDER NUMBER FIFTY-FOUR (99)

VIRGINIA'S INSTANT GAME LOTTERY 171; "PINHEADS," FINAL RULES FOR GAME OPERATION.

In accordance with the authority granted by Sections 9-6.14:4.1 B (15) and 58.1-4006 A of the Code of Virginia, I hereby promulgate the final rules for game operation in Virginia's Instant Game Lottery 171, "Pinheads." These rules

amplify and conform to the duly adopted State Lottery Department regulations for the conduct of instant game lotteries.

The rules are available for inspection and copying during normal business hours at the State Lottery Department headquarters, 900 East Main Street, Richmond, Virginia, and at each of the State Lottery Department regional offices. A copy may be requested by mail by writing to: Public Affairs Division, State Lottery Department, 900 East Main Street, Richmond, Virginia 23219.

This Director's Order becomes effective on the date of its signing and shall remain in full force and effect unless amended or rescinded by further Director's Order.

/s/ David L. Norton, Manager, Legal Affairs  
November 15, 1999

### DIRECTOR'S ORDER NUMBER FIFTY-FIVE (99)

VIRGINIA'S INSTANT GAME LOTTERY 452; "ZODIAC," FINAL RULES FOR GAME OPERATION.

In accordance with the authority granted by Sections 9-6.14:4.1 B (15) and 58.1-4006 A of the Code of Virginia, I hereby promulgate the final rules for game operation in Virginia's Instant Game Lottery 452, "Zodiac." These rules amplify and conform to the duly adopted State Lottery Department regulations for the conduct of instant game lotteries.

The rules are available for inspection and copying during normal business hours at the State Lottery Department headquarters, 900 East Main Street, Richmond, Virginia, and at each of the State Lottery Department regional offices. A copy may be requested by mail by writing to: Public Affairs Division, State Lottery Department, 900 East Main Street, Richmond, Virginia 23219.

This Director's Order becomes effective on the date of its signing and shall remain in full force and effect unless amended or rescinded by further Director's Order.

/s/ David L. Norton, Manager, Legal Affairs  
November 15, 1999

### DIRECTOR'S ORDER NUMBER FIFTY-SIX (99)

VIRGINIA'S INSTANT GAME LOTTERY 448; "ACES HIGH," FINAL RULES FOR GAME OPERATION.

In accordance with the authority granted by Sections 9-6.14:4.1 B (15) and 58.1-4006 A of the Code of Virginia, I hereby promulgate the final rules for game operation in Virginia's Instant Game Lottery 448, "Aces High." These rules amplify and conform to the duly adopted State Lottery Department regulations for the conduct of instant game lotteries.

The rules are available for inspection and copying during normal business hours at the State Lottery Department headquarters, 900 East Main Street, Richmond, Virginia, and at each of the State Lottery Department regional offices. A copy may be requested by mail by writing to: Public Affairs Division, State Lottery Department, 900 East Main Street, Richmond, Virginia 23219.

This Director's Order becomes effective on the date of its signing and shall remain in full force and effect unless amended or rescinded by further Director's Order.

/s/ David L. Norton, Manager, Legal Affairs  
December 6, 1999

### DIRECTOR'S ORDER NUMBER FIFTY-SEVEN (99)

VIRGINIA'S INSTANT GAME LOTTERY 311; "LUCKY NUMBER BINGO," FINAL RULES FOR GAME OPERATION.

In accordance with the authority granted by Sections 9-6.14:4.1 B (15) and 58.1-4006 A of the Code of Virginia, I hereby promulgate the final rules for game operation in Virginia's Instant Game Lottery 311, "Lucky Number Bingo." These rules amplify and conform to the duly adopted State Lottery Department regulations for the conduct of instant game lotteries.

The rules are available for inspection and copying during normal business hours at the State Lottery Department headquarters, 900 East Main Street, Richmond, Virginia, and at each of the State Lottery Department regional offices. A copy may be requested by mail by writing to: Public Affairs Division, State Lottery Department, 900 East Main Street, Richmond, Virginia 23219.

This Director's Order becomes effective on the date of its signing and shall remain in full force and effect unless amended or rescinded by further Director's Order.

/s/ David L. Norton, Manager, Legal Affairs  
December 7, 1999

### DIRECTOR'S ORDER NUMBER FIFTY-EIGHT (99)

VIRGINIA'S INSTANT GAME LOTTERY 174; "INSTANT REFUND II," FINAL RULES FOR GAME OPERATION.

In accordance with the authority granted by Sections 9-6.14:4.1 B (15) and 58.1-4006 A of the Code of Virginia, I hereby promulgate the final rules for game operation in Virginia's Instant Game Lottery 174, "Instant Refund II." These rules amplify and conform to the duly adopted State Lottery Department regulations for the conduct of instant game lotteries.

The rules are available for inspection and copying during normal business hours at the State Lottery Department headquarters, 900 East Main Street, Richmond, Virginia, and at each of the State Lottery Department regional offices. A copy may be requested by mail by writing to: Public Affairs Division, State Lottery Department, 900 East Main Street, Richmond, Virginia 23219.

This Director's Order becomes effective on the date of its signing and shall remain in full force and effect unless amended or rescinded by further Director's Order.

/s/ David L. Norton, Manager, Legal Affairs  
December 15, 1999

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# General Notices/Errata

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## STATE WATER CONTROL BOARD

### Proposed Consent Special Order City of Danville

The State Water Control Board (SWCB) proposes to issue a proposed Consent Special Order (CSO) to the City of Danville regarding settlement of a civil enforcement action related to compliance with the Permit Regulation, 9 VAC 25-31-10 et seq. at the Northside Sewage Treatment Plant. On behalf of the State Water Control Board, the department will consider written comments relating to this settlement until February 16, 2000. Comments should be addressed to Robert Steele, Department of Environmental Quality, West Central Regional Office, 3019 Peters Creek Road, NW, Roanoke, VA 24019.

The final CSO may be examined at the department during regular business hours. Copies are available from Mr. Steele at the address above or by calling him at (540) 562-6777.

## VIRGINIA CODE COMMISSION

### Notice to State Agencies

**Mailing Address:** Virginia Code Commission, 910 Capitol Street, General Assembly Building, 2nd Floor, Richmond, VA 23219. You may FAX in your notice; however, we ask that you FAX two copies and do not follow up with a mailed copy. Our FAX number is: (804) 692-0625.

### Forms for Filing Material for Publication in *The Virginia Register of Regulations*

All agencies are required to use the appropriate forms when furnishing material for publication in *The Virginia Register of Regulations*. The forms may be obtained from: Virginia Code Commission, 910 Capitol Street, General Assembly Building, 2nd Floor, Richmond, VA 23219, telephone (804) 786-3591.

**Internet:** Forms and other *Virginia Register* resources may be printed or downloaded from the *Virginia Register* web page: <http://legis.state.va.us/codecomm/register/regindex.htm>

#### FORMS:

NOTICE of INTENDED REGULATORY ACTION - RR01  
NOTICE of COMMENT PERIOD - RR02  
PROPOSED (Transmittal Sheet) - RR03  
FINAL (Transmittal Sheet) - RR04  
EMERGENCY (Transmittal Sheet) - RR05  
NOTICE of MEETING - RR06  
AGENCY RESPONSE TO LEGISLATIVE OBJECTIONS  
- RR08

## ERRATA

### STATE BOARD OF HEALTH

Title of Regulation: 12 VAC 5-408-10 et seq. Regulations for the Certification of Managed Care Health Insurance Plan Licenses.

Publication: 16:7 VA.R. 819-842 December 20, 1999.

#### Corrections to Final Regulation:

Page 823, 12 VAC 5-408-70 A, last paragraph, line 5, change "shall" to "may"

Page 831, 12 VAC 5-408-230 C 2, line 5, change "grievances" to "appeals"



Page 837, change section number 12 VAC 5-408-370 to 12 VAC 5-408-360

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# CALENDAR OF EVENTS


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## Symbol Key

-  Location accessible to handicapped
-  Teletype (TTY)/Voice Designation

## NOTICE


Only those meetings which are filed with the Registrar of Regulations by the filing deadline noted at the beginning of this publication are listed. Since some meetings are called on short notice, please be aware that this listing of meetings may be incomplete. Also, all meetings are subject to cancellation and the *Virginia Register* deadline may preclude a notice of such cancellation.

For additional information on open meetings and public hearings held by the standing committees of the legislature during the interim, please call Legislative Information at (804) 698-1500 or Senate Information and Constituent Services at (804) 698-7410 or (804) 698-7419/TTY , or visit the General Assembly web site's Legislative Information System (<http://leg1.state.va.us/lis.htm>) and select "Meetings."

VIRGINIA CODE COMMISSION

## EXECUTIVE

### BOARD OF ACCOUNTANCY

**January 24, 2000 - 10 a.m.** -- Open Meeting  
Department of Professional and Occupational Regulation,  
3600 West Broad Street, Conference Room 5W, Richmond,  
Virginia. 

A regular meeting. A public comment period will be held at the beginning of the meeting.

**Contact:** David E. Dick, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad Street, Richmond, VA 23230, telephone (804) 367-8505, FAX (804) 367-2475, (804) 367-9753/TTY , e-mail [accountancy@dpor.state.va.us](mailto:accountancy@dpor.state.va.us).

### DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES


#### Virginia Aquaculture Advisory Board

**February 24, 2000 - 11:30 a.m.** -- Open Meeting  
Virginia State University, Cooperative Extension Pavilion,  
4415 River Road, Ettrick, Virginia 


A regular meeting to discuss issues related to Virginia aquaculture. The board will entertain public comment at the conclusion of all other business for a period not to exceed 30 minutes. Any person who needs any accommodation in order to participate at the meeting should contact the person identified in this notice at least five days before the meeting date so that suitable arrangements can be made.

**Contact:** T. Robins Buck, Secretary, Virginia Aquaculture Advisory Board, Department of Agriculture and Consumer Services, 1100 Bank Street, Room 211, Richmond, VA 23219, telephone (804) 371-6094, FAX (804) 371-7679.


### Consumer Affairs Advisory Committee

† **February 14, 2000 - 9:30 a.m.** -- Open Meeting  
Washington Building, 1100 Bank Street, Second Floor Board Room, Richmond, Virginia  (Interpreter for the deaf provided upon request)

The Consumer Affairs Advisory Committee communicates the views and interests of Virginians on issues related to the Department of Agriculture and Consumer Services' consumer education and fraud prevention programs, their availability to citizens, and the utilization of a state-wide network of volunteer program presenters. The February meeting is the first of two meetings held annually. Members will review 1999's events, plan for 2000, and elect the chairperson for the year. Any person who needs any accommodation in order to participate at the meeting should contact the person identified in this notice at least five days before the meeting date so that suitable arrangements can be made.

**Contact:** Evelyn A. Jez, Administrative Staff Specialist, Department of Agriculture and Consumer Services, Office of Consumer Affairs, 1100 Bank St., Room 1101, Richmond, VA, telephone (804) 786-1308, FAX (804) 786-5112, toll-free (800) 552-9963, (800) 828-1120/TTY 

#### Virginia Plant Pollination Advisory Board

† **February 4, 2000 - 10 a.m.** -- Open Meeting  
Washington Building, 1100 Bank Street, First Floor Conference Room, Richmond, Virginia 

An annual meeting. The board will entertain public comment at the conclusion of all other business for a period not to exceed 30 minutes. Any person who needs any accommodation in order to participate at the meeting should contact Robert G. Wellemeyer at least five days before the meeting date so that suitable arrangements can be made.

**Contact:** Robert G. Wellemeyer, Secretary-Treasurer, Plant Pollination Advisory Board, Department of Agriculture and Consumer Services, 234 West Shirley Avenue, Warrenton,

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# Calendar of Events

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Va. 20186, telephone (540) 347-6380, FAX (540) 347-6384, (804) 371-6344/TTY ☎

## Virginia Winegrowers Advisory Board

**February 22, 2000 - 10 a.m.** -- Open Meeting

Washington Building, 1100 Bank Street, Second Floor, Board Room, Richmond, Virginia. ♿

A quarterly business meeting, including hearing and potential approval of minutes from the prior meeting, committee reports, treasurer's report, and a report from the Alcoholic Beverage Control Board. The board will entertain public comment at the conclusion of all other business for a period not to exceed 30 minutes. Any person who needs any accommodations in order to participate at the meeting should contact Mary E. Davis-Barton at least five days before the meeting date so that suitable arrangements can be made.

**Contact:** Mary Davis-Barton, Board Secretary, Virginia Winegrowers Advisory Board, Washington Building, 1100 Bank Street, Suite 1010, Richmond, VA 23219, telephone (804) 371-7685, FAX (804) 786-3122.

## STATE AIR POLLUTION CONTROL BOARD

**January 24, 2000** - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Air Pollution Control Board intends to amend regulations entitled: **Regulations for the Control and Abatement of Air Pollution (Rev. S97): 9 VAC 5-20-10 et seq. General Provisions and 9 VAC 5-40-10 et seq. Existing Stationary Sources.** The proposed regulation applies to hospital/medical/infectious waste incinerators (HMIWIs), and includes emission limits for particulate matter, carbon monoxide, dioxins/furans, hydrogen chloride, sulfur dioxide, nitrogen oxides, lead, cadmium, and mercury. Special HMIWI operator training and qualification requirements are included in order to assure proper facility operation and compliance with the emissions limitations; sources are also required to prepare overall waste management plans. Compliance, emissions testing, and monitoring requirements are delineated, as well as recordkeeping and reporting of such test results. Finally, specific compliance schedules are provided.

**Request for Comments:** The purpose of this notice is to provide the public with the opportunity to comment on the proposed regulation and the costs and benefits of the proposal.

**Localities Affected:** There is no locality which will bear any identified disproportionate material air quality impact due to the proposed regulation which would not be experienced by other localities.

**Location of Proposal:** The proposal, an analysis conducted by the department (including: a statement of purpose, a statement of estimated impact and benefits of the proposed

regulation, an explanation of need for the proposed regulation, an estimate of the impact of the proposed regulation upon small businesses, identification of and comparison with federal requirements, and a discussion of alternative approaches) and any other supporting documents may be examined by the public at the Department's Office of Air Regulatory Development (Eighth Floor), 629 East Main Street, Richmond, Virginia and the Department's regional offices (listed below) between 8:30 a.m. and 4:30 p.m. of each business day until the close of the public comment period.

Southwest Regional Office  
Department of Environmental Quality  
355 Deadmore Street  
Abingdon, Virginia  
Ph: (540) 676-4800

West Central Regional Office  
Department of Environmental Quality  
3019 Peters Creek Road  
Roanoke, Virginia  
Ph: (540) 562-6700

Lynchburg Satellite Office  
Department of Environmental Quality  
7705 Timberlake Road  
Lynchburg, Virginia  
Ph: (804) 582-5120

Valley Regional Office  
Department of Environmental Quality  
4411 Early Road  
Harrisonburg, Virginia 22801  
Ph: (540) 574-7800

Fredericksburg Satellite Office  
Department of Environmental Quality  
806 Westwood Office Park  
Fredericksburg, Virginia  
Ph: (540) 899-4600

Northern Regional Office  
Department of Environmental Quality  
13901 Crown Court  
Woodbridge, Virginia  
Ph: (703) 583-3800

Piedmont Regional Office  
Department of Environmental Quality  
4949-A Cox Road  
Glen Allen, Virginia  
Ph: (804) 527-5020

Tidewater Regional Office  
Department of Environmental Quality  
5636 Southern Boulevard  
Virginia Beach, Virginia  
Ph: (757) 518-2000

Statutory Authority: § 10.1-1308 of the Code of Virginia.

Public comments may be submitted until 4:30 p.m., January 24, 2000, to the Director, Office of Air Regulatory Development, Department of Environmental Quality, P.O. Box 10009, Richmond, Virginia 23240.



**Contact:** Karen G. Sabasteanski, Policy Analyst, Office of Air Regulatory Development, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4426, FAX (804) 698-4510, toll-free (800) 592-5482 or (804) 698-4021/TTY ☎

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

† **March 8, 2000 - 9 a.m.** -- Open Meeting  
Department of Professional and Occupational Regulation, 3600 West Broad Street, 4th Floor, Richmond, Virginia. ♿

A meeting of the full board to conduct business. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact the department at least 10 days prior to the meeting so that suitable arrangements can be made. The department fully complies with the Americans with Disabilities Act.

**Contact:** Mark N. Courtney, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., 5th Floor, Richmond, VA 23230-4917, telephone (804) 367-514, FAX (804) 367-2475 or (804) 367-9753/TTY ☎

### **Architect Section**

† **February 2, 2000 - 9 a.m.** -- Open Meeting  
Department of Professional and Occupational Regulation, 3600 West Broad Street, 5th Floor, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

The Architect Section will conduct board business. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact the department at least 10 days prior to the meeting so that suitable arrangements can be made. The department fully complies with the Americans with Disabilities Act.

**Contact:** Mark N. Courtney, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., 5th Floor, Richmond, VA 23230-4917, telephone (804) 367-8514, FAX (804) 367-2475 or (804) 367-9753/TTY ☎

### **Certified Interior Designer Section**

† **March 1, 2000 - 9 a.m.** -- Open Meeting  
Department of Professional and Occupational Regulation, 3600 West Broad Street, 5th Floor, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

The Certified Interior Designer Section will conduct board business. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact the department at least 10 days prior to the meeting so that suitable arrangements can be made. The department fully complies with the Americans with Disabilities Act.

**Contact:** Mark N. Courtney, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., 5th Floor, Richmond, VA 23230-4917, telephone (804) 367-8514, FAX (804) 367-2475 or (804) 367-9753/TTY ☎

### **Landscape Architect Section**

† **February 23, 2000 - 9 a.m.** -- Open Meeting  
Department of Professional and Occupational Regulation, 3600 West Broad Street, 5th Floor, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

The Landscape Architect Section will conduct board business. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact the department at least 10 days prior to the meeting so that suitable arrangements can be made. The department fully complies with the Americans with Disabilities Act.

**Contact:** Mark N. Courtney, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., 5th Floor, Richmond, VA 23230-4917, telephone (804) 367-8514, FAX (804) 367-2475 or (804) 367-9753/TTY ☎

### **Land Surveyor Section**

**January 20, 2000 - 11 a.m.** -- Open Meeting  
Department of Professional and Occupational Regulation, 3600 West Broad Street, Examination Conference Room, 5th Floor, Richmond, Virginia. ♿

A meeting of the Land Surveyor Section and invited subject matter experts to conduct an exam workshop. A public comment period will be held at the beginning of the workshop. After the public comment period, the workshop will be conducted in closed executive session under authority of § 2.1-344 A 11 of the Code of Virginia due to the confidential nature of the examination. The public will not be admitted to the closed executive session.

**Contact:** Sharon M. Sweet, Examination Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-8572 or (804) 367-9753/TTY ☎

† **February 16, 1999 - 9 a.m.** -- Open Meeting  
Department of Professional and Occupational Regulation, 3600 West Broad Street, 5th Floor, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

The Land Surveyor Section will conduct board business. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact the department at least 10 days prior to the meeting so that suitable arrangements can be made. The department fully complies with the Americans with Disabilities Act.


**Contact:** Mark N. Courtney, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., 5th Floor, Richmond, VA 23230-4917, telephone (804) 367-8514, FAX (804) 367-2475 or (804) 367-9753/TTY ☎

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# Calendar of Events

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## Professional Engineer Section

† **February 9, 2000 - 9 a.m.** -- Open Meeting  
Department of Professional and Occupational Regulation,  
3600 West Broad Street, 5th Floor, Richmond, Virginia.   
(Interpreter for the deaf provided upon request)

The Professional Engineer Section will conduct board business. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact the department at least 10 days prior to the meeting so that suitable arrangements can be made. The department fully complies with the Americans with Disabilities Act.

**Contact:** Mark N. Courtney, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., 5th Floor, Richmond, VA 23230-4917, telephone (804) 367-8514, FAX (804) 367-2475 or (804) 367-9753/TTY 

## ART AND ARCHITECTURAL REVIEW BOARD

**February 4, 2000 - 10 a.m.** -- Open Meeting  
The Library of Virginia, 800 East Broad Street, Conference Room A, Richmond, Virginia.  (Interpreter for the deaf provided upon request)


A monthly meeting to review projects submitted by state agencies.

**Contact:** Richard L. Ford, AIA, Chairman, Art and Architectural Review Board, 1011 E. Main Street, Suite 221, Richmond, VA 23219, telephone (804) 643-1977.

## VIRGINIA BOARD FOR ASBESTOS AND LEAD

**March 7, 2000 - 10 a.m.** -- Open Meeting  
Department of Professional and Occupational Regulation,  
3600 West Broad Street, Conference Room 5W, Richmond,  
Virginia.

A meeting to conduct routine business. A public comment period will be held at the beginning of the meeting.


**Contact:** David E. Dick, Assistant Director, Virginia Board for Asbestos and Lead, Department of Professional and Occupational Regulation, 3600 W. Broad Street, Richmond, VA 23230, telephone (804) 367-8505, FAX (804) 367-2475, (804) 367-9753/TTY , e-mail [asbestos@dpor.state.va.us](mailto:asbestos@dpor.state.va.us).

## ASSISTIVE TECHNOLOGY LOAN FUND AUTHORITY


**January 20, 2000 - 10 a.m.** -- Open Meeting  
**February 17, 2000 - 10 a.m.** -- Open Meeting  
Department of Rehabilitative Services, 8004 Franklin Farms Drive, Richmond, Virginia.  (Interpreter for the deaf provided upon request)

A monthly board meeting of the Board of Directors to review applications for guaranteed loans. Public comment is invited. The board will meet in closed


session to review loan applications in order to protect the personal information of the applicants.

**Contact:** Gail Stubbs, Assistive Technology Loan Fund Authority, 8004 Franklin Farms Drive, Richmond, VA 23228, telephone (804) 662-7331, FAX (804) 662-9533, (804) 662-7331/TTY , e-mail [loanfund@erols.com](mailto:loanfund@erols.com), homepage <http://www.cns.state.va.us/atffa>.


## AUCTIONEERS BOARD

† **January 25, 2000 - 10 a.m.** -- Open Meeting  
Department of Professional and Occupational Regulation,  
3600 West Broad Street, 5th Floor, Richmond, Virginia. 


A meeting to conduct board business. Persons desiring to participate in the meeting and requiring special accommodations or interpretative services should contact the department at (804) 367-8514 at least 10 days prior to the meeting so that suitable arrangements can be made. The department fully complies with the Americans with Disabilities Act.

**Contact:** Mark N. Courtney, Assistant Director, Department of Professional and Occupational Regulation, 3600 West Broad St., Richmond, VA 23230, telephone (804) 367-8514, FAX (804) 367-2475, (804) 367-9753/TTY , e-mail [auctioneers@dpor.state.va.us](mailto:auctioneers@dpor.state.va.us).


## BOARD OF AUDIOLOGY AND SPEECH-LANGUAGE PATHOLOGY

† **January 24, 2000 - 9 a.m.** -- Open Meeting  
Department of Health Professions, 6606 W. Broad Street, 5th Floor, Conference Room 1, Richmond, Virginia. 

A meeting of the Task Force on Continuing Education to develop proposed regulations on continuing competency.

**Contact:** Senita Booker, Administrative Staff Assistant, Board of Audiology and Speech-Language Pathology, Department of Health Professions, 6606 W. Broad St., Suite 403, Richmond, VA 23230-1717, telephone (804) 662-9111, FAX (804) 662-9523, (804) 662-7197/TTY , e-mail [sbooker@dhp.state.va.us](mailto:sbooker@dhp.state.va.us).

## BOARD FOR BARBERS

**February 7, 2000 - 10 a.m.** -- Open Meeting  
Department of Professional and Occupational Regulation,  
3600 West Broad Street, 4th Floor, Richmond, Virginia.   
(Interpreter for the deaf provided upon request)

An open meeting to discuss regulatory review and other matters requiring board action, including disciplinary cases. All meetings are subject to cancellation. The time of the meeting is subject to change. A public comment period will be held at the beginning of the meeting. Any person desiring to attend the meeting and requiring special accommodations or interpretive services should contact the department at 804-367-8590 or 367-9753/TTY at least 10 days prior to the meeting so that

suitable arrangements can be made for an appropriate accommodation. The department fully complies with the Americans with Disabilities Act.

**Contact:** Nancy Taylor Feldman, Assistant Director, Department of Professional and Occupational Regulation, 3600 West Broad Street, 4th Floor, Richmond, VA 23230-4917, telephone (804) 367-8590, FAX (804) 367-2474, (804) 367-9753/TTY ☎, e-mail [barbers@dpor.state.va.us](mailto:barbers@dpor.state.va.us), homepage <http://www.state.va.us/dpor>.

## BOARD FOR BRANCH PILOTS

† **January 31, 2000 - 9:30 a.m.** -- Open Meeting  
Virginia Pilot Association, 3329 Shore Drive, Virginia Beach, Virginia. ♿ (Interpreter for the deaf provided upon request)

A meeting to conduct examinations.

**Contact:** Mark N. Courtney, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8514, FAX (804) 367-2475, (804) 367-9753/TTY ☎, e-mail [branchpilots@dpor.state.va.us](mailto:branchpilots@dpor.state.va.us).

† **February 1, 2000 - 9:30 a.m.** -- Open Meeting  
Virginia Pilot Association, 3329 Shore Drive, Virginia Beach, Virginia. ♿ (Interpreter for the deaf provided upon request)

A meeting to conduct board business. Persons desiring to participate in the meeting and requiring special accommodations or interpretative services should contact the department at (804) 367-8514 at least 10 days prior to this meeting so that suitable arrangements can be made. The department fully complies with the Americans with Disabilities Act.

**Contact:** Mark N. Courtney, Assistant Director, Department of Professional and Occupational Regulation, 3600 West Broad St., Richmond, VA 23230, telephone (804) 367-8514, FAX (804) 367-2475, (804) 367-9753/TTY ☎, e-mail [branchpilots@dpor.state.va.us](mailto:branchpilots@dpor.state.va.us).

## CEMETERY BOARD

**January 19, 2000 - 9:30 a.m.** -- Open Meeting  
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia. ♿

A regular business meeting.

**Contact:** Eric L. Olson, Regulatory Boards Administrator, Department of Professional and Occupational Regulation, 3600 W. Broad Street, Richmond, VA 23230, telephone (804) 367-2039, FAX (804) 367-2475, (804) 367-9753/TTY ☎, e-mail [olson@dpor.state.va.us](mailto:olson@dpor.state.va.us).

**January 20, 2000 - 8:30 a.m.** -- Open Meeting  
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia. ♿

A regular meeting of the Delivery Committee to develop a working definition of the delivery of cemetery items.

**Contact:** Eric L. Olson, Regulatory Boards Administrator, Department of Professional and Occupational Regulation, 3600 W. Broad Street, Richmond, VA 23230, telephone (804) 367-2039, FAX (804) 367-2475, (804) 367-9753/TTY ☎, e-mail [olson@dpor.state.va.us](mailto:olson@dpor.state.va.us).

## STATE BOARD FOR COMMUNITY COLLEGES

**January 26, 2000 - 12:30 p.m.** -- Open Meeting  
Virginia Community College System, James Monroe Building, 101 North 14th Street, 15th Floor, Godwin-Hamel Board Room, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

Telephonic meetings of the following committees: Academic and Student Affairs, Audit, Budget and Finance, Facilities, and Personnel with times to be announced at a later date.

**Contact:** Dr. Joy S. Graham, Assistant Chancellor, Public Affairs, Virginia Community College System, Monroe Building, 101 N. 14th Street, 15th Floor, Richmond, VA 23219, telephone (804) 225-2126, FAX (804) 371-0085, (804) 371-8504/TTY ☎, homepage <http://www.vccs.cc.va.us>.

**January 27, 2000 - 9 a.m.** -- Open Meeting  
Virginia Community College System, James Monroe Building, 101 North 14th Street, 14th Floor, Compressed Video Room, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

A regular meeting to be held by video conference. Other sites available to the public will be announced.

**Contact:** Dr. Joy S. Graham, Assistant Chancellor, Public Affairs, Virginia Community College System, Monroe Building, 101 N. 14th Street, 15th Floor, Richmond, VA 23219, telephone (804) 225-2126, FAX (804) 371-0085, (804) 371-8504/TTY ☎, homepage <http://www.vccs.cc.va.us>.

## COMPENSATION BOARD

**January 25, 2000 - 11 a.m.** -- Open Meeting  
Compensation Board, 202 North 9th Street, 10th Floor, Richmond, Virginia. ♿

A monthly board meeting.

**Contact:** Cindy Waddell, Administrative Assistant, Compensation Board, P.O. Box 710, Richmond, VA 23218, telephone (804) 786-0786, FAX (804) 371-0235, e-mail [cwaddell@scb.state.va.us](mailto:cwaddell@scb.state.va.us).

## DEPARTMENT OF CONSERVATION AND RECREATION

† **January 20, 2000 - 7 p.m.** -- Open Meeting  
New River Community College, Intersection of Routes 100 and 11, Room 117, Section A, Dublin, Virginia.

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## Calendar of Events

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A meeting to review the goals and objectives of existing conditions for the Master Plan for Claytor Lake State Park.

**Contact:** Richard Gibbons, Environmental Programs Manager, Department of Conservation and Recreation, 203 Governor St., Richmond, VA 23219, telephone (804) 786-4132 or FAX (804) 371-7899.

† **January 24, 2000 - 1:30 p.m.** -- Open Meeting  
Leesburg County Administration Building, Lovettsville Room, Leesburg, Virginia.


A meeting to (i) discuss and reaffirm bylaws; (ii) receive a briefing by board members on the status of projects assigned to them; and (iii) review other assignments involving housing development, bridges, proposed bridges, road improvements, and a park.

**Contact:** Richard Gibbons, Environmental Programs Manager, Department of Conservation and Recreation, 203 Governor St., Richmond, VA 23219, telephone (804) 786-4132 or FAX (804) 371-7899.

† **January 26, 2000 - 7 p.m.** -- Open Meeting  
Kiptopeke Elementary School, 24023 Fairview Road, Cape Charles, Virginia.  (Interpreter for the deaf provided upon request)

A meeting to discuss the park purpose statement, goals and objectives and future facilities to be considered in the development of the park master plan.


**Contact:** James Guyton, Environmental Program Planner, Department of Conservation and Recreation, 203 Governor St., Suite 302, Richmond, VA 23219, telephone (804) 786-2093, FAX (804) 786-6141, e-mail [jguyton@dcr.state.va.us](mailto:jguyton@dcr.state.va.us).

**February 10, 2000 - 7 p.m.** -- Open Meeting  
South Warren Fire Department, Route 340, Bentonville, Virginia.  (Interpreter for the deaf provided upon request)


A meeting to present the draft master plan for Raymond R. "Andy" Guest/ Shenandoah River State Park to the public for information and to receive input. The South Warren Fire Department building is located approximately 10 miles south of Front Royal on the east side of Route 340.

**Contact:** Tony Widmer, Park Manager, Department of Conservation and Recreation, P.O. Box 235, Bentonville, VA 22610, telephone (540) 622-6840 or FAX (540) 622-6841.


### Cave Board

† **January 22, 2000 - 11 a.m.** -- Open Meeting  
Radford University, Heth Student Center, Virginia Room, Radford, Virginia.  (Interpreter for the deaf provided upon request)

A regular meeting of the Cave Board. Issues relating to cave and karst conservation will be discussed. A public comment period is set aside on the agenda. Committee meetings will begin at 11 a.m., followed by a full board meeting at 1 p.m.

**Contact:** Lawrence R. Smith, Natural Area Protection Manager, Department of Conservation and Recreation, 217 Governor St., 3rd Floor, Richmond, VA 23219, telephone (804) 786-7951, FAX (804) 371-2674, (804) 786-2121/TTY , e-mail [lsmith@dcr.state.va.us](mailto:lsmith@dcr.state.va.us).


### BOARD FOR CONTRACTORS

† **January 26, 2000 - 10 a.m.** -- Open Meeting  
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia.  (Interpreter for the deaf provided upon request)

A meeting of the Tradesman Committee to consider items of interest relating to the tradesman section of the Board for Contractors.

**Contact:** Jan McMahan, Administrative Staff Assistant, Board for Contractors, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-6166.


### BOARD OF CORRECTIONAL EDUCATION

† **January 21, 2000 - 10 a.m.** -- Open Meeting  
James Monroe Building, 101 North 14th Street, 7th Floor, Richmond, Virginia.  (Interpreter for the deaf provided upon request)


A meeting to discuss general business.

**Contact:** Patty Ennis, Board Clerk, Board of Correctional Education, James Monroe Building, 101 N. 14th Street, Richmond, VA 23219, telephone (804) 225-3314, FAX (804) 786-7642, (804) 371-8647/TTY , e-mail [paennis@dce.state.va.us](mailto:paennis@dce.state.va.us).

### BOARD FOR COSMETOLOGY

**March 6, 2000 - 8:30 a.m.** -- Open Meeting  
Department of Professional and Occupational Regulation, 3600 W. Broad Street, 4th Floor, Richmond, Virginia.  (Interpreter for the deaf provided upon request)

A meeting to discuss regulatory review and other matters requiring board action, including disciplinary cases. A public comment period will be held at the beginning of the meeting. All meetings are subject to cancellation. The time of the meeting is subject to change. Any persons desiring to attend the meeting and requiring special accommodations or interpretative services should contact the department at 804-367-8590 or 804-367-9753/TTY at least 10 days prior to the meeting so that suitable arrangements can be made for an appropriate accommodation. The department fully complies with the Americans with Disabilities Act.

**Contact:** Nancy Taylor Feldman, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad Street, 4th Floor, Richmond, VA 23230-4917, telephone (804) 367-8590, FAX (804) 367-2474, (804) 367-9753/TTY , e-mail [cosmo@dpor.state.va.us](mailto:cosmo@dpor.state.va.us), homepage <http://www.state.va.us/dpor>.

## DEPARTMENT FOR THE DEAF AND HARD-OF-HEARING

† **February 2, 2000 - 9 a.m.** -- Open Meeting  
Department for the Deaf and Hard-of-Hearing, 1602 Rolling Hills Drive, 2nd Floor Conference Room, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A regular meeting of the advisory board.

**Contact:** Leslie G. Hutcheson, Regulatory Coordinator, Department for the Deaf and Hard-of-Hearing, 1602 Rolling Hills Dr., Suite 203, Richmond, VA 23229-5012, telephone (804) 662-9703, FAX (804) 662-9718, toll-free (800) 552-7917, (800) 552-7917/TTY, e-mail hutchelg@ddhh.state.va.us.

## DESIGN-BUILD/CONSTRUCTION MANAGEMENT REVIEW BOARD

**January 24, 2000 - 11 a.m.** -- Open Meeting  
The Library of Virginia, 800 East Broad Street, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A meeting to review requests submitted by localities for the use of the design-build or construction management type of contract. Public comments will be received. Please contact the Division of Engineering and Buildings to confirm meeting.

**Contact:** Joseph M. West, Jr., Assistant Director for Administration, Design-Build/Construction Management Review Board, 805 E. Broad Street, Room 101, Richmond, VA 23219, telephone (804) 786-3263, FAX (804) 371-7934, (804) 786-6152/TTY, e-mail jwest@dgs.state.va.us, homepage <http://dgs.state.va.us>.

## BOARD OF EDUCATION

**January 21, 2000** - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Board of Education intends to amend regulations entitled: **8 VAC 20-131-10 et seq. Regulations Establishing Standards for Accrediting Public Schools in Virginia.** The regulations have been revised primarily to (i) identify and target for early intervention and intensive assistance those schools that need the most help and attention and (ii) define consequences and rewards for schools that achieve, or fail to achieve, the standards.

Statutory Authority: §§ 22.1-19 and 22.1-253.13:13 of the Code of Virginia.

**Contact:** Charles W. Finley, Director of Accreditation, Department of Education, P.O. Box 2120, Richmond, VA 23218-2120, telephone (804) 786-9421, FAX (804) 786-9763 or toll-free (800) 292-3820.

**February 24, 2000 - 9 a.m.** -- Open Meeting

**March 23, 2000 - 9 a.m.** -- Open Meeting  
James Monroe Building, 101 North 14th Street, Richmond, Virginia. (Interpreter for the deaf provided upon request)

The Board of Education and the Board of Vocational Education will hold its regularly scheduled meeting. Business will be conducted according to items on the agenda. The agenda is available upon request.

**Contact:** Dr. Margaret Roberts, Executive Assistant for State Board of Education, Department of Education, Monroe Building, 101 North 14th Street, P.O. Box 2120, Richmond, VA 23218-2120, telephone (804) 225-2540, FAX (804) 225-2524 or toll-free (800) 292-3829.

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† **February 28, 2000 - 7 p.m.** -- Public Hearing  
Marion Senior High, 848 Stage Street, Marion, Virginia.

† **February 28, 2000 - 7 p.m.** -- Public Hearing  
John Marshall High School, 4225 Old Brook Road, Richmond, Virginia.

† **February 28, 2000 - 7 p.m.** -- Public Hearing  
Fairfax, Virginia area; location to be announced.

† **February 28, 2000 - 7 p.m.** -- Public Hearing  
Lynchburg, Virginia area; location to be announced.

† **February 28, 2000 - 7 p.m.** -- Public Hearing  
Newport News, Virginia area; location to be announced.

† **February 28, 2000 - 7 p.m.** -- Public Hearing  
Staunton, Virginia area; location to be announced.

**March 17, 2000** - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Board of Education intends to amend regulations entitled: **8 VAC 20-80-10 et seq. Regulations Governing Special Education Programs for Children with Disabilities in Virginia** and repeal regulations entitled: **8 VAC 20-750-10 et seq. Special Education Program Standards.** These regulations ensure that Virginia complies with the Individuals with Disabilities Education Act (IDEA) (20 USC § 1400 et seq.) and that all children with disabilities in the Commonwealth have available a free appropriate public education and procedural safeguards. The Special Education Program Standards, which provide special education teacher staffing and assignments, is being incorporated into the board of Virginia's special education regulations and is, therefore, being repealed.

Statutory Authority: §§ 22.1-16 and 22.1-214 of the Code of Virginia.


**Contact:** Catherine A. Pomfrey, Executive Secretary Senior, Department of Education, P.O. Box 2120, Richmond, VA 23218-2120, telephone (804) 225-2402, FAX (804) 371-8796 or (804) 371-2822/TTY.

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# Calendar of Events

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## LOCAL EMERGENCY PLANNING COMMITTEE - HANOVER COUNTY

**January 18, 2000 - 9 a.m.** -- Open Meeting  
Hanover Fire Administration, Emergency Operation Center,  
13326 Hanover Courthouse Road, Route 301, Hanover,  
Virginia. 


A regular meeting.

**Contact:** John F. Trivellin, CEM, Deputy Fire  
Marshal/Hazardous Materials Coordinator, Hanover County  
Fire Administration, P.O. Box 470, Hanover, VA 23069,  
telephone (804) 537-6195, ext. 207.


## LOCAL EMERGENCY PLANNING COMMITTEE - WINCHESTER

**January 20, 2000 - 2 p.m.** -- Open Meeting  
Shawnee Fire Company, 2333 Roosevelt Boulevard,  
Winchester, Virginia.

A meeting to meet the requirement of the Chemical  
Safety Information, Site Security and Fuels Relief Act to  
inform the public about local facilities' risk management  
plans by February 1, 2000, and to elect LEPC officers for  
2000.

**Contact:** L. A. Miller, Fire and Rescue Chief, Winchester Fire  
and Rescue Department, 126 N. Cameron St., Winchester,  
VA 22601, telephone (540) 662-2298, (540) 667-0118 or  
(540) 662-4131/TTY 


## STATE EMERGENCY MEDICAL SERVICES ADVISORY BOARD

**† January 28, 2000 - 1 p.m.** -- Open Meeting  
Embassy Suites Hotel, 2925 Emerywood Parkway,  
Richmond, Virginia. 

A quarterly meeting.

**Contact:** Irene Hamilton, Secretary to State EMS Advisory  
Board, Department of Health, 1538 E. Parham Rd.,  
Richmond, VA 23228, telephone (804) 371-3500, FAX (804)  
371-3543, toll-free (800) 523-6019, e-mail  
ihamilton@vdh.state.va.us.


## DEPARTMENT OF ENVIRONMENTAL QUALITY

**† January 20, 2000 - 7 p.m.** -- Open Meeting  
Pence Middle School Auditorium, Bowman Road, Dayton,  
Virginia.  (Interpreter for the deaf provided upon request)


A meeting to receive comments on the development of a  
total maximum daily load (TMDL) for fecal coliform  
bacteria on segments of Dry River, Mill Creek and  
Pleasant Run in Rockingham County.


**Contact:** Rod Bodkin, Department of Environmental Quality,  
Valley Regional Office, 4411 Early Rd., Harrisonburg, VA  
22801, telephone (540) 574-7801, FAX (540) 574-7878, e-  
mail rvbodkin@deq.state.va.us.

## BOARD OF FUNERAL DIRECTORS AND EMBALMERS


**† January 26, 2000 - 9 a.m.** -- Open Meeting  
Department of Health Professions, 6606 West Broad Street,  
5th Floor, Conference Room 1, Richmond, Virginia   
(Interpreter for the deaf provided upon request)

A meeting of the Special Conference Committee to hold  
informal hearings. Public comments will not be received.


**Contact:** Cheri Emma-Leigh, Administrative Staff Assistant,  
Board of Funeral Directors and Embalmers, 6606 W. Broad  
St., 4th Floor, Richmond, VA 23230, telephone (804) 662-  
9907, FAX (804) 662-9523 or (804) 662-7197/TTY 


**† January 27, 2000 - 9 a.m.** -- Open Meeting  
Department of Health Professions, 6606 West Broad Street,  
5th Floor, Conference Room 1, Richmond, Virginia   
(Interpreter for the deaf provided upon request)


A meeting of the Regulatory/Bylaws Committee to  
discuss possible amendments to regulations or bylaws of  
the board.


**Contact:** Elizabeth Young Tisdale, Executive Director, Board  
of Funeral Directors and Embalmers, 6606 W. Broad St., 4th  
Floor, Richmond, VA 23230, telephone (804) 662-9907, FAX  
(804) 662-9523, (804) 662-7197/TTY , e-mail  
etisdale@dhp.state.va.us.


## DEPARTMENT OF GAME AND INLAND FISHERIES

**February 8, 2000 - 7 p.m.** -- Open Meeting  
Department of Game and Inland Fisheries, Williamsburg  
Regional Office, 5806 Mooretown Road, Williamsburg,  
Virginia.  (Interpreter for the deaf provided upon request)

**February 9, 2000 - 7 p.m.** -- Open Meeting  
Department of Game and Inland Fisheries, Lynchburg  
Regional Office, 910 Thomas Jefferson Road, Forest,  
Virginia.  (Interpreter for the deaf provided upon request)

**February 10, 2000 - 7 p.m.** -- Open Meeting  
Department of Game and Inland Fisheries, Fredericksburg  
Regional Office, 1320 Belman Road, Fredericksburg,  
Virginia.  (Interpreter for the deaf provided upon request)

**February 15, 2000 - 7 p.m.** -- Open Meeting  
Smyth-Bland Regional Library, Copenhaver Meeting Room,  
118 South Sheffey Street, Marion, Virginia.  (Interpreter for the deaf provided upon request)


**February 16, 2000 - 7 p.m.** -- Open Meeting  
Department of Game and Inland Fisheries, Verona (Staunton)  
Regional Office, 4724 Lee Highway, Verona, Virginia.   
(Interpreter for the deaf provided upon request)

The Virginia Department of Game and Inland Fisheries  
(DGIF) is hosting five public meetings in February 2000  
to discuss Virginia's freshwater fishing regulations and  
agency programs with anglers and other interested  
parties. Interested individuals are invited to join the DGIF  
staff to discuss these subjects. Public comments and  
suggestions received will be considered by staff as they  
refine current programs, develop new ones, and develop


staff recommendations for amendments to freshwater fish and fishing regulations. Agency staff will present such recommendations to the Board of Game and Inland Fisheries at its August 2000 meeting as part of the regular biennial review of freshwater fish and fishing regulations.

**Contact:** Phil Smith, Policy Analyst, Department of Game and Inland Fisheries, 4010 W. Broad Street, Richmond, VA, telephone (804) 367-1000 or FAX (804) 367-0488.


## BOARD FOR GEOLOGY

**January 27, 2000 - 9 a.m.** -- Open Meeting  
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia. 


A general business meeting. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact the department at least two weeks in advance of the meeting. The department fully complies with the Americans with Disabilities Act.

**Contact:** William H. Ferguson, II, Board Administrator, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-2406, FAX (804) 367-2475, or (804) 367-9753/TTY 


## DEPARTMENT OF HEALTH PROFESSIONS

**† February 11, 2000 - 9 a.m.** -- Open Meeting  
Department of Health Professions, 6606 West Broad Street, 5th Floor, Conference Room 4, Richmond, Virginia.   
(Interpreter for the deaf provided upon request)

The Intervention Program Committee will meet with its contractor and representatives to review reports, policies and procedures for the Health Practitioner's Intervention Program. The committee will meet in open session for general discussion of the program. The committee may meet in executive sessions for the purpose of consideration of specific requests from applicants to or participants in the program.


**Contact:** John W. Hasty, Director, Department of Health Professions, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9424, FAX (804) 662-9114 or (804) 662-7197/TTY 

## BOARD FOR HEARING AID SPECIALISTS


**January 25, 2000 - 8:30 a.m.** -- Open Meeting  
Department of Professional and Occupational Regulation, 3600 West Broad Street, 4th Floor, Richmond, Virginia.   
(Interpreter for the deaf provided upon request)

An open meeting to discuss regulatory review and other matters requiring board action, including disciplinary cases. A public comment period will be held at the beginning of the meeting. All meetings are subject to cancellation. The time of the meeting is subject to

change. Any persons desiring to attend the meeting and requiring special accommodations or interpretative services should contact the department at 804-367-8590 or 804-367-9753/TTY at least 10 days prior to the meeting so that suitable arrangements can be made for an appropriate accommodation. The department fully complies with the Americans with Disabilities Act.


**Contact:** Nancy Taylor Feldman, Assistant Director, Department of Professional and Occupational Regulation, 3600 West Broad Street, 4th Floor, Richmond, VA 23230-4917, telephone (804) 367-8590, FAX (804) 367-2474, (804) 367-9753/TTY , e-mail [hearingaidspec@dpor.state.va.us](mailto:hearingaidspec@dpor.state.va.us), homepage <http://www.state.va.us/dpor>.

## STATE COUNCIL OF HIGHER EDUCATION FOR VIRGINIA

**January 18, 2000 - 8:30 a.m.** -- Open Meeting  
James Monroe Building, 9th Floor, Richmond, Virginia.   
(Interpreter for the deaf provided upon request)

Monthly committee and council meetings.


**Contact:** Pamela H. Landrum, Administrative Staff Assistant, State Council of Higher Education for Virginia, James Monroe Building, 101 N. 14th Street, Richmond, VA 23219, telephone (804) 225-2602, FAX (804) 371-7911, e-mail [landrum@schev.edu](mailto:landrum@schev.edu), homepage <http://www.schev.edu>.

**February 8, 2000 - 9 a.m.** -- Open Meeting  
James Monroe Building, 101 North 14th Street, Richmond, Virginia.   
(Interpreter for the deaf provided upon request)

A teleconferenced meeting. Locations are McGuire, Woods, Battle and Boothe; World Trade Center, Suite 9000, Norfolk, Virginia; and 420 Park Street, Charlottesville, Virginia. Times may vary.

**Contact:** Pamela H. Landrum, Administrative Staff Assistant, State Council of Higher Education for Virginia, James Monroe Building, 101 N. 14th Street, Richmond, VA 23219, telephone (804) 225-2602, FAX (804) 371-7911, e-mail [landrum@schev.edu](mailto:landrum@schev.edu), homepage <http://www.schev.edu>.

## HOPEWELL INDUSTRIAL SAFETY COUNCIL

**February 1, 2000 - 9 a.m.** -- Open Meeting  
**March 7, 2000 - 9 a.m.** -- Open Meeting  
Hopewell Community Center, 100 West City Point Road, Hopewell, Virginia.   
(Interpreter for the deaf provided upon request)

Local Emergency Preparedness Committee meeting on emergency preparedness as required by SARA Title III.

**Contact:** Robert Brown, Emergency Services Coordinator, Hopewell Industrial Safety Council, 300 N. Main Street, Hopewell, VA 23860, telephone (804) 541-2298.

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# Calendar of Events

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## VIRGINIA HOUSING DEVELOPMENT AUTHORITY


† **January 26, 2000 - 11 a.m.** -- Open Meeting  
Virginia Housing Development Authority, 601 South Belvidere Street, Richmond, Virginia. 

A regular meeting of the Board of Commissioners. The board will (i) review and, if appropriate, approve the minutes from the prior monthly meeting; (ii) consider for approval and ratification mortgage loan commitments under its various programs; (iii) review the authority's operations for the prior month; and (iv) consider such other matters and take such other actions as it may deem appropriate. Various committees of the Board of Commissioners may also meet before or after the regular meeting and consider matters within their purview. The planned agenda of the meeting will be available at the offices of the authority one week prior to the date of the meeting.

**Contact:** J. Judson McKellar, Jr., General Counsel, Virginia Housing Development Authority, 601 S. Belvidere St., Richmond, VA 23220, telephone (804) 343-5540, FAX (804) 783-6701, toll-free 1-800-968-7837, or (804) 783-6705/TTY 

## DEPARTMENT OF LABOR AND INDUSTRY


### Migrant and Seasonal Farmworkers Board


**January 19, 2000 - 10 a.m.** -- Open Meeting  
Jackson Center Building, 501 North Second Street, 1st Floor, Richmond, Virginia.  (Interpreter for the deaf provided upon request)

A regular quarterly meeting of the board rescheduled from December 1, 1999.

**Contact:** Patti C. Bell, Public Relations Coordinator, Department of Labor and Industry, 13 S. Thirteenth Street, Richmond, VA 23219, telephone (804) 225-3083, FAX (804) 786-8418, (804) 786-2376/TTY , e-mail [pcb@doli.state.va.us](mailto:pcb@doli.state.va.us), homepage <http://www.dli.state.va.us>.

## STATE LIBRARY BOARD

**January 21, 2000 - 8:15 a.m.** -- Open Meeting  
The Library of Virginia, 800 East Broad Street, Richmond, Virginia. 

**March 13, 2000 - 8:15 a.m.** -- Open Meeting  
Location to be announced. 

A meeting to discuss matters pertaining to The Library of Virginia and the State Library Board.

The following committees will meet at 8:15 a.m.:


Public Library Development Committee (Orientation Room)  
Publications and Educational Services Committee (Conference Room B)

Records Management Committee (Conference Room C)

The following committees will meet at 9:30 a.m.:

Archival and Information Services Committee (Orientation Room)  
Collection Management Services Committee (Conference Room B)  
Legislative and Finance Committee (Conference Room C).


The full board will meet in the conference room on 2M at 10:30 a.m. Public comment will be received at approximately 11 a.m.

**Contact:** Jean H. Taylor, Executive Secretary Senior, The Library of Virginia, 800 East Broad Street, Richmond, VA 23219-8000, telephone (804) 692-3535, FAX (804) 692-3594, (804) 692-3976/TTY , e-mail [jtaylor@vsla.edu](mailto:jtaylor@vsla.edu), homepage <http://www.lva.lib.va.us>.

## COMMISSION ON LOCAL GOVERNMENT


**February 21, 2000 - 10:30 a.m.** -- Public Hearing  
Clifton Forge area; site to be determined.

Oral presentations regarding the City of Clifton Forge's proposed reversion to a town in Alleghany County. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact the commission.

**Contact:** Barbara W. Bingham, Administrative Assistant, Commission on Local Government, 900 E. Main Street, Suite 103, Richmond, VA 23219-3513, telephone (804) 786-6508, FAX (804) 371-7999, (800) 828-1120/TTY , e-mail [bbingham@clg.state.va.us](mailto:bbingham@clg.state.va.us), <http://www.state.va.us/clg>.

**February 21, 2000 - 7 p.m.** -- Public Hearing  
Clifton Forge area; site to be determined.

A public hearing regarding the City of Clifton Forge's proposed reversion to a town in Alleghany County. Persons desiring to participate in the commission's proceedings and requiring special accommodations or interpreter services should contact the commission.

**Contact:** Barbara W. Bingham, Administrative Assistant, Commission on Local Government, 900 E. Main Street, Suite 103, Richmond, VA 23219-3513, telephone (804) 786-6508, FAX (804) 371-7999, (800) 828-1120/TTY , e-mail [bbingham@clg.state.va.us](mailto:bbingham@clg.state.va.us), <http://www.state.va.us/clg>.

**February 22, 2000 - 9 a.m.** -- Public Hearing  
Clifton Forge area; site to be determined.

Oral presentations regarding the City of Clifton Forge's proposed reversion to a town in Alleghany County. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact the commission.

**Contact:** Barbara W. Bingham, Administrative Assistant, Commission on Local Government, 900 E. Main Street, Suite 103, Richmond, VA 23219-3513, telephone (804) 786-6508,



FAX (804) 371-7999, (800) 828-1120/TTY ☎, e-mail [bbingham@clg.state.va.us](mailto:bbingham@clg.state.va.us), <http://www.state.va.us/clg>.

## LONGWOOD COLLEGE

† **January 27, 2000 - 9 a.m.** -- Open Meeting  
Longwood College, Lancaster 215, Farmville, Virginia. ♿

The following committees of the Board of Visitors will conduct routine business meetings:

Academic Affairs Committee -- 9 a.m.  
Facilities and Services Committee - 11:15 a.m.  
Student Affairs Committee - 1 p.m.  
Finance and Audit Committee - 3 p.m.

**Contact:** Patricia P. Cormier, President, Longwood College, 201 High St., Farmville, VA 23909, telephone (804) 395-2004 or FAX (804) 395-2821.

† **January 28, 2000 - 9 a.m.** -- Open Meeting  
Longwood College, Lancaster 215, Farmville, Virginia. ♿

A meeting of the Board of Visitors to conduct routine business.

**Contact:** Patricia P. Cormier, President, Longwood College, 201 High St., Farmville, VA 23909, telephone (804) 395-2004 or FAX (804) 395-2821.

## VIRGINIA MANUFACTURED HOUSING BOARD

† **January 20, 2000 - 10 a.m.** -- Open Meeting  
Department of Housing and Community Development, 501 North 2nd Street, The Jackson Center, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

A regular monthly meeting.

**Contact:** Curtis L. McIver, Associate Director, Department of Housing and Community Development, Manufactured Housing Office, The Jackson Center, 501 N. 2nd St., Richmond, VA 23219, telephone (804) 371-7160 or (804) 371-7089/TTY ☎

## MARINE RESOURCES COMMISSION

**January 25, 2000 - 9:30 a.m.** -- Open Meeting  
**February 22, 2000 - 9:30 a.m.** -- Open Meeting  
**March 28, 2000 - 9:30 a.m.** -- Open Meeting  
Marine Resources Commission, 2600 Washington Avenue, Room 403, Newport News, Virginia. ♿ (Interpreter for the deaf provided upon request)

The commission will hear and decide the following marine environmental matters beginning at 9:30 a.m.: permit applications for projects in wetlands, bottom lands, coastal primary sand dunes and beaches; appeals of local wetland board decisions; and policy and regulatory issues. The commission will hear and decide the following fishery management items beginning at approximately noon: regulatory proposals; fishery management plans; fishery conservation issues;

licensing; and shellfish leasing. Meetings are open to the public. Testimony will be taken under oath from parties addressing agenda items on permits and licensing. Public comments will be taken on resource matters, regulatory issues and items scheduled for public hearing.

**Contact:** LaVerne Lewis, Secretary to the Commission, Marine Resources Commission, P.O. Box 756, Newport News, VA 23607-0756, telephone (757) 247-2261, toll-free (800) 541-4646 or (757) 247-2292/TTY ☎

## DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

† **February 17, 2000 - 2 p.m.** -- Open Meeting  
Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Board Room, Richmond, Virginia. ♿

A meeting of the Drug Utilization Review Board to conduct board business.

**Contact:** Marianne Rollings, Program Administrator, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 225-4268, FAX (804) 786-1680, (800) 343-0634/TTY ☎, e-mail [mrollings@dmass.state.va.us](mailto:mrollings@dmass.state.va.us).

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**March 17, 2000** - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of Medical Assistance Services intends to amend regulations entitled: **Program for All-Inclusive Care for the Elderly - PACE: 12 VAC 30-10-10 et seq. State Plan Under Title XIX of the Social Security Act Medical Assistance Program; General Provisions; 12 VAC 30-50-10 et seq. Amount, Duration, and Scope of Medical and Remedial Care Services; 12 VAC 30-120-10 et seq. Waivered Services.** These proposed regulations provide for the creation of Medicaid coverage of PACE services (Program of All-Inclusive Care for the Elderly). These regulations link all types of medical care that frail, elderly individuals might need through a system of care management. This program has been modeled after the On Lok program in California.

Statutory Authority: § 32.1-325 of the Code of Virginia.

Public comments may be submitted until March 17, 2000, to T. C. Jones, Analyst, LTC-Appeals Division, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, Virginia 23219.

**Contact:** Victoria Simmons, Regulatory Coordinator, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 786-7959 or FAX (804) 786-1680.

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# Calendar of Events

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**March 17, 2000** - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of Medical Assistance Services intends to amend regulations entitled: **12 VAC 30-70-10 et seq. Methods and Standards for Establishing Payment Rates-Inpatient Hospital Care (Diagnosis Related Groups)**. The proposed regulations amend the existing inpatient hospital payment methodology regulations to remove transition period rules and fully implement the new Diagnosis Related Grouping (DRG) methodology. These amendments fulfill a directive by the 1996 General Assembly to implement a DRG methodology (Chapter 912, Item 322 J) and the settlement terms of a case brought under the federal Boren Amendment which required DMAS and the then Virginia Hospital Association to jointly develop a replacement reimbursement method.

Statutory Authority: § 32.1-325 of the Code of Virginia.

Public comments may be submitted until March 17, 2000, to Stan Fields, Director of Cost Settlement, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, Virginia 23219.

**Contact:** Victoria Simmons, Regulatory Coordinator, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 786-7959 or FAX (804) 786-1680.

## BOARD OF MEDICINE

**January 21, 2000** - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Medicine intends to amend regulations entitled:

**18 VAC 85-20-10 et seq. Regulations Governing the Practice of Medicine, Osteopathy, Podiatry, Chiropractic and Physician Acupuncture;**

**18 VAC 85-31-10 et seq. Regulations Governing the Practice of Physical Therapy;**

**18 VAC 85-40-10 et seq. Regulations Governing the Practice of Respiratory Care Practitioners;**

**18 VAC 85-50-10 et seq. Regulations Governing the Practice of Physician Assistants;**

**18 VAC 85-80-10 et seq. Regulations Governing the Licensure of Occupational Therapists;**


**18 VAC 85-101-10 et seq. Regulations Governing the Licensure of Radiologic Technologists and Radiologic Technologists-Limited; and**

**18 VAC 85-110-10 et seq. Regulations Governing the Practice of Licensed Acupuncturists.**


The proposed amendments revise the schedule of fees paid by physicians and other medical professionals to the Board of Medicine. These fee changes bring the board into compliance with the board's interpretation of § 54.1-113 of the Code of Virginia, which requires all regulatory boards under the Department of Health Professions to revise their fee schedules if, after the close of any biennium, there is more than a 10% difference between revenues and expenditures.

Statutory Authority: §§ 54.1-113 and 54.1-2400 of the Code of Virginia.

**Contact:** William L. Harp, M.D., Executive Director, Board of Medicine, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9908.

**January 28, 2000 - 1 p.m.** -- Open Meeting  
Department of Health Professions, 6606 West Broad Street, 5th Floor, Richmond, Virginia  (Interpreter for the deaf provided upon request)


A meeting of the Legislative Committee to (i) discuss legislative issues related to board activities and regulations, (ii) review any pending regulations pursuant to regulatory review or legislative action, and (iii) consider any other information that may come before the committee. The committee will entertain public comments during the first 15 minutes on agenda items.

**Contact:** William L. Harp, M.D., Executive Director, Board of Medicine, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9960, FAX (804) 662-9517, (804) 662-7197/TTY 


**February 10, 2000 - 8 a.m.** -- Open Meeting

**February 11, 2000 - 8 a.m.** -- Open Meeting


**February 12, 2000 - 8 a.m.** -- Open Meeting

Department of Health Professions, 6606 West Broad Street, 5th Floor, Richmond, Virginia  (Interpreter for the deaf provided upon request)


A meeting to conduct general board business, receive committee and board reports, and discuss any other items which may come before the board. The board will also meet on Friday and Saturday, February 11 and 12, to review reports, interview licensees/applicants, conduct administrative proceedings, and make decisions on disciplinary matters. The board will also review any regulations that may come before it. The board will entertain public comments during the first 15 minutes on agenda items.

**Contact:** William L. Harp, M.D., Executive Director, Board of Medicine, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9960, FAX (804) 662-9517, (804) 662-7197/TTY 


## Informal Conference Committee

**January 20, 2000 - 9:30 a.m.** -- Open Meeting  
Wyndham Roanoke Hotel, 2801 Hershberger Road, N.W., Roanoke, Virginia. 

† **January 26, 2000 - 9 a.m.** -- Open Meeting  
Richmond Hotel and Conference Center, 6531 West Broad Street, Richmond, Virginia.


**March 9, 2000 - 9 a.m.** -- Open Meeting  
Central Park Hotel, 2801 Plank Road, Fredericksburg, Virginia. 

A meeting to inquire into allegations that certain practitioners may have violated laws and regulations governing the practice of medicine and other healing arts in Virginia. The committee will meet in open and closed sessions pursuant to § 2.1-344 A 7 and A 15 of the Code of Virginia. Public comment will not be received.


**Contact:** Peggy Sadler or Renee Dixon, Board of Medicine, 6606 W. Broad Street, 4th Floor, Richmond, VA 23230, telephone (804) 662-7332, FAX (804) 662-9517, (804) 662-7197/TTY 

## DEPARTMENT OF MINES, MINERALS AND ENERGY

### Board of Mineral Mining Examiners

† **January 20, 2000 - 10 a.m.** -- Open Meeting  
Department of Forestry, Division of Mineral Mining Office, Fontaine Research Park, 900 Natural Resources Drive, Training Room, Charlottesville, Virginia.  (Interpreter for the deaf provided upon request)

A meeting to conduct a formal hearing relating to an individual certification issue.

**Contact:** Ronald Mullins, Safety Engineer, Department of Mines, Minerals and Energy, Charlottesville, VA 22903, telephone (804) 951-6310, FAX (804) 951-6325, (800) 828-1120/TTY , e-mail [rdm@mme.state.va.us](mailto:rdm@mme.state.va.us).


### BOARD OF NURSING

**January 21, 2000** - Public comments may be submitted until this date.


Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Nursing intends to amend regulations entitled: **18 VAC 90-20-10 et seq. Regulations Governing the Practice of Nursing.** The proposed amendments increase application, renewal and other fees charged to applicants and regulated entities in order to cover the expenditures for the regulatory and disciplinary functions of the board.


Statutory Authority: §§ 54.1-113 and 54.1-2400 of the Code of Virginia.

**Contact:** Nancy K. Durrett, R.N., Executive Director, Board of Nursing, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9909 or FAX (804) 662-9943.


**January 24, 2000 - 8:30 a.m.** -- Open Meeting  
**January 26, 2000 - 8:30 a.m.** -- Open Meeting  
**January 27, 2000 - 8:30 a.m.** -- Open Meeting  
Department of Health Professions, 6606 West Broad Street, 5th Floor, Conference Room 2, Richmond, Virginia. 


A panel of the board will conduct formal hearings with licensees and certificate holders. Public comment will not be received.

**Contact:** Nancy K. Durrett, R.N., Executive Director, Board of Nursing, 6606 W. Broad Street, 4th Floor, Richmond, VA 23230, telephone (804) 662-9909, FAX (804) 662-9512, (804) 662-7197/TTY , e-mail [nursebd@dhp.state.va.us](mailto:nursebd@dhp.state.va.us).


**January 25, 2000 - 9 a.m.** -- Open Meeting  
Department of Health Professions, 6606 West Broad Street, 5th Floor, Conference Room 2, Richmond, Virginia  (Interpreter for the deaf provided upon request)

A meeting to adopt proposed regulations for nurse practitioners, prescriptive authority and massage therapists in order to increase certain fees charged to applicants and to consider any other action as may come before the board. Public comment will be received at 11 a.m.

**Contact:** Nancy K. Durrett, R.N., Executive Director, Board of Nursing, 6606 W. Broad Street, 4th Floor, Richmond, VA 23230, telephone (804) 662-9909, FAX (804) 662-9512, (804) 662-7197/TTY , e-mail [ndurrett@dhp.state.va.us](mailto:ndurrett@dhp.state.va.us), homepage <http://dhp.state.va.us>.

**February 15, 2000 - 9 a.m.** -- Open Meeting  
Department of Health Professions, 6606 West Broad Street, 5th Floor, Conference Room 1, Richmond, Virginia.  (Interpreter for the deaf provided upon request)


A meeting to adopt final regulations for nurses and certified nurse aides in order to increase certain fees charged to applicants and to consider any other action as may come before the board.

**Contact:** Nancy K. Durrett, R.N., Executive Director, Board of Nursing, 6606 W. Broad Street, 4th Floor, Richmond, VA 23230, telephone (804) 662-9909, FAX (804) 662-9512, (804) 662-7197/TTY , e-mail [ndurrett@dhp.state.va.us](mailto:ndurrett@dhp.state.va.us).

### BOARD OF NURSING HOME ADMINISTRATORS

**January 12, 2000 - 9:30 a.m.** -- Open Meeting  
Department of Health Professions, 6606 West Broad Street, 5th Floor, Richmond, Virginia. 


A regular meeting. Public comments will be heard for 15 minutes prior to the start of the meeting.

**Contact:** Senita Booker, Administrative Staff Assistant, Board of Nursing Home Administrators, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9111, FAX (804) 662-9523, (804) 662-7197/TTY , e-mail [SBooker@dhp.state.va.us](mailto:SBooker@dhp.state.va.us).


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# Calendar of Events


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† **February 9, 2000 - 10 a.m.** -- Open Meeting  
Department of Health Professions, 6606 West Broad Street,  
5th Floor, Conference Room 3, Richmond, Virginia. 

The Special Conference Committee will conduct an informal hearing pursuant to § 9-6.14:11 of the Code of Virginia. Public comments will not be received.

**Contact:** Senita Booker, Administrative Staff Assistant, Board of Nursing Home Administrators, 6606 W. Broad St., Suite 403, Richmond, VA 23230-1717, telephone (804) 662-9111, FAX (804) 662-9523, (804) 662-7197/TTY , e-mail SBooker@dhp.state.va.us.


## BOARD FOR OPTICIANS

**February 11, 2000 - 9 a.m.** -- Open Meeting  
Department of Professional and Occupational Regulation,  
3600 West Broad Street, 4th Floor, Richmond, Virginia.   
(Interpreter for the deaf provided upon request)


An open meeting to discuss regulatory review and other matters requiring board action, including disciplinary cases. A public comment period will be held at the beginning of the meeting. All meetings are subject to cancellation. The time of the meeting is subject to change. Any persons desiring to attend the meeting and requiring special accommodations or interpretative services should contact the department at 804-367-8590 or 804-367-9753/TTY at least 10 days prior to the meeting so that suitable arrangements can be made for an appropriate accommodation. The department fully complies with the Americans with Disabilities Act.

**Contact:** Nancy Taylor Feldman, Assistant Director, Department of Professional and Occupational Regulation, 3600 West Broad Street, 4th Floor, Richmond, VA 23230-4917, telephone (804) 367-8590, FAX (804) 367-2474, e-mail opticians@dpor.state.va.us.


## BOARD OF OPTOMETRY

† **January 26, 2000 - 9 a.m.** -- Open Meeting  
Department of Health Professions, 6606 West Broad Street,  
5th Floor, Conference Room 4, Richmond, Virginia.   
(Interpreter for the deaf provided upon request)


The Informal Conference Committee will conduct informal hearings pursuant to § 9-6.14:11 of the Code of Virginia. Public comment will not be received.

**Contact:** Carol Stamey, Administrative Assistant, Board of Optometry, 6606 W. Broad St., 4th Floor, Richmond, VA 23230, telephone (804) 662-9910, FAX (804) 662-7098, (804) 662-7197/TTY , e-mail cstamey@dhp.state.va.us.

## VIRGINIA BOARD FOR PEOPLE WITH DISABILITIES

**February 3, 2000 - 8:30 a.m.** -- Open Meeting  
The Library of Virginia, 800 East Broad Street, Richmond,  
Virginia.  (Interpreter for the deaf provided upon request)

A regular meeting.

**Contact:** Tom Ariail, Assistant Director of Board Operations, Virginia Board for People with Disabilities, 202 N. 9th Street, 9th Floor, Richmond, VA 23219, telephone (804) 786-0016, FAX (804) 786-1118, toll-free (800) 846-4464, (804) 786-0016/TTY .

## BOARD OF LICENSED PROFESSIONAL COUNSELORS, MARRIAGE AND FAMILY THERAPISTS AND SUBSTANCE ABUSE TREATMENT PROFESSIONALS

**January 21, 2000** - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Licensed Professional Counselors, Marriage and Family Therapists and Substance Abuse Treatment Professionals intends to amend regulations entitled:

**18 VAC 115-20-10 et seq. Regulations Governing the Practice of Professional Counseling;**

**18 VAC 115-30-10 et seq. Regulations Governing the Certification of Substance Abuse Counselors;**


**18 VAC 115-40-10 et seq. Regulations Governing the Certification of Rehabilitation Providers; and**

**18 VAC 115-50-10 et seq. Regulations Governing the Practice of Marriage and Family Therapists.**


The proposed amendments increase certain fees pursuant to the board's statutory mandate to levy fees as necessary to cover expenses of the board. Fees sufficient to fund the operations of the board are essential for activities such as licensing, investigation of complaints, and adjudication of disciplinary cases.

Statutory Authority: §§ 54.1-113 and 54.1-2400 of the Code of Virginia.

**Contact:** Janet Delorme, Deputy Executive Director, Board of Licensed Professional Counselors, Marriage and Family Therapists and Substance Abuse Treatment Professionals, 6606 W. Broad St., 4th Floor, Richmond, VA 23230, telephone (804) 662-9975 or (804) 662-9943.

**February 18, 2000 - 10 a.m.** -- Open Meeting  
Department of Health Professions, 6606 West Broad Street,  
5th, Floor, Board Room 2, Richmond, Virginia. 

A regular meeting to conduct general board business; consider committee reports correspondence and any other matters under the jurisdiction of the board. Public comments will be heard at the beginning of the meeting.

**Contact:** Joyce D. Williams, Administrative Assistant, Board of Licensed Professional Counselors, Marriage and Family Therapists and Substance Abuse Treatment Professionals, 6606 W. Broad Street, 4th Floor, Richmond, VA 23230, telephone (804) 662-9912, FAX (804) 662-9943, (804) 662-7197/TTY , e-mail coun@dhp.state.va.us.


## BOARD OF PSYCHOLOGY

**January 21, 2000** - Public comments may be submitted until this date.


Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Psychology intends to amend regulations entitled: **18 VAC 125-20-10 et seq. Regulations Governing the Practice of Psychology.** The purpose of the proposed action is to increase fees for practitioners regulated by the board in order to comply with statutory requirements for revenues to be sufficient to cover the expenditures of the board.

Statutory Authority: §§ 54.1-113 and 54.1-2400 of the Code of Virginia.


**Contact:** Janet Delorme, Deputy Executive Director, Board of Professional Counselors, Marriage and Family Therapists, and Substance Abuse Treatment Professionals, 6606 W. Broad St., 4th Floor, Richmond, VA 23230, telephone (804) 662-9975 or (804) 662-9943.

† **January 28, 2000 - 9 a.m.** -- Open Meeting  
Department of Health Professions, 6606 West Broad Street, 5th Floor, Room 1, Richmond, Virginia 

The Special Conference Committee will conduct two informal conferences, one scheduled at 9 a.m. and one scheduled at 11 a.m. to discuss possible violations of the regulations and laws governing the practice of psychology. No public comment will be received.

**Contact:** Arnice Covington, Administrative Assistant, Board of Psychology, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9913, FAX (804) 662-9943, (804) 662-7197/TTY , e-mail psy@dhp.state.va.us.


## VIRGINIA RACING COMMISSION

† **February 16, 2000 - 9:30 a.m.** -- Open Meeting  
Tyler Building, 1300 East Main Street, Richmond, Virginia 

A regular monthly meeting including a segment for public participation. The commission will discuss proposed amendments to its regulation 11 VAC 10-150-10 et seq., Regulations Pertaining to Horse Racing with Pari-Mutuel Wagering: Standardbred Racing.


**Contact:** William H. Anderson, Policy Analyst, Virginia Racing Commission, 10700 Horsemen's Rd., New Kent, VA 23124, telephone (804) 966-7404, FAX (804) 966-7418.

## STATE REHABILITATION COUNCIL

**February 14, 2000 - 9:30 a.m.** -- Open Meeting  
Department of Rehabilitative Services, 8004 Franklin Farms Drive, Richmond, Virginia.  (Interpreter for the deaf provided upon request)

Council committee followed by a regular business meeting.


**Contact:** Kay Magill, State Rehabilitation Council Liaison, Department of Rehabilitative Services, 8004 Franklin Farms

Dr., Richmond, VA 23288, telephone (804) 662-7527, FAX (804) 662-7696, or toll-free 1-800-552-5019 or 1-800-464-9950/TTY 


## BOARD OF REHABILITATIVE SERVICES

**January 27, 2000 - 9:30 a.m.** -- Open Meeting  
Department of Rehabilitative Services, 8004 Franklin Farms Drive, Richmond, Virginia.  (Interpreter for the deaf provided upon request)


A quarterly business meeting. Public comments will be received at 9:45 a.m.

**Contact:** Barbara G. Tyson, Administrative Staff Assistant, Department of Rehabilitative Services, 8004 Franklin Farms Dr., P.O. Box K-300, Richmond, VA 23288-0300, telephone (804) 662-7010, toll-free 1-800-552-5019 or (804) 662-7000/TTY 


## DEPARTMENT FOR RIGHTS OF VIRGINIANS WITH DISABILITIES

† **January 26, 2000 - 10 a.m.** -- Open Meeting  
Southeastern Virginia Training Center, 2100 Steppingstone Square, Chesapeake, Virginia.  (Interpreter for the deaf provided upon request)

A quarterly meeting of the Developmental Disabilities Advisory Council.

**Contact:** Susan Jones, Program Operations Coordinator, Department for Rights of Virginians with Disabilities, 202 N. Ninth St., Ninth Floor, Richmond, VA 23219, telephone (804) 225-2061, FAX (804) 225-3221, toll-free (800) 552-3962, (804) 225-2042/TTY , e-mail jonessm@drvd.state.va.us.


## SEWAGE HANDLING AND DISPOSAL APPEAL REVIEW BOARD

**January 26, 2000 - 10 a.m.** -- Open Meeting  
General Assembly Building, 9th and Broad Streets, Senate Room A, Richmond, Virginia. 

A meeting to hear appeals of health department denials of septic tank permits.

**Contact:** Susan C. Sherertz, Secretary to the Board, Sewage Handling and Disposal Appeal Review Board, P.O. Box 2448, Room 115, Richmond, VA 23218, telephone (804) 225-4236 or FAX (804) 225-4003.

## VIRGINIA SMALL BUSINESS FINANCING AUTHORITY

† **January 25, 2000 - 10 a.m.** -- Open Meeting  
Virginia Small Business Financing Authority, 707 East Main Street, 3rd Floor, Board Room, Richmond, Virginia 

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## Calendar of Events

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A meeting to review applications for loans submitted to the authority for approval and to conduct general business of the board. The time of the meeting is subject to change depending on the agenda of the board.

**Contact:** Cathleen M. Surface, Executive Director, Virginia Small Business Financing Authority, P.O. Box 446, Richmond, VA 23218-0446, telephone (804) 371-8254 or FAX (804) 225-3384.


### BOARD OF SOCIAL WORK

**February 25, 2000 - 10 a.m.** -- Open Meeting  
Department of Health Professions, 6606 West Broad Street, 5th Floor, Board Room 1, Richmond, Virginia. 

A meeting to conduct general board business, receive committee reports, and discuss any other items which may come before the board. The board will entertain public comments during the first 15 minutes of the meeting.

**Contact:** Rai Minor, Administrative Assistant, Board of Social Work, 6606 West Broad Street, 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9914, FAX (804) 662-9943, (804) 662-7197/TTY , e-mail bsw@dhp.state.va.us, homepage <http://www.dhp.state.va.us>.

### VIRGINIA SOIL AND WATER CONSERVATION BOARD


**† January 20, 2000 - 9 a.m.** -- Open Meeting  
Virginia Colonial Farm Credit, 7104 Mechanicsville Turnpike, Mechanicsville, Virginia.  (Interpreter for the deaf provided upon request)

A regular business meeting. Public comment will be allowed at the conclusion of regular business.

**Contact:** Leon E. App, Regulatory Coordinator, Department of Conservation and Recreation, 203 Governor St., Suite 302, Richmond, VA 23219, telephone (804) 786-4570, FAX (804) 786-6141, e-mail lea@dcr.state.va.us.

### DEPARTMENT OF TECHNOLOGY PLANNING


#### Council on Technology Services' Organizational Workgroup

**† February 8, 2000 - 1 p.m.** -- Open Meeting  
Department of Technology Planning, 110 South 7th Street, 3rd Floor, Executive Conference Room, Richmond, Virginia. 

A regular meeting.


**Contact:** Dan Ziomek, Information Technology Manager, Department of Technology Planning, 110 S. 7th St., Suite 135, Richmond, VA 23219, telephone (804) 371-2763, FAX (804) 371-2795, e-mail dziomek@ntp.state.va.us.

### COMMONWEALTH TRANSPORTATION BOARD

**January 19, 2000 - 2 p.m.** -- Open Meeting  
Department of Transportation, 1401 East Broad Street, Richmond, Virginia.  (Interpreter for the deaf provided upon request)

A work session of the board and the Department of Transportation staff.


**Contact:** Shirley J. Ybarra, Secretary of Transportation, 1401 E. Broad St., Richmond, VA 23219, telephone (804) 786-6675.

**January 20, 2000 - 10 a.m.** -- Open Meeting  
Department of Transportation, 1401 East Broad Street, Richmond, Virginia.  (Interpreter for the deaf provided upon request)

A monthly meeting of the board to vote on proposals presented regarding bids, permits, additions and deletions to the highway system, and any other matters requiring board approval. Public comment will be received at the outset of the meeting on items on the meeting agenda for which the opportunity for comment has not been afforded the public in another forum. Remarks will be limited to five minutes. Large groups are asked to select one individual to speak for the group. The board reserves the right to amend these conditions. Separate committee meetings may be held on call of the chairman. Contact Department of Transportation Public Affairs at (804) 786-2715 for schedule.

**Contact:** Shirley J. Ybarra, Secretary of Transportation, 1401 E. Broad St., Richmond, VA 23219, telephone (804) 786-6675.


### TRANSPORTATION SAFETY BOARD

**January 25, 2000 - 10 a.m.** -- Open Meeting  
Department of Transportation, 1401 East Broad Street, 3rd Floor, Conference Room, Richmond, Virginia.  (Interpreter for the deaf provided upon request)

A meeting to discuss issues relating to highway safety in Virginia.

**Contact:** Angelisa Jennings, Management Analyst, Transportation Safety Board, 2300 W. Broad Street, Richmond, VA 23269, telephone (804) 367-2026.

### BOARD OF VETERINARY MEDICINE

**† February 2, 2000 - 9:30 a.m.** -- Open Meeting  
The Homestead, Madison Room, Hot Springs, Virginia.  (Interpreter for the deaf provided upon request)

A board meeting to approve consent orders, consider requests for licensure by endorsement, vote on the revised inspection plan, and discuss requests for regulatory interpretation and possible regulatory amendment.

**Contact:** Terri H. Behr, Administrative Assistant, Board of Veterinary Medicine, 6606 W. Broad St., 4th Floor, Richmond, VA 23230, telephone (804) 662-9915, FAX (804) 662-7098, (804) 662-7197/TTY ☎, e-mail tbehr@dhp.state.va.us.

† **February 3, 2000 - 10 a.m.** -- Open Meeting  
The Homestead, Chesapeake Room, Hot Springs, Virginia. ♿  
(Interpreter for the deaf provided upon request)

Informal hearings. These are public meetings; however, no public comment will be received.

**Contact:** Terri H. Behr, Administrative Assistant, Board of Veterinary Medicine, 6606 W. Broad St., 4th Floor, Richmond, VA 23230, telephone (804) 662-9915, FAX (804) 662-7098, (804) 662-7197/TTY ☎, e-mail tbehr@dhp.state.va.us.

## BOARD FOR THE VISUALLY HANDICAPPED

**January 18, 2000 - 1 p.m.** -- Open Meeting  
Department for the Visually Handicapped, Administrative Headquarters, 397 Azalea Avenue, Richmond, Virginia. ♿  
(Interpreter for the deaf provided upon request)

A regular quarterly meeting to receive information regarding department activities and operations, review expenditures from the board's endowment fund, and discuss other issues raised for board members.

**Contact:** Katherine C. Proffitt, Administrative Secretary Senior, Department for the Visually Handicapped, 397 Azalea Avenue, Richmond, VA 23227, telephone (804) 371-3145, FAX (804) 371-3157, toll-free (800) 622-2155, (804) 371-3140/TTY ☎, e-mail proffikc@dvh.state.va.us, homepage <http://www.cns.state.va.us/dvh>.

## VIRGINIA WASTE MANAGEMENT BOARD

**January 20, 2000 - 9 a.m.** -- Open Meeting  
Department of Environmental Quality, 629 East Main Street, 10th Floor Conference Room, Richmond, Virginia. ♿

A public meeting to receive comments on the board's intent to amend 9 VAC 20-140-10 et seq., Regulations for the Certification of Recycling Machinery and Equipment for Tax Exemption Purposes.

**Contact:** John Ely, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4249, (804) 698-4021/TTY ☎, e-mail jeely@deq.state.va.us, homepage <http://www.deq.state.va.us>.

**January 20, 2000 - 2 p.m.** -- Open Meeting  
Department of Environmental Quality, 10th Floor Conference Room, 629 East Main Street, 10th Floor Conference Room, Richmond, Virginia. ♿

A public meeting to receive comments on the board's intent to adopt 9 VAC 20-180-10 et seq., Regulations Governing the Commercial Transportation of Nonhazardous Municipal Solid Waste and Regulated Medical Waste by Truck.

**Contact:** Robert Wickline, Department of Environmental Quality, P.O. Box 10009, Richmond, Virginia 23240, telephone (804) 698-4213, (804) 698-4021/TTY ☎, e-mail rgwickline@deq.state.va.us, homepage <http://deq.state.va.us>.

**January 21, 2000 - 9 a.m.** -- Open Meeting  
Department of Environmental Quality, 10th Floor Conference Room, 629 East Main Street, Richmond, Virginia. ♿

A public meeting to receive comments on the board's intent to amend 9 VAC 20-130-10 et seq., Regulations for the Development of Solid Waste Management Plans.

**Contact:** Robert Wickline, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4213, (804) 698-4021/TTY ☎, e-mail rgwickline@deq.state.va.us, homepage <http://www.deq.state.va.us>.

## STATE WATER CONTROL BOARD

**January 20, 2000 - 1 p.m.** -- Open Meeting  
Robert E. Lee Building, 121 East 2nd Street, Chase City, Virginia. ♿

A meeting to receive comments on the board's intent to amend 9 VAC 25-430-10 et seq., Roanoke River Basin Water Quality Management Plan, relative to Chase City's wasteload allocation.

**Contact:** Jon Van Soestbergen, Environmental Engineer, Senior, Department of Environmental Quality, Piedmont Regional Office, 4949-A Cox Road, Glen Allen, Virginia 23060, telephone (804) 527-5106, e-mail jvansoest@deq.state.va.us, homepage <http://deq.state.va.us>.

† **January 26, 2000 - 7 p.m.** -- Public Hearing  
Culpeper County High School, 14240 Achievement Drive, Culpeper, Virginia. ♿ (Interpreter for the deaf provided upon request)

A public hearing to receive comments on the proposed issuance of a Virginia Pollutant Discharge Elimination System Permit for Culpeper County's proposed Mountain Run Wastewater Treatment Plant.

**Contact:** Tom A. Faha, Water Permits Manager, Department of Environmental Quality, Northern Regional Office, 13901 Crown Court, Woodbridge, VA 22193, telephone (703) 583-3846.

**January 27, 2000 - 2 p.m.** -- Open Meeting  
Virginia War Memorial, 621 South Belvidere Street, Richmond, Virginia. ♿

A meeting to receive comments on the board's intent to amend the Water Quality Standards, 9 VAC 25-260-10 et seq., to update numerical and/or narrative criteria for dissolved oxygen.

**Contact:** Eleanore Daub, Department of Environmental Quality, P.O. Box 10009, Richmond, Virginia 23240, telephone (804) 698-4111, (804) 698-4021/TTY ☎, e-mail emdaub@deq.state.va.us.

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# Calendar of Events

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## BOARD FOR WATERWORKS AND WASTEWATER WORKS OPERATORS

† February 24, 2000 - 8:30 a.m. -- Open Meeting

March 16, 2000 - 8:30 a.m. -- Open Meeting

Department of Professional and Occupational Regulation, 3600 West Broad Street, Conference Room 5W, Richmond, Virginia. 

A meeting to conduct routine business and adopt final regulations. A public comment period will be held at the beginning of the meeting.

**Contact:** David E. Dick, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad Street, Richmond, VA 23230, telephone (804) 367-8505, FAX (804) 367-2475, (804) 367-9753/TTY , e-mail [waterwasteoper@dpor.state.va.us](mailto:waterwasteoper@dpor.state.va.us).

## COLLEGE OF WILLIAM AND MARY

† February 3, 2000 - 1 p.m. -- Open Meeting


Blow Memorial Hall, Richmond Road, Williamsburg, Virginia.

A regularly scheduled meeting of the Board of Visitors to receive reports from several committees of the board and to act on those resolutions that are presented by the administrations of the College of William and Mary and Richard Bland College.


**Contact:** William T. Walker, Jr., Director, Office of University Relations, College of William and Mary, 312 Jamestown Rd., P.O. Box 8795, Williamsburg, VA 23187-8795, telephone (757) 221-2624 or FAX (757) 221-1021.

## VIRGINIA WORKFORCE COUNCIL


January 21, 2000 - 10 a.m. -- Open Meeting

Virginia Employment Commission, Central Office, 703 East Main Street, Conference Room 303, Richmond, Virginia.   
(Interpreter for the deaf provided upon request)


A meeting of the Existing Workforce and the Hard-to-Employ Committee to consider alternative funding formulas for 30% of the adult and youth funds under Title I of the Workforce Investment Act (WIA). Local planning guidance for Title I of the WIA may also be reviewed.

**Contact:** Gail Robinson, Virginia Workforce Council Liaison, Virginia Employment Commission, P.O. Box 1358, Richmond, VA 23218-1358, telephone (804) 225-3070, FAX (804) 786-5891 or (804) 371-8050/TTY 

† January 31, 2000 - 10 a.m. -- Open Meeting

Virginia Employment Commission, Central Office, 703 East Main Street, Conference Room 303, Richmond, Virginia.   
(Interpreter for the deaf provided upon request)

A meeting of the Workforce Investment Act and Coordinated Planning Committees to consider the five-year strategic plan development process for the Workforce Investment Act, the policy on local board focus, staffing and restrictions, and the public participation policy.

**Contact:** Gail Robinson, Virginia Workforce Council Liaison, Virginia Employment Commission, P.O. Box 1358, Richmond, VA 23218-1358, telephone (804) 225-3070, FAX (804) 786-5891 or (804) 371-8050/TTY 


## LEGISLATIVE

### Notice to Subscribers


Legislative meetings held during the Session of the General Assembly are exempted from publication in *The Virginia Register of Regulations*. You may call Legislative Information for information on standing committee meetings. The number is (804) 698-1500.

## COMMISSION ON ACCESS AND DIVERSITY IN HIGHER EDUCATION IN VIRGINIA (HJR 226/1998)

† January 19, 2000 - Immediately upon adjournment of Session -- Open Meeting

General Assembly Building, 9th and Broad Streets, House Room D, Richmond, Virginia.   
(Interpreter for the deaf provided upon request)

A regular meeting. Questions regarding the meeting should be addressed to Brenda Edwards, Division of Legislative Services, (804) 786-3591. Individuals requiring interpreter services or other special assistance should contact Dawn Smith at least 10 working days prior to the meeting.

**Contact:** Dawn B. Smith, Committee Operations, House of Delegates, State Capitol, P.O. Box 406, Richmond, VA 23218, telephone (804) 698-1540 or (804) 786-2369/TTY 

## OPEN MEETINGS

January 18

Emergency Planning Committee, Local - Hanover County  
Higher Education for Virginia, State Council of  
Visually Handicapped, Board for the

January 19

Cemetery Board  
† Higher Education in Virginia, Commission on Access  
and Diversity in  
Labor and Industry, Department of  
- Migrant and Seasonal Farmworkers Board  
Transportation Board, Commonwealth

January 20

Architects, Professional Engineers, Land Surveyors,  
Certified Interior Designers and Landscape Architects,  
Board of  
- Land Surveyor Section  
Assistive Technology Loan Fund Authority  
Cemetery Board  
- Delivery Committee  
† Conservation and Recreation, Department of  
Emergency Planning Committee, Local - Winchester



† Environmental Quality, Department of  
† Manufactured Housing Board, Virginia  
Medicine, Board of  
- Informal Conference Committee  
† Mines, Minerals and Energy, Department of  
- Board of Mineral Mining Examiners  
† Soil and Water Conservation Board, Virginia  
Transportation Board, Commonwealth  
Waste Management Board, Virginia  
Water Control Board, State

## January 21

† Correctional Education, Board of  
Library Board, State  
Waste Management Board, Virginia  
Workforce Council, Virginia  
- Existing Workforce and the Hard-to-Employ  
Committee

## January 22

† Conservation and Recreation, Department of  
- Cave Board

## January 24

Accountancy, Board of  
† Audiology and Speech-Language Pathology, Board of  
- Task Force Committee on Continuing Education  
† Conservation and Recreation, Department of  
- Goose Creek Scenic River Advisory Board  
Design-Build/Construction Management Review Board  
Nursing, Board of

## January 25

† Auctioneers Board  
Compensation Board  
Hearing Aid Specialists, Board for  
Marine Resources Commission  
Nursing, Board of  
† Small Business Financing Authority, Virginia  
Transportation Safety Board

## January 26

Community Colleges, State Board for  
† Conservation and Recreation, Department of  
† Contractors, Board for  
- Tradesman Certification Committee  
† Funeral Directors and Embalmers, Board of  
- Special Conference Committee  
† Housing Development Authority, Virginia  
- Board of Commissioners  
† Medicine, Board of  
- Informal Conference Committee  
Nursing, Board of  
† Optometry, Board of  
- Informal Conference Committee  
† Rights of Virginians with Disabilities, Department for  
- Developmental Disabilities Advisory Council  
Sewage Handling and Disposal Appeal Review Board

## January 27

Community Colleges, State Board for  
† Funeral Directors and Embalmers, Board of  
- Regulatory/Bylaws Committee  
Geology, Board for

† Longwood College  
- Academic Affairs Committee  
- Facilities and Services Committee  
- Finance and Audit Committee  
- Student Affairs Committee  
Nursing, Board of  
Rehabilitative Services, Board of  
Water Control Board, State

## January 28

† Emergency Medical Services Advisory Board, State  
Longwood College  
- Board of Visitors  
Medicine, Board of  
- Legislative Committee  
† Psychology, Board of  
- Special Conference Committee

## January 31

† Branch Pilots, Board for  
† Workforce Council, Virginia  
- Workforce Investment Act and Coordinated Planning  
Committee

## February 1

† Branch Pilots, Board for  
Hopewell Industrial Safety Council

## February 2

† Architects, Professional Engineers, Land Surveyors,  
Certified Interior Designers and Landscape Architects,  
Board for  
- Architects Section  
† Deaf and Hard-of-Hearing, Department for the  
† Veterinary Medicine, Board of

## February 3

People with Disabilities, Virginia Board for  
† Veterinary Medicine, Board of  
† William and Mary, The College of  
- Board of Visitors

## February 4

† Agriculture and Consumer Services, Department of  
- Virginia Plant Pollination Advisory Board  
Art and Architectural Review Board

## February 7

Barbers, Board for

## February 8

Game and Inland Fisheries, Department of  
Higher Education for Virginia, State Council of  
† Technology Planning, Department of  
- Council on Technology Services' Organizational  
Workgroup

## February 9

† Architects, Professional Engineers, Land Surveyors,  
Certified Interior Designers and Landscape Architects,  
Board for  
- Professional Engineers Section  
Game and Inland Fisheries, Department of  
† Nursing Home Administrators, Board of  
- Special Conference Committee

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# Calendar of Events

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**February 10**

Conservation and Recreation, Department of  
Game and Inland Fisheries, Department of  
Medicine, Board of

**February 11**

† Health Professions, Department of  
- Health Practitioners' Intervention Program  
Medicine, Board of  
Opticians, Board for

**February 12**

Medicine, Board of

**February 14**

† Agriculture and Consumer Services, Department of  
- Consumer Affairs Advisory Committee  
Rehabilitation Council, State

**February 15**

Game and Inland Fisheries, Department of  
Nursing, Board of

**February 16**

† Architects, Professional Engineers, Land Surveyors,  
Certified Interior Designers and Landscape Architects,  
Board for  
- Land Surveyors Section  
Game and Inland Fisheries, Department of  
† Racing Commission, Virginia

**February 17**

Assistive Technology Loan Fund Authority  
† Medical Assistance Services, Department of  
- Drug Utilization Review Board

**February 18**

Professional Counselors, Marriage and Family Therapists  
and Substance Abuse Treatment Professionals, Board  
of Licensed

**February 22**

Agriculture and Consumer Services, Department of  
- Virginia Winegrowers Advisory Board  
Marine Resources Commission

**February 23**

† Architects, Professional Engineers, Land Surveyors,  
Certified Interior Designers and Landscape Architects,  
Board for  
- Landscape Architects Section

**February 24**

Agriculture and Consumer Services, Department of  
- Virginia Aquaculture Advisory Board  
Education, Board of  
† Waterworks and Wastewater Works Operators, Board  
for

**February 25**

Social Work, Board of

**March 1**

† Architects, Professional Engineers, Land Surveyors,  
Certified Interior Designers and Landscape Architects,  
Board for  
- Certified Interior Designer Section

**March 6**

Cosmetology, Board for

**March 7**

Asbestos and Lead, Virginia Board for  
Hopewell Industrial Safety Council

**March 8**

† Architects, Professional Engineers, Land Surveyors,  
Certified Interior Designers and Landscape Architects,  
Board for

**March 9**

Medicine, Board of  
- Informal Conference Committee

**March 13**

Library Board, State

**March 16**

Waterworks and Wastewater Works Operators, Board for

**March 23**

Education, Board of

**March 28**

Marine Resources Commission

## PUBLIC HEARINGS

**January 26**

† Water Control Board, State

**February 21**

Local Government, Commission on

**February 22**

Local Government, Commission on

**February 28**

† Education, State Board of