



VIRGINIA

REGISTER OF REGULATIONS

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Virginia Code Commission

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THE VIRGINIA REGISTER INFORMATION PAGE

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

ADOPTION, AMENDMENT, AND REPEAL OF REGULATIONS

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

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

The Governor may review the final regulation during this time and, if he objects, forward his objection to the Registrar and the agency. In addition to or in lieu of filing a formal objection, the Governor may suspend the effective date of a portion or all of a regulation until the end of the next regular General Assembly session by issuing a directive signed by a majority of the members of the appropriate legislative body and the Governor. The Governor's objection or suspension of the regulation, or both, will be published in the *Virginia Register*. If the Governor finds that 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 objection period; (ii) the Governor exercises his authority to require the agency to provide for additional public comment, in which event the regulation,

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

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

FAST-TRACK RULEMAKING PROCESS

Section 2.2-4012.1 of the Code of Virginia provides an exemption from certain provisions of the Administrative Process Act for agency regulations deemed by the Governor to be noncontroversial. To use this process, Governor's concurrence is required and advance notice must be provided to certain legislative committees. Fast-track regulations will become effective on the date noted in the regulatory action if no objections to using the process are filed in accordance with § 2.2-4012.1.

EMERGENCY REGULATIONS

Pursuant to § 2.2-4011 of the Code of Virginia, an agency, upon consultation with the Attorney General, and at the discretion of the Governor, may adopt emergency regulations that are necessitated by an emergency situation. An agency may also adopt an emergency regulation when Virginia statutory law or the appropriation act or federal law or federal regulation requires that a regulation be effective in 280 days or less from its enactment. 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 no more than 12 months in duration; however, may be extended for six months under certain circumstances as provided for in § 2.2-4011 D. 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 (§ 2.2-4006 et seq.) of Chapter 40 of Title 2.2 of the Code of Virginia be examined carefully.

CITATION TO THE VIRGINIA REGISTER

The *Virginia Register* is cited by volume, issue, page number, and date. **29:5 VA.R. 1075-1192 November 5, 2012**, refers to Volume 29, Issue 5, pages 1075 through 1192 of the *Virginia Register* issued on November 5, 2012.

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

Members of the Virginia Code Commission: **John S. Edwards**, Chairman; **Gregory D. Habeeb**; **James M. LeMunyon**; **Ryan T. McDougle**; **Robert L. Calhoun**; **E.M. Miller, Jr.**; **Thomas M. Moncure, Jr.**; **Wesley G. Russell, Jr.**; **Charles S. Sharp**; **Robert L. Taverner**; **Christopher R. Nolen**; **J. Jasen Eige** or **Jeffrey S. Palmore**.

Staff of the Virginia Register: **Jane D. Chaffin**, Registrar of Regulations; **June T. Chandler**, Assistant Registrar; **Rhonda Dyer**, Publications Assistant; **Terri Edwards**, Operations Staff Assistant; **Karen Perrine**, Staff Attorney.

PUBLICATION SCHEDULE AND DEADLINES

This schedule is available on the *Register's* Internet home page (<http://register.dls.virginia.gov>).

May 2013 through June 2014

<u>Volume: Issue</u>	<u>Material Submitted By Noon*</u>	<u>Will Be Published On</u>
29:18	April 17, 2013	May 6, 2013
29:19	May 1, 2013	May 20, 2013
29:20	May 15, 2013	June 3, 2013
29:21	May 29, 2013	June 17, 2013
29:22	June 12, 2013	July 1, 2013
29:23	June 26, 2013	July 15, 2013
29:24	July 10, 2013	July 29, 2013
29:25	July 24, 2013	August 12, 2013
29:26	August 7, 2013	August 26, 2013
30:1	August 21, 2013	September 9, 2013
30:2	September 4, 2013	September 23, 2013
30:3	September 18, 2013	October 7, 2013
30:4	October 2, 2013	October 21, 2013
30:5	October 16, 2013	November 4, 2013
30:6	October 30, 2013	November 18, 2013
30:7	November 13, 2013	December 2, 2013
30:8	November 26, 2013 (Tuesday)	December 16, 2013
30:9	December 11, 2013	December 30, 2013
30:10	December 23, 2013 (Monday)	January 13, 2014
30:11	January 8, 2014	January 27, 2014
30:12	January 22, 2014	February 10, 2014
30:13	February 5, 2014	February 24, 2014
30:14	February 19, 2014	March 10, 2014
30:15	March 5, 2014	March 24, 2014
30:16	March 19, 2014	April 7, 2014
30:17	April 2, 2014	April 21, 2014
30:18	April 16, 2014	May 5, 2014
30:19	April 30, 2014	May 19, 2014
30:20	May 14, 2014	June 2, 2014
30:21	May 28, 2014	June 16, 2014
30:22	June 11, 2014	June 30, 2014

*Filing deadlines are Wednesdays unless otherwise specified.

PETITIONS FOR RULEMAKING

TITLE 12. HEALTH

STATE BOARD OF HEALTH

Initial Agency Notice

Title of Regulation: 12VAC5. None specified.

Name of Petitioner: Molly Vick.

Nature of Petitioner's Request: The petitioner requests that the State Board of Health (the Board) promulgate regulations for the licensure of plastic surgery centers. The petitioner cites from an official advisory opinion issued by the Attorney General dated August 20, 2010, to Delegate Robert Marshall and Senator Ralph Smith. The petitioner quotes the following sections from the official advisory opinion: "To promote "the protection, improvement and preservation of the public health" (VA. CODE ANN. § 32.1-2) the General Assembly has enacted Title 32.1 of the Code of Virginia, which provides in pertinent part for the regulation of medical and health care facilities (See Code of Virginia, Title 32.1, Chapter 5, "Regulation of Medical Care Facilities and Services," §§ 32.1-123 through 32.1-162.15 (2009 & Supp. 2010)). In addition, because "the unregulated practice of the profession or occupation can harm or endanger the health, safety, or welfare of the public (VA. CODE ANN. § 54.1-100 (2009)) the Commonwealth further exercises its police power to oversee health professionals "for the exclusive purpose of protecting the public interest." "Virginia law provides that all hospitals in the Commonwealth are to be licensed (Section 32.1-125 (2009)) and directs the State Health Commissioner to issue licenses in accordance with the regulations of the Board and other law. The Code broadly defines "hospital" as "any facility ... in which the primary function is the provision of diagnosis, treatment, and of medical and nursing services, surgical or nonsurgical, for two or more nonrelated individuals, including ... outpatient surgical [hospitals]" (Section 32.1-123 (2009))" The petitioner then states that "Although 'Plastic Surgery Centers' are not specifically mentioned, this definition encompasses facilities in which plastic surgeries are performed."

Agency Plan for Disposition of Request: Following a 21-day public comment period, the department will consider the petition in light of any comments or information received.

Public Comment Deadline: May 26, 2013.

Agency Contact: Carrie Eddy, Policy Analyst, Department of Health, 9960 Mayland Drive, Suite 401, Richmond, VA 23233, telephone (804) 367-2102, or email carrie.eddy@vdh.virginia.gov.

VA.R. Doc. No. R13-25, Filed April 5, 2013, 12:14 p.m.

Initial Agency Notice

Title of Regulation: 12VAC5-371. Regulations for the Licensure of Nursing Facilities.

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

Name of Petitioner: Molly Vick.

Nature of Petitioner's Request: The petitioner requests that the State Board of Health (the Board) amend its regulations concerning architectural drawings and specifications requirements for nursing facilities, contained in the Regulations of Licensure of Nursing Facilities (12VAC5-371-410) (the Regulations), on the grounds that the regulation conflicts with the provisions of § 32.1-127.001 of the Code of Virginia.

Agency Plan for Disposition of Request: Following a 21-day public comment period, the department will consider the petition in light of any comments or information received.

Public Comment Deadline: May 26, 2013.

Agency Contact: Carrie Eddy, Policy Analyst, Department of Health, 9960 Mayland Drive, Suite 401, Richmond, VA 23233, telephone (804) 367-2102, or email carrie.eddy@vdh.virginia.gov.

VA.R. Doc. No. R13-24, Filed April 5, 2013, 12:05 p.m.

Initial Agency Notice

Title of Regulation: 12VAC5-410. Rules and Regulations for the Licensure of Hospitals in Virginia.

Statutory Authority: § 32.1-123 of the Code of Virginia.

Name of Petitioner: Molly Vick.

Nature of Petitioner's Request: The petitioner requests that the State Board of Health (the Board) amend its regulations concerning general building and physical plant requirements for hospitals, contained in the Regulations of Licensure of Hospitals in Virginia (12VAC5-410-650) (the Regulations), on the grounds that the regulation conflicts with the provisions of § 32.1-127.001 of the Code of Virginia.

Agency Plan for Disposition of Request: Following a 21-day public comment period, the department will consider the petition in light of any comments or information received.

Public Comment Deadline: May 26, 2013.

Agency Contact: Carrie Eddy, Policy Analyst, Department of Health, 9960 Mayland Drive, Suite 401, Richmond, VA 23233, telephone (804) 367-2102, or email carrie.eddy@vdh.virginia.gov.

VA.R. Doc. No. R13-23, Filed April 5, 2013, 12:11 p.m.

NOTICES OF INTENDED REGULATORY ACTION

TITLE 8. EDUCATION

STATE BOARD OF EDUCATION

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the State Board of Education intends to consider amending **8VAC20-131, Regulations Establishing Standards for Accrediting Public Schools in Virginia**. The purpose of the proposed action is to (i) eliminate the Standard Technical, Advanced Technical, and Modified Standard Diplomas; (ii) change the graduation requirements for the Standard and Advanced Studies Diplomas; and (iii) otherwise conform the regulations to Chapters 454 and 642 of the 2012 Acts of Assembly to strengthen postsecondary education and workplace readiness opportunities for all students.

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

Statutory Authority: § 22.1-253.13 of the Code of Virginia.

Public Comment Deadline: June 5, 2013.

Agency Contact: Anne Wescott, Assistant Superintendent, Policy and Communications, Department of Education, P.O. Box 2120, Richmond, VA 23218-2120, telephone (804) 225-2403, FAX (804) 225-2524, or email anne.wescott@doe.virginia.gov.

VA.R. Doc. No. R13-3304; Filed April 9, 2013, 9:48 a.m.

TITLE 11. GAMING

CHARITABLE GAMING BOARD

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Charitable Gaming Board intends to consider amending **11VAC15-40, Charitable Gaming Regulations**. The purpose of the proposed action is to adopt regulations pertaining to a new bingo game called "network bingo" pursuant to Chapters 36 and 350 of the 2013 Acts of Assembly. This regulatory action is intended to promulgate the required network bingo regulations as well as amend provisions of the current regulations that staff has identified as needing clarification.

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

Statutory Authority: §§ 18.2-340.15 and 18.2-340.19 of the Code of Virginia.

Public Comment Deadline: June 5, 2013.

Agency Contact: Erin Williams, Policy and Planning Coordinator, Department of Agriculture and Consumer

Services, P.O. Box 1163, Richmond, VA 23218, telephone (804) 786-1308, FAX (804) 371-7479, TTY (800) 828-1120, or email erin.williams@vdacs.virginia.gov.

VA.R. Doc. No. R13-3652; Filed April 17, 2013, 1:25 p.m.

REGULATIONS

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

Symbol Key

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

TITLE 2. AGRICULTURE

DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

Forms

Title of Regulation: 2VAC5-210. Rules and Regulations Pertaining to Meat and Poultry Inspection under the Virginia Meat and Poultry Products Inspection Act.

Contact Information: Dr. Richard C. Hackenbracht, Program Manager, Meat and Poultry Services, Department of Agriculture and Consumer Services, P.O. Box 1163, Richmond, VA 23218, telephone (804) 786-4569, FAX (804) 786-1003, TDD (800) 828-1120, or email richard.hackenbracht@vdacs.virginia.gov.

NOTICE: Forms used in administering the following regulation have been filed by the Department of Agriculture and Consumer Services. The forms are not being published; however, online users of this issue of the Virginia Register of Regulations may click on the name of the new or amended form to access it. The forms are also available from the agency contact or may be viewed at the Office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia 23219.

FORMS (2VAC5-210)

~~Application for Red Meat Permit of Exemption Under the Virginia Meat and Poultry Products Inspection Act, Form VDACS-03072 (rev. 11/07).~~

[Application for Red Meat Permit of Exemption Under the Virginia Meat and Poultry Products Inspection Act, Form VDACS-03072 \(rev. 1/08\).](#)

[Application for State Meat and Poultry Inspection, Form VDACS-03090 \(eff. 2/06\).](#)

~~Application for Permit of Poultry Exemption Under the Virginia Meat and Poultry Products Inspection Act, Form VDACS-03072A (eff. 11/07).~~

~~Establishment Hours of Operation, Form VDACS-03091 (eff. 11/07).~~

[Application for Registration of Poultry Exemption Under the Virginia Meat and Poultry Products Inspection Act, Form VDACS-03072A \(eff. 11/07\).](#)

[Establishment Hours of Operation, Form VDACS-03091 \(eff. 2/07\).](#)

[Application/Approval for Voluntary Reimbursable Inspection Service, Form VDACS-03140 \(eff. 6/06\).](#)

V.A.R. Doc. No. R13-3654; Filed April 3, 2013, 3:39 p.m.

Fast-Track Regulation

Title of Regulation: 2VAC5-260. Regulations Establishing the Virginia Quality Label (repealing 2VAC5-260-10 through 2VAC5-260-30).

Statutory Authority: § 3.2-4320 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: June 5, 2013.

Effective Date: June 21, 2013.

Agency Contact: Charles Green, Director, Division of Marketing, Department of Agriculture and Consumer Services, P.O. Box 1163, Richmond, VA 23218, telephone (804) 786-5447, FAX (804) 225-4539, TTY (800) 828-1120, or email charles.green@vdacs.virginia.gov.

Basis: Section 3.2-4320 of the Code of Virginia provides that it is unlawful to use the Virginia Quality Label or a label with the shield of the United States, except in accordance with regulations prescribed by the Marketing Director with the approval of the Virginia Department of Agriculture and Consumer Services Commissioner. In no case shall it be used upon the label, tag, seal, or container of the product of any farm, factory, mill or any other producing, processing, packing, preparing, or dressing establishment unless such product is processed, packed, prepared, or dressed under continuous official state or federal-state inspection.

Purpose: Virginia offers agricultural producers official grading services for agricultural commodities including fruits and vegetables, peanuts, soybeans and grain, livestock, poultry, and eggs. These grading and inspection services are based on official grades recommended or adopted by U.S. Department of Agriculture (USDA). Due to the adoption and utilization of USDA grade standards and the authority to adopt and utilize other nationally and internationally recognized grade standards for commodities grown in Virginia, a separate Virginia Quality Label is not necessary for the public's health, safety, or welfare.

Rationale for Using Fast-Track Process: Virginia Department of Agriculture and Consumer Services expects the repeal of these regulations to be noncontroversial because neither the agency nor the industry has utilized the Virginia Quality Label in at least 20 years.

Substance: Virginia Department of Agriculture and Consumer Services proposes to repeal 2VAC5-260, Regulations Establishing the Virginia Quality Label.

Issues: The repeal of 2VAC5-260, Regulations Establishing the Virginia Quality Label, poses no disadvantages to either

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the public or the Commonwealth of Virginia. For at least two decades, this label has not been used.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Department of Agriculture and Consumer Services proposes to repeal the Regulations Establishing the Virginia Quality Label (2VAC5-260), which describes the Virginia Quality Label as consisting of an outline map of the State of Virginia to be used for designating inspected agricultural products.

Result of Analysis. The benefits likely exceed the costs for all proposed changes.

Estimated Economic Impact. The Commonwealth offers agricultural producers official grading services for agricultural commodities including fruits and vegetables, peanuts, soybeans and grain, livestock, poultry and eggs. These grading and inspection services are based on official grades recommended or adopted by the U.S. Department of Agriculture (USDA). Since Virginia adopted and utilizes USDA grade standards and retains the authority to adopt other grades or standards in addition to or different from those recommended or adopted by the USDA, a separate Virginia Quality Label is not necessary. According to the Department of Agriculture and Consumer Services, the Virginia Quality Label has not been used for at least two decades. Thus the proposed repeal of these regulations will have no impact beyond perhaps reducing some confusion.

Businesses and Entities Affected. No businesses or entities are significantly affected by the proposed repeal of these regulations.

Localities Particularly Affected. The proposed repeal of these regulations does not particularly affect specific localities.

Projected Impact on Employment. The proposed repeal of these regulations will not affect employment.

Effects on the Use and Value of Private Property. The proposed repeal of these regulations will not significantly affect the use and value of private property.

Small Businesses: Costs and Other Effects. The proposed repeal of these regulations will not significantly affect costs for small businesses.

Small Businesses: Alternative Method that Minimizes Adverse Impact. The proposed repeal of these regulations does not adversely affect small businesses.

Real Estate Development Costs. The proposed repeal of these regulations will not affect real estate development costs.

Legal Mandate. The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Administrative Process Act and Executive Order Number 14 (10). Section 2.2-4007.04 requires that such economic impact analyses include, but need not be limited to, a determination of the public benefit, 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. Further, if the proposed regulation has an adverse effect on small businesses, § 2.2-4007.04 requires that such economic impact analyses include (i) an identification and estimate of the number of small businesses subject to the regulation; (ii) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the regulation, including the type of professional skills necessary for preparing required reports and other documents; (iii) a statement of the probable effect of the regulation on affected small businesses; and (iv) a description of any less intrusive or less costly alternative methods of achieving the purpose of the regulation. The analysis presented above represents DPB's best estimate of these economic impacts.

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

Summary:

Since Virginia has adopted and utilizes the U.S. Department of Agriculture (USDA) grade standards and retains the authority to adopt other grades or standards in addition to or different from those recommended or adopted by the USDA, a separate Virginia Quality Label is not necessary.

VA.R. Doc. No. R13-3483; Filed April 17, 2013, 10:06 a.m.



TITLE 4. CONSERVATION AND NATURAL RESOURCES

VIRGINIA SOIL AND WATER CONSERVATION BOARD

Final Regulation

REGISTRAR'S NOTICE: The Virginia Soil and Water Conservation Board is claiming an exemption from the Administrative Process Act pursuant to § 10.1-104.9 of the Code of Virginia, which establishes a regulatory process for the promulgation of regulations for the enforcement of Article 1.1 (§ 10.1-104.7 et seq.) of Title 10.1 of the Code of Virginia relating to resource management plans.

Title of Regulation: 4VAC50-70. Resource Management Plans (adding 4VAC50-70-10 through 4VAC50-70-150).

Statutory Authority: § 10.1-104.8 of the Code of Virginia.

Effective Date: December 6, 2013.

Agency Contact: David C. Dowling, Policy and Planning Director, Department of Conservation and Recreation, 203 Governor Street, Suite 302, Richmond, VA 23219, telephone (804) 786-2291, FAX (804) 786-6141, or email david.dowling@dcr.virginia.gov.

Summary:

In accordance with Chapter 781 of the 2011 Acts of Assembly (HB1830), this action establishes a new regulation related to resource management plans (RMPs) that represents a balanced process by which farmers may voluntarily implement a high level of best management practices that are protective of water quality and that may be applied toward necessary nutrient and sediment reductions associated with the Chesapeake Bay Watershed Implementation Plan and other total maximum daily loads.

Substantive elements of this regulatory action include: (i) establishment of minimum standards of an RMP; (ii) processes for the development, updating, and approval of an RMP by RMP reviewers; (iii) processes to ensure the implementation of an RMP and for issuance of a Certificate of RMP Implementation; (iv) processes associated with conducting inspections by the RMP reviewer and ensuring RMP compliance after certificate issuance by the Department of Conservation and Recreation including issuance of deficiency notices and development and implementation of corrective action agreements; (v) procedures for the review of duties performed by local soil and water conservation districts; and (vi) establishment of qualifications and certification processes for RMP developers and the issuance or revocation of an RMP developer certificate by the Department of Conservation and Recreation.

CHAPTER 70

RESOURCE MANAGEMENT PLANS

4VAC50-70-10. Definitions.

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

"Assessment" means an onsite review of a management unit.

"Best management practice" or "BMP" means structural and nonstructural practices that manage soil loss, nutrient losses, or other pollutant sources to minimize pollution of water resources and improve water quality.

"Board" means the Virginia Soil and Water Conservation Board.

"Corrective action agreement" means a written agreement that guides the owner or operator in the steps needed and the specific remedies required to return to compliance with the minimum standards of a resource management plan.

"Department" means the Department of Conservation and Recreation.

"Management unit" means one or more agricultural fields or United States Department of Agriculture Farm Service Agency tracts under the control of the owner or operator and identified as the appropriate unit for RMP implementation. The management unit may consist of multiple fields and tracts or an entire agricultural operation.

"NRCS" means the United States Department of Agriculture Natural Resources Conservation Service.

"Operator" means a person who exercises managerial control over the management unit.

"Owner" means a person who owns land included in a management unit.

"Person" means an individual, corporation, partnership, association, state, municipality, commission, or political subdivision of a state, governmental body, any interstate body, or any other legal entity.

["Perennial stream" means water bodies depicted as solid blue lines on the most recent U.S. Geological Survey 7-1/2 minute topographic quadrangle map (scale 1:24,000); or a body of water that flows in a natural or man-made channel year-round during a year of normal precipitation as a result of groundwater discharge or surface runoff. Such stream exhibits the typical biological, hydrological, and physical characteristics commonly associated with the continuous conveyance of water. However, determinations based on site-specific characteristics shall be made or confirmed by the RMP developer.]

"Resource management plan" or "RMP" means a plan developed and implemented pursuant to the standards established by this chapter.

"Review authority" means a soil and water conservation district or the department where [~~no soil and water conservation district exists~~ applicable] that is authorized under this chapter to determine the adequacy of a resource management plan and perform other duties specified by this chapter.

"RMP developer" means an individual who meets the qualifications established by this chapter to prepare or revise a resource management plan.

"Soil and water conservation district" or "district" means a political subdivision of the Commonwealth organized in accordance with the provisions of Chapter 5 (§ 10.1-500 et seq.) of Title 10.1 of the Code of Virginia.

"Technical Review Committee" or "TRC" means a committee established by a soil and water conservation district board to review RMPs and provide recommendations to the soil and water conservation district board regarding RMPs. A TRC may include, but not be limited to, the following members: soil and water conservation district directors, associates, and personnel; Virginia Cooperative Extension personnel; department nutrient management specialists; and such other technical resources available to the district.

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"Total maximum daily load" or "TMDL" means a calculation of the maximum amount of a pollutant that a waterbody can receive and still meet water quality standards and an allocation of that amount to the pollutant's sources. A TMDL includes wasteload allocations for point source discharges and load allocations for nonpoint sources or natural background, or both, and must include a margin of safety and account for seasonal variations.

4VAC50-70-20. Purpose and authority.

Pursuant to Article 1.1 (§ 10.1-104.7 et seq.) of Title 10.1 of the Code of Virginia, this chapter is adopted to clarify and specify the criteria that must be included in a resource management plan and the processes by which a Certificate of RMP Implementation is issued and maintained. Except as provided for in 4VAC50-70-30, agricultural landowners or operators who fully implement and maintain the applicable components of their resource management plans, in accordance with the criteria for such plans set out in § 10.1-104.8 of the Code of Virginia and any requirements of this chapter, shall be deemed to be in full compliance with any load allocation contained in a TMDL established under § 303(d) of the federal Clean Water Act addressing benthic, bacteria, nutrient, or sediment impairments; any requirements of the Virginia Chesapeake Bay TMDL Watershed Implementation Plan; and applicable state water quality requirements for nutrients and sediment.

4VAC50-70-30. Applicability of other laws and regulations.

Nothing in this chapter shall be construed as limiting the applicability [or preventing or precluding the enforcement] of other laws, regulations, or permits [~~including, but not limited to, a Virginia Pollutant Discharge Elimination System Permit, a Virginia Pollution Abatement Permit, a nutrient management plan otherwise required by law, any requirements of the Chesapeake Bay Preservation Act, and any requirements of the Agricultural Stewardship Act~~].

4VAC50-70-40. Minimum standards of a resource management plan.

A. Pursuant to Article 1.1 (§ 10.1-104.7 et seq.) of Title 10.1 of the Code of Virginia, a resource management plan requires the implementation of BMPs sufficient to implement the Virginia Chesapeake Bay TMDL Watershed Implementation Plan and other local TMDL water quality requirements of the Commonwealth. Pursuant to subdivision B 5 of § 10.1-104.8 of the Code of Virginia, [a an] RMP shall address all of the following BMP requirements when applicable to the management unit and needed based upon an on-farm assessment of the following land uses:

1. For all cropland or specialty crops:

a. A nutrient management plan that meets the specifications of the Nutrient Management Training and Certification Regulations (4VAC5-15);

b. A forest or grass buffer between cropland and perennial streams shall be consistent with NRCS standards and specifications, except no buffer shall be less than a minimum width of 35 feet as measured from the top of the channel bank to the edge of the field to meet water quality objectives;

c. A soil conservation plan that achieves a maximum soil loss rate to "T" as defined by NRCS and such BMPs necessary to address gross erosion when it is present as gullies or other severely eroding conditions; and

d. Cover crops, when needed to address nutrient management [~~and~~ or] soil loss requirements, [or both,] that provide for reportable practices which meet best management practice specifications as determined by NRCS or the Virginia Agricultural Best Management Practices Cost-Share Program.

2. For all hayland:

a. A nutrient management plan that meets the specifications of the Nutrient Management Training and Certification Regulations (4VAC5-15);

b. A forest or grass buffer between cropland and perennial streams shall be consistent with NRCS standards and specifications, except no buffer shall be less than a minimum width of 35 feet as measured from the top of the channel bank to the edge of the field to meet water quality objectives; and

c. A soil conservation plan that achieves a maximum soil loss rate to "T" as defined by NRCS and such BMPs necessary to address gross erosion when it is present as gullies or other severely eroding conditions.

3. For all pasture:

a. A nutrient management plan that meets the specifications of the Nutrient Management Training and Certification Regulations (4VAC5-15);

b. A pasture management plan or soil conservation plan that achieves a maximum soil loss rate of "T" as defined by NRCS and such BMPs necessary to address gross erosion when it is present as gullies or other severely eroding conditions; and

c. A system that limits or prevents livestock access to perennial streams requires that:

(1) Any fencing or exclusion system provides year-round livestock restriction to perennial streams; [and]

(2) [~~A forest or grass buffer between the exclusion system and a perennial stream shall be consistent with NRCS standards and specifications, except no buffer shall be less than a minimum width of 35 feet as measured from the top of the channel bank to the exclusion system to meet water quality objectives; and~~

(~~3~~) Provisions that are made for [limited] access through stream crossings and livestock watering systems are designed to NRCS standards and specifications and

[are such limited access is] determined [to be] necessary by the RMP developer.

B. Other BMPs approved by the [department board] may be applied to achieve the minimum standards of this section [~~beyond those already~~ once they have been] identified by NRCS or [included] within the Virginia Agricultural Best Management Practices Cost-Share Program. [Additionally, BMPs identified in the Chesapeake Bay Watershed Model or the Chesapeake Bay TMDL Watershed Implementation Plan may be utilized where found to achieve the minimum standards of this section. The department shall annually evaluate such BMPs through decision support tools to determine whether they achieve the minimum standards and are authorized for use in the RMP program as a component of an RMP.]

C. The department shall evaluate the minimum standards of this section [no later than the end of 2017 as part of the Chesapeake Bay mid-point assessment] to determine their adequacy [~~when revisions occur to a load allocation in meeting load allocations~~] contained in [~~a TMDL established~~ revisions to existing TMDL(s) or established in new TMDL(s) developed] under § 303(d) of the federal Clean Water Act [~~addressing~~ to address] benthic, bacteria, nutrient, or sediment impairments; requirements of the Virginia Chesapeake Bay TMDL Watershed Implementation Plan; and applicable state water quality requirements for nutrients and sediment. Changes to the minimum standards by the board may result in the use of BMPs identified in the Chesapeake Bay Watershed Model, identified in the Virginia Chesapeake Bay TMDL Watershed Implementation Plan, or approved by the [department board].

4VAC50-70-50. Components of a resource management plan.

A. Pursuant to subdivision B 3 of § 10.1-104.8 of the Code of Virginia, an assessment shall be performed by the RMP developer or by an individual authorized by the RMP developer to perform work on his behalf and shall gather and evaluate the following information:

1. Information on the location of the management unit, including geographic coordinates, United States Department of Agriculture Farm Service Agency tract number or numbers, if applicable, or the locality tax parcel identification number or numbers;
2. Description of the management unit, including acreage, water features, environmentally sensitive features, erosion issues, and agricultural activity;
3. Contact information for the owner or operator who has requested the RMP, including name, address, and telephone number;
4. Authorization from the owner or operator for the RMP developer, or his designee, for right of entry and access to property specified within the management unit and

authorization to obtain copies of any conservation or water quality plans necessary for the assessment;

5. Copies of nutrient management plans, soil conservation plans from NRCS, RMPs, and any other conservation or water quality plan that includes the implementation of BMPs; and

6. Information on the location and status of all BMPs and other alternative measures applicable to the management unit that are currently implemented.

B. Following the assessment provided in subsection A of this section, the RMP developer shall prepare the RMP in a format established by the department or in a format approved by the board as equivalent that contains the following components:

1. A determination of the adequacy of existing BMPs, conservation plans, and water quality plans in meeting the minimum standards set out in 4VAC50-70-40;

2. A complete list of BMPs, developed as a result of the assessment required in subsection A of this section, that may be utilized to meet the minimum standards set out in 4VAC50-70-40;

3. A complete list of the BMPs that the owner or operator agrees to implement or maintain to meet the minimum standards set out in 4VAC50-70-40;

4. A confirmation of BMPs that achieve the minimum standards set out in 4VAC50-70-40;

5. A schedule for the implementation of the BMPs;

6. An inclusion of any current nutrient management plans, soil conservation plans, and any other conservation or water quality plans that include the implementation of BMPs; and

7. Other information collected pursuant to subsection A of this section.

C. Certification.

1. The RMP developer must certify that the RMP is true and correct in his professional judgment.

2. The RMP must be signed by the owner or operator affirming that he:

a. Is the responsible individual to be implementing the RMP [~~in its entirety~~];

b. Shall adhere to the RMP [components necessary to meet the minimum standards set out in 4VAC50-70-40];

c. Shall allow the review authority to conduct inspections of properties within the management unit as needed to ensure the adequacy of the RMP in accordance with 4VAC50-70-70;

d. Shall notify the RMP developer within 60 days of potential material changes to the management unit that may require revision of the plan pursuant to 4VAC50-70-60; and

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e. Shall notify the review authority of a complete change in owner or operator of the management unit or units under the RMP. If a management unit falls within one or more soil and water conservation districts, the owner or operator shall contact the district containing the greatest land area of the management unit.

4VAC50-70-60. Revisions to a resource management plan.

A. Upon notification of the review authority by an owner or operator of a change in owner or operator of the management unit with a signed RMP, in accordance with 4VAC50-70-50 C 2 e, where it involves the complete transfer of one or more RMPs and any Certificate or Certificates of RMP Implementation previously issued by the department for such RMPs:

1. The review authority shall contact the new owner or operator within 60 days of the new owner or operator assuming control of the management unit regarding implementation of the RMP and any necessary revisions.

2. Following consultation with the review authority, the new owner or operator may elect to:

a. Implement and maintain the provisions of the existing RMP. The new owner or operator must sign the RMP in accordance with 4VAC50-70-50 C. If a Certificate of RMP Implementation has been issued to the prior owner or operator, the certificate shall be transferred by the department to the new owner or operator upon notification by the review authority. The transferred certificate shall be valid for the balance of time remaining since it was originally issued by the department;

b. Contact the RMP developer when changes in the operation are planned by the new owner or operator or are otherwise required by this chapter. The new owner or operator may request the RMP developer to revise the RMP as necessary to fulfill BMP requirements pursuant to 4VAC50-70-50 and the administrative requirements of subsection [~~D~~ F] of this section; or

c. Choose not to continue implementing the RMP. If a Certificate of RMP Implementation for the management unit has been issued, it shall be revoked by the department.

B. Upon notification of the RMP developer by the owner or operator of the management unit with a signed RMP, in accordance with 4VAC50-70-50 C, that changes in the management unit or implementation of the RMP may create needs for revision, the RMP developer shall review the RMP within 30 days to determine if material changes to the management unit require a revision of the RMP in accordance with the following:

1. Material changes to the management unit that may require a revision of the RMP include:

a. A conversion from one type of agricultural operation to another;

b. A change in the schedule and type of BMPs implemented pursuant to 4VAC50-70-50;

c. An increase or decrease in production acreage that materially impacts the management unit's ability to meet the minimum standards set out in 4VAC50-70-40;

d. An increase or decrease in livestock population that materially impacts the management unit's ability to meet the minimum standards set out in 4VAC50-70-40; or

e. Any other change the RMP developer identifies that would materially impact the management unit's ability to meet the minimum standards set out in 4VAC50-70-40.

2. The RMP developer will determine if revision of the RMP is required. When the RMP developer determines that revision of the existing RMP is not necessary, the RMP developer shall provide such determination to the requesting owner or operator in writing. Such documentation shall be available upon inspection by the review authority. When the RMP developer determines that revision of the existing RMP is necessary, the owner or operator may elect to:

a. Request the RMP developer to revise the RMP as necessary to fulfill RMP requirements pursuant to 4VAC50-70-50 and the administrative requirements of subsection [~~D~~ F] of this section; or

b. Choose not to continue implementing [a an] RMP whereupon the RMP for the management unit shall no longer be valid. The RMP developer shall notify the review authority and the department in writing of this decision by the owner or operator. If a Certificate of RMP Implementation for the management unit has been issued, it shall be revoked by the department.

C. When an owner or operator does not hold a Certificate of RMP Implementation for an RMP that has been approved by the review authority, revision of the RMP is required when a new or modified watershed implementation plan is issued for the Chesapeake Bay or a new or modified local approved TMDL is issued that assigns a load to agricultural uses. An RMP covering land with waters that drain to such TMDL shall be deemed sufficient when the RMP has been revised to address the new or modified TMDL and the owner or operator agrees to implement the revised RMP, except as provided in subsection D of this section.

D. When an owner or operator holds a Certificate of RMP Implementation that has not expired, revision of the RMP specified in subsection C of this section is not required. In this case the owner or operator may continue operation of the RMP without revision due to a new or modified watershed implementation plan for the Chesapeake Bay or a new or modified local approved TMDL for the lifespan of the Certificate of RMP Implementation so long as the owner or operator is deemed to be fully implementing the RMP.

E. When an owner or operator with a revised RMP fulfills all requirements pursuant to this section and 4VAC50-70-70,

and the owner or operator holds a Certificate of RMP Implementation that has not expired for the management unit addressed by the revised RMP, the owner or operator may request that the department revoke the existing Certificate of RMP Implementation and issue a new Certificate of RMP Implementation. The department shall evaluate and respond to all requests. Upon verification that all requirements have been satisfied, the department shall issue a new Certificate of RMP Implementation in a timely manner and ensure that no owner or operator is found out of compliance with any requirements of this chapter due to any delays in the department's issuance of a new Certificate of RMP Implementation pursuant to this subsection even if the original certificate expires during this issuance time period.

F. Revision of an RMP by an RMP developer requires:

1. If a Certificate of RMP Implementation has not been issued, the revised RMP shall be provided to the review authority and shall be subject to all review requirements set out in 4VAC50-70-70 and shall be subject to the requirements for issuance of a Certificate of RMP Implementation pursuant to 4VAC50-70-80.
2. If a Certificate of RMP Implementation has been issued by the department and its duration has not expired, such existing Certificate of RMP Implementation shall remain valid for the balance of time remaining since it was originally issued by the department or a new Certificate of RMP Implementation may be issued where appropriate in accordance with subsection E of this section.
3. An existing or new owner or operator shall sign a revised RMP pursuant to 4VAC50-70-50 C.
4. When a valid Certificate of RMP Implementation has been issued by the department for the management unit, the RMP developer shall provide the review authority and the department with a copy of a revised RMP within 30 days of completion of the revised plan.

4VAC50-70-70. Review of a resource management plan.

A. Upon completion of a new or revised RMP in accordance with 4VAC50-70-50 and 4VAC50-70-60, the owner or operator or the RMP developer on behalf of the owner or operator, shall submit the RMP to the review authority. [If the RMP developer is a district employee or district board member of the district that is the designated review authority, the department shall serve as the review authority for that RMP.]

B. Each soil and water conservation district shall establish a Technical Review Committee (TRC). RMPs received by a soil and water conservation district shall be referred to the TRC for review to ensure the RMP fully meets the minimum standards set forth in 4VAC50-70-40 and the components specified in 4VAC50-70-50. Within 90 days of receipt of the RMP, the soil and water conservation district shall notify the owner or operator and the RMP developer in writing if the RMP fulfills such requirements. An RMP that fails to fulfill

such requirements shall be returned to the RMP developer noting all deficiencies. A revised RMP may be resubmitted once the noted deficiencies have been satisfactorily addressed. Revised submittals shall be reviewed and a response regarding RMP sufficiency or a listing of RMP deficiencies provided within 45 days of receipt.

C. If an RMP is located within multiple soil and water conservation districts, each TRC will review the portion of the plan applicable to the management unit within their district, either in consultation or independently of each other. The soil and water conservation district with the largest amount of acreage under the RMP has lead responsibility for (i) coordinating the review among multiple districts; (ii) resolving disputes; (iii) corresponding with the owner or operator and RMP developer regarding the RMP review; and (iv) when appropriate, submitting required documentation to the department to support issuance of a Certificate of RMP Implementation.

D. RMPs received by the department where no local soil and water conservation district exists [, or where the RMP developer is a district employee or district board member of the district that would have been the designated review authority,] must fully meet minimum standards set forth in 4VAC50-70-40 and the components specified in 4VAC50-70-50 and shall be reviewed by the department. Within 90 days of receipt of the RMP, the department shall notify the owner or operator and the RMP developer if the RMP fulfills such requirements. An RMP that fails to fulfill such requirements shall be returned to the RMP developer noting all deficiencies. A revised RMP may be resubmitted once the noted deficiencies have been satisfactorily addressed. Revised submittals shall be reviewed and a response regarding RMP sufficiency or a listing of RMP deficiencies provided within 45 days of receipt.

E. When an RMP is determined by the review authority to be insufficient to meet minimum standards set forth in 4VAC50-70-40 and the components specified in 4VAC50-70-50, such review authority shall work with the owner or operator and the RMP developer to revise the RMP.

F. Where an RMP is deemed sufficient, the notification issued to the owner or operator and the RMP developer by the review authority shall include approval of the plan and its implementation in accordance with subsection B or D of this section, whichever is applicable.

G. When an owner or operator is aggrieved by an action of the review authority pursuant to this section, the owner or operator shall have a right to appeal in accordance with 4VAC50-70-110.

4VAC50-70-80. Issuance of a Certificate of Resource Management Plan Implementation.

A. Prior to issuance of a Certificate of RMP Implementation for a management unit, confirmation shall be made by the RMP developer that [the plan meets the requirements of subsections B and C of 4VAC50-70-50 and that] no revision

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of the RMP is required in accordance with 4VAC50-70-60 and as such is adequate, and verification of the full implementation of the RMP shall be completed. The owner or operator shall request the verification of RMP implementation by the review authority.

B. The request to the review authority for verification in a format provided by the department shall include the following:

1. A complete copy of the RMP including any referenced plans;
2. Authorization for review authority employees to conduct an onsite inspection of the management unit to ensure the RMP is fully implemented; and
3. Authorization upon the issuance of a Certificate of RMP Implementation for review authority employees and the department to conduct onsite inspections of the management unit to ensure the continued implementation of, maintenance of, and compliance with the [current] RMP in accordance with 4VAC50-70-90.

C. If based on onsite verification and a review of referenced plans by the local soil and water conservation district where the district is the review authority the RMP is determined to be adequate and fully implemented in accordance with subsection A of this section, the soil and water conservation district board shall affirm such adequacy and implementation and submit the required documentation to the department for action. Upon receiving such documentation supporting that the plan is adequate and has been fully implemented, the department shall issue a Certificate of RMP Implementation.

D. Where the department is the review authority, the department shall determine adequacy and full implementation of the RMP in accordance with subsection A of this section through onsite verification and a review of referenced plans. If based on the onsite verification and a review of referenced plans, the RMP is determined to be adequate and fully implemented, the department shall affirm such implementation by issuing a Certificate of RMP Implementation.

E. If the resource management plan is not adequate or has not been fully implemented, the review authority shall provide the owner or operator with written documentation that specifies the deficiencies of the RMP within 30 days following the field review of the RMP. The owner or operator may correct the named deficiencies and request verification of RMP adequacy or implementation at such time as the shortcomings have been addressed.

F. A Certificate of RMP Implementation shall be valid for a period of nine years.

G. An owner or operator who holds a Certificate of RMP Implementation that has not expired shall not be required to revise the RMP when the issuance of a new or modified watershed implementation plan for the Chesapeake Bay TMDL or a new or modified local approved TMDL impacts

any portion of the management unit during the lifespan of the Certificate of RMP Implementation so long as the owner or operator is deemed to be fully implementing the RMP.

H. Upon the expiration of the Certificate of RMP Implementation, a new RMP may be prepared by a plan developer for the management unit upon request by the owner or operator. The RMP must conform with all existing TMDL implementation plans applicable to the management unit to include the Chesapeake Bay and any local approved TMDL, which assign a load to agricultural uses and impact any portion of the management unit. The plan developer shall ensure the new RMP complies with requirements set forth in 4VAC50-70-40.

I. The department shall maintain a public registry on the agency's website of all current Certificates of RMP Implementation in accordance with the provisions of subsection E of § 10.1-104.7 of the Code of Virginia.

4VAC50-70-90. Inspections.

A. Each management unit that has been issued a Certificate of RMP Implementation shall be subject to periodic onsite inspections to be performed by the review authority. In addition the department, when it is not the review authority but deems it appropriate, can conduct inspections to ensure the continued implementation of, maintenance of, and compliance with the RMP [components necessary to meet the minimum standards set out in 4VAC50-70-40].

B. Onsite inspections shall occur no less than once every three years but not more than annually on lands where an active Certificate of RMP Implementation has been issued provided that no deficiencies have been noted pursuant to this section that may require more frequent inspections or re-inspections.

C. As part of an inspection, an owner or operator shall provide any documents needed to verify the implementation of the RMP [components necessary to meet the minimum standards set out in 4VAC50-70-40], any documents pertaining to revision of the RMP when applicable, and any other referenced plans as applicable.

D. Upon the completion of the inspection, an inspection report shall be completed in a format provided by the department to document the implementation of the [current] RMP on the management unit. A copy of the inspection report shall be provided to the department within 10 business days following the date of inspection with a copy to the owner or operator when inspections are performed by a soil and water conservation district. The inspection report shall include:

1. Confirmation of all BMPs implemented, operated, and maintained with a notation of changes in the operation of any BMPs included in the RMP; and
2. Any identified deficiencies that may include any components of the RMP [necessary to meet the minimum standards set out in 4VAC50-70-40] that have not been

satisfactorily implemented, components that need to be renewed, and any changes to the management unit that may need to be addressed through revision of the RMP.

E. If deficiencies are noted based upon the inspection, the department shall proceed pursuant to 4VAC50-70-100.

F. All inspections or re-inspections conducted in accordance with this chapter shall occur only after 48 hours of prior notice to the owner or operator unless otherwise authorized by the owner or operator.

4VAC50-70-100. Compliance.

A. If deficiencies are identified during an inspection conducted in accordance with 4VAC50-70-90, following review of such deficiencies the department shall provide a written notice to the owner or operator within 30 days of receipt of the inspection report. The written notice shall include a list of the noted deficiencies that need to be addressed to meet full implementation of the RMP.

B. Within 90 days of the written notice being issued to the owner or operator, a corrective action agreement in a format provided by the department, that may include revisions to the RMP, shall be developed by the RMP developer in consultation with the owner or operator, signed by the owner or operator, and submitted to the department for consideration. The corrective action agreement shall include an implementation schedule to correct the deficiencies found during the inspection. The department shall review the corrective action agreement including any revisions to the RMP within 30 days following receipt. The department shall consult with the review authority. If the corrective action agreement, including any revisions to the RMP, is determined by the department to be reasonable and satisfactory, the department shall convey such determination to the owner or operator in writing within 30 days following receipt.

C. If the department determines that the corrective action agreement, including any revisions to the RMP, does not satisfactorily address deficiencies documented from an inspection conducted pursuant to 4VAC50-70-90, the department shall document such deficiencies in writing to the owner or operator within 30 days following receipt of the corrective action agreement. A revised corrective action agreement may be submitted once the noted deficiencies have been satisfactorily addressed.

D. If the department and the owner or operator are unable to concur on a final corrective action agreement within 90 days of the submission of the initial corrective action agreement to the department or such additional time that is acceptable to the department, the department shall revoke the owner's or operator's Certificate of RMP Implementation after an informal fact finding proceeding held in accordance with § 2.2-4019 of the Code of Virginia.

E. If it is determined by the department through a re-inspection that an owner or operator has failed to fully implement the agreed upon corrective action agreement, the

department shall revoke the owner's or operator's Certificate of RMP Implementation for the corrective action agreement. Such re-inspection shall be performed by the department or by the review authority when directed by the department.

F. At any time, the owner or operator may provide written notice to the department requesting that the Certificate of RMP Implementation be revoked.

4VAC50-70-110. Appeals.

A. An owner or operator that has been aggrieved by any action of a soil and water conservation district shall have a right to appeal to the department within 30 days of issuance of the district's decision. The department shall make its decision on an appeal in accordance with the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia). In making its decision on an appeal, the department will hold an informal fact finding proceeding in accordance with § 2.2-4019 of the Code of Virginia.

B. Any party, including but not limited to a district, an owner or operator, or [a an] RMP developer aggrieved by and claiming the unlawfulness of a case decision of the department shall have a right to appeal to the board in accordance with the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia). In making its decision on an appeal, the board will hold an informal fact finding proceeding in accordance with § 2.2-4019 of the Code of Virginia.

C. Any party, including but not limited to a district, an owner or operator, or [a an] RMP developer, aggrieved by and claiming the unlawfulness of a case decision of the board shall have a right to appeal to a court of competent jurisdiction in accordance with the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia).

D. Revocation of a Certificate of RMP Implementation issued pursuant to 4VAC50-70-80 shall be suspended pending any appeals.

4VAC50-70-120. Reporting.

A. BMP data collection and reporting shall occur:

1. When [a RMP assessment is conducted by a soil and water conservation district or when] data is made available to [a district the review authority] by an owner or operator following an assessment performed by [a an] RMP developer or individual authorized by them to perform an assessment pursuant to 4VAC50-70-50;
2. Upon changes or revisions to [a an] RMP pursuant to 4VAC50-70-60;
3. Upon verification of the full implementation of the RMP as required by 4VAC50-70-80;
4. When inspections are conducted pursuant to 4VAC50-70-90; and
5. Upon any other opportunities when verification of BMP implementation becomes available.

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B. BMP data collected in accordance with subsection A of this section shall be entered in the Virginia Agricultural BMP Tracking Program or any subsequent automated tracking systems made available to soil and water conservation districts by the department.

C. BMP data entry by soil and water conservation districts shall occur throughout the year; however, the annual reporting period shall begin July 1 of one year and end June 30 of the following year. Districts shall ensure all collected data is fully entered in the data collection system by July 31 following the close of the annual reporting period.

D. Any personal or proprietary information collected pursuant to Article 1.1 (§ 10.1-104.7 et seq.) of Title 10.1 of the Code of Virginia shall be exempt from the Virginia Freedom of Information Act (§ 2.2-3700 et seq. of the Code of Virginia) and fully comply with all provisions of § 10.1-104.7 of the Code of Virginia.

E. The department, in accordance with subsection D of this section, shall make use of RMP BMP data for purposes that include progress reporting for the Chesapeake Bay TMDL watershed implementation plan; other local approved TMDLs; inclusion in the report required by § 2.2-220 of the Code of Virginia; and other reports required of the department or generated by the agency.

4VAC50-70-130. Review of duties performed by soil and water conservation districts.

A. The department shall periodically conduct a comprehensive review of the RMP duties performed by each soil and water conservation district to evaluate whether requirements set forth by this chapter have been satisfactorily fulfilled. The department shall develop a schedule for conducting periodic reviews and evaluations. Each district shall receive a comprehensive review at least once every five years; however, the department may impose more frequent, partial, or comprehensive reviews with cause. Such reviews where applicable shall be coordinated with those being implemented by agency staff for other purposes that may include annual spot checks of BMPs implemented by districts through the Virginia Agricultural BMP Cost Share Program.

B. If a review conducted by the department indicates that the soil and water conservation district has not administered, enforced where authorized to do so, or conducted its duties in a manner that satisfies the requirements set forth within this chapter, the department shall document such deficiencies and convey the needed corrective actions in writing to the soil and water conservation district's board of directors within 30 days following the review.

C. When the department determines:

1. The deficiencies are due to the district's failure to satisfactorily perform the required duties with the resources at its disposal, the department shall provide close oversight, guidance, and training as appropriate to enable the district to fully perform the duties required by this

chapter. If after such actions there remains one or more deficiencies that cannot be resolved to the satisfaction of the department, the department may delay or withhold [RMP allocated] funding under its authority and control from the district that is not satisfactorily performing its RMP duties. Such duties may be assigned to another soil and water conservation district. Funds withheld from the district with deficiencies may be directed to the district that is performing the additional RMP duties.

2. The deficiencies are due to a work demand generated by the duties required by this chapter that exceed the district's existing resources, the department shall endeavor to assist the district in the performance of its duties and in finding a solution to the shortage of resources.

4VAC50-70-140. RMP developer qualifications and certification.

A. An individual shall be qualified to serve as an RMP developer if the individual:

1. Is certified as a conservation planner by the NRCS and is certified as a nutrient management planner by the department; or

2. Is certified as a nutrient management planner by the department and demonstrates academic and applied proficiencies with an understanding of all of the following:

a. Agricultural conservation planning;

b. State and federal environmental laws and regulations and local ordinances;

c. State and federal laws and regulations that address the identification and preservation of historic resources;

d. Standards and specifications for agricultural conservation practices utilized in Virginia and the ability to plan and implement such practices;

e. Soil erosion processes and skill in applying approved erosion prediction technologies including the applicable current United States Department of Agriculture Revised Universal Soil Loss Equation and the Wind Erosion Equation;

f. The fundamentals of water quality and nonpoint source pollution, pest management, and fire management;

g. Site vulnerability assessment tools; and

h. Other proficiencies and understandings identified by the department in consultation with the board.

B. In a format established by the department, such individual shall submit documentation to the department for verification that the requirements of subsection A of this section have been met.

1. Upon receipt, the department shall review the documentation and issue its notification within 60 days. During its review the department shall determine:

a. If all required documentation is complete. If incomplete the applicant shall be notified.

b. If all requirements have been satisfied. If deficiencies exist the applicant shall be notified.

2. Applicants with deficiencies may submit additional documentation in support of their request to be certified. The department shall review the documentation provided within 30 days to determine its sufficiency.

3. When all requirements of this subsection have been met, the department shall issue to the applicant a Resource Management Plan Developer Certificate.

C. In the event that an individual's proficiency skills or the quality of technical work no longer meet the criteria for RMP developer certification, the individual's certification may be revoked by the department following a seven-day advance notification of the pending action and the holding of an informal fact finding proceeding held in accordance with § 2.2-4019 of the Code of Virginia. The department shall consider any action by NRCS to decertify a certified conservation planner. An RMP developer may appeal a decision of the department to the board in accordance with 4VAC50-70-110.

D. When an individual's RMP developer certificate has been revoked by the department, the basis for the revocation will be provided to the individual by the department. The individual will be informed of the steps necessary to address the deficiencies that led to the revocation and to re-establish certification.

E. Revocation of an individual's RMP developer certificate shall not result in revocation of a Certificate of RMP Implementation of which the RMP developer was party to.

F. The department shall maintain a public registry on the agency's website of all individuals issued [a an] RMP developer certificate and shall note any subsequent revocations or other changes to the status of RMP developers.

4VAC50-70-150. Advancing the adoption of RMPs.

The department and districts shall encourage and promote the adoption of RMPs among agricultural communities across the Commonwealth.

VA.R. Doc. No. R12-3140; Filed April 16, 2013, 11:36 a.m.



TITLE 8. EDUCATION

STATE BOARD OF EDUCATION

Emergency Regulation

Title of Regulation: 8VAC20-131. Regulations Establishing Standards for Accrediting Public Schools in Virginia (amending 8VAC20-131-5, 8VAC20-131-50, 8VAC20-131-60, 8VAC20-131-110, 8VAC20-131-270, 8VAC20-131-280, 8VAC20-131-360).

Statutory Authority: § 22.1-253.13 of the Code of Virginia.

Effective Dates: June 5, 2013, through June 4, 2014.

Agency Contact: Anne Wescott, Assistant Superintendent, Policy and Communications, Department of Education, P.O. Box 2120, Richmond, VA 23218-2120, telephone (804) 225-2403, FAX (804) 225-2524, or email anne.wescott@doe.virginia.gov.

Preamble:

House Bill 1061 and Senate Bill 489, passed by the 2012 General Assembly and signed by the Governor, amend § 22.1-253.13:4 of the Code of Virginia to require the Board of Education to promulgate changes to its regulations to implement the provisions of the legislation, to be effective within 280 days of its enactment. In addition, § 2.2-4011 of the Code of Virginia states that agencies may adopt emergency regulations in situations in which Virginia statutory law or the appropriation act or federal law or federal regulation requires that a regulation be effective in 280 days or less from its enactment, and the regulation is not exempt under the provisions of subdivision A 4 of § 2.2-4006 of the Code of Virginia.

The amendments strengthen postsecondary education and workplace readiness opportunities for all students and consolidate the number of Board of Education-approved diplomas. The amendments eliminate the Standard Technical, Advanced Technical, and Modified Standard Diplomas, and change the graduation requirements for the Standard and Advanced Studies Diplomas.

Part I

Definitions and Purpose

8VAC20-131-5. Definitions.

The following words and terms apply only to these regulations and do not supersede those definitions used for federal reporting purposes or for the calculation of costs related to the Standards of Quality (§ 22.1-253.13:1 et seq. of the Code of Virginia). When used in these regulations, these words shall have the following meanings, unless the context clearly indicates otherwise:

"Accreditation" means a process used by the Virginia Department of Education (hereinafter "department") to evaluate the educational performance of public schools in accordance with these regulations.

"Additional test" means a test, including substitute tests approved by the Board of Education that students may use in lieu of a Standards of Learning test to obtain verified credit.

"Class period" means a segment of time in the school day that is approximately 1/6 of the instructional day.

"Combined school" means a public school that contains any combination of or all of the grade levels from kindergarten through grade 12. This definition does not include those schools defined as elementary, middle, or secondary schools.

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"Credit accommodations" means adjustments to meet the standard and verified credit requirements for earning a Standard Diploma for students with disabilities.

"Elementary school" means a public school with any grades kindergarten through five.

"Eligible students" means the total number of students of school age enrolled in the school at a grade or course for which a Standards of Learning test is required unless excluded under the provisions of 8VAC20-131-30 F and 8VAC20-131-280 D relative to limited English proficient (LEP) students.

"Enrollment" means the act of complying with state and local requirements relative to the registration or admission of a child for attendance in a school within a local school division. This term also means registration for courses within the student's home school or within related schools or programs.

"First time" means the student has not been enrolled in the school at any time during the current school year (for purposes of 8VAC20-131-60 with reference to students who transfer in during the school year).

"Four core areas" or "four core academic areas" means English, mathematics, science, and history and social science for purposes of testing for the Standards of Learning.

"Graduate" means a student who has earned a Board of Education recognized diploma, which includes the Advanced Studies, ~~Advanced Technical, Standard, Standard Technical, Modified Standard, and Special, and General Achievement~~ diplomas.

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

"Locally awarded verified credit" means a verified unit of credit awarded by a local school board in accordance with 8VAC20-131-110.

"Middle school" means a public school with any grades 6 through 8.

"Planning period" means one class period per day or the equivalent unencumbered of any teaching or supervisory duties.

"Recess" means a segment of free time exclusive of time provided for meals during the standard school day in which students are given a break from instruction.

"Reconstitution" means a process that may be used to initiate a range of accountability actions to improve pupil performance, curriculum, and instruction to address deficiencies that caused a school to be rated Accreditation Denied that may include, but not be limited to, restructuring a school's governance, instructional program, staff or student population.

"School" means a publicly funded institution where students are enrolled for all or a majority of the instructional day and:

1. Those students are reported in fall membership at the institution; and
2. At a minimum, the institution meets the preaccreditation eligibility requirements of these regulations as adopted by the Board of Education.

"Secondary school" means a public school with any grades 9 through 12.

"Standard school day" means a calendar day that averages at least five and one-half instructional hours for students in grades 1 through 12, excluding breaks for meals and recess, and a minimum of three instructional hours for students in kindergarten.

"Standard school year" means a school year of at least 180 teaching days or a total of at least 990 teaching hours per year.

"Standard unit of credit" or "standard credit" means credit awarded for a course in which the student successfully completes 140 clock hours of instruction and the requirements of the course. Local school boards may develop alternatives to the requirement for 140 clock hours of instruction as provided for in 8VAC20-131-110.

"Standards of Learning (SOL) tests" means those criterion referenced assessments approved by the Board of Education for use in the Virginia assessment program that measure attainment of knowledge and skills required by the Standards of Learning.

"Student" means a person of school age as defined by § 22.1-1 of the Code of Virginia, a child with disabilities as defined in § 22.1-213 of the Code of Virginia, and a person with limited English proficiency in accordance with § 22.1-5 of the Code of Virginia.

"Student periods" means the number of students a teacher instructs per class period multiplied by the number of class periods taught.

"Verified unit of credit" or "verified credit" means credit awarded for a course in which a student earns a standard unit of credit and achieves a passing score on a corresponding end-of-course SOL test or an additional test approved by the Board of Education as part of the Virginia assessment program.

"Virginia assessment program" means a system used to evaluate student achievement that includes Standards of Learning tests and additional tests that may be approved from time to time by the Board of Education.

8VAC20-131-50. Requirements for graduation.

A. The requirements for a student to earn a diploma and graduate from a Virginia high school shall be those in effect when that student enters the ninth grade for the first time. Students shall be awarded a diploma upon graduation from a Virginia high school.

The Advanced Studies Diploma shall be the recommended diploma for students pursuing baccalaureate study. Both the Standard and the Advanced Studies Diploma shall prepare students for postsecondary education and the career readiness required by the Commonwealth's economy.

When students below the ninth grade successfully complete courses offered for credit in grades 9 through 12, credit shall be counted toward meeting the standard units required for graduation provided the courses are equivalent in content and academic rigor as those courses offered at the secondary level. To earn a verified unit of credit for these courses, students must meet the requirements of 8VAC20-131-110.

The following requirements shall be the only requirements for a diploma, unless a local school board has prescribed additional requirements that have been approved by the Board of Education. All additional requirements prescribed by local school boards that have been approved by the Board of Education remain in effect until such time as the local school board submits a request to the board to amend or discontinue them.

B. Requirements for a Standard Diploma.

1. Beginning with the ninth-grade class of ~~2011-2012~~ 2013-2014 and beyond, students shall earn the required standard and verified units of credit described in subdivision 2 of this subsection.
2. Credits required for graduation with a Standard Diploma.

Discipline Area	Standard Units of Credit Required	Verified Credits Required
English	4	2
Mathematics ¹	3	1
Laboratory Science ^{2,6}	3	1
History and Social Sciences ^{3,6}	3	1
Health and Physical Education	2	
Foreign Language, Fine Arts or Career and Technical Education ⁷	2	
Economics and Personal Finance	1	
Electives ⁴	4	
Student Selected Test ⁵		1

<u>Career and Technical Education Credential⁸</u>		
Total ²	22	6

¹Courses completed to satisfy this requirement shall include at least two different course selections from among: Algebra I, Geometry, Algebra, Functions, and Data Analysis, Algebra II, or other mathematics courses above the level of Algebra II. The board shall approve courses to satisfy this requirement.

²Courses completed to satisfy this requirement shall include course selections from at least two different science disciplines: earth sciences, biology, chemistry, or physics, or completion of the sequence of science courses required for the International Baccalaureate Diploma. The board shall approve courses to satisfy this requirement.

³Courses completed to satisfy this requirement shall include U.S. and Virginia History, U.S. and Virginia Government, and one course in either world history or geography or both. The board shall approve courses to satisfy this requirement.

⁴Courses to satisfy this requirement shall include at least two sequential electives as required by the Standards of Quality.

⁵A student may utilize additional tests for earning verified credit in computer science, technology, career and technical education, economics or other areas as prescribed by the board in 8VAC20-131-110.

⁶Students who complete a career and technical education program sequence and pass an examination or occupational competency assessment in a career and technical education field that confers certification or an occupational competency credential from a recognized industry, or trade or professional association, or acquires a professional license in a career and technical education field from the Commonwealth of Virginia may substitute the certification, competency credential, or license for (i) the student-selected verified credit and (ii) either a science or history and social science verified credit when the certification, license, or credential confers more than one verified credit. The examination or occupational competency assessment must be approved by the Board of Education as an additional test to verify student achievement.

⁷Pursuant to § 22.1-253.13:4 of the Code of Virginia, credits earned for this requirement shall include one credit in fine or performing arts or career and technical education.

⁸Students shall earn a career and technical education credential approved by the Board of Education that

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could include, but not be limited to, the successful completion of an industry certification, a state licensure examination, a national occupational competency assessment, or the Virginia workplace readiness assessment.

⁹Students shall successfully complete one virtual course, which may be a noncredit-bearing course or a required or elective credit-bearing course that is offered online.

3. The Board of Education shall establish, through guidelines, credit accommodations to the standard and verified credit requirements for a Standard Diploma. Such credit accommodations for students with disabilities may include:

- a. Approval of alternative courses to meet the standard credit requirements;
- b. Modifications to the requirements for local school divisions to award locally awarded verified credits;
- c. Approval of additional tests to earn a verified credit;
- d. Adjusted cut scores required to earn verified credit; and
- e. Allowance of work-based learning experiences.

The student's Individual Education Program (IEP) or 504 Plan would specify any credit accommodations that would be applicable for the student.

Students completing the requirements for the Standard Diploma may be eligible to receive an honor deemed appropriate by the local school board as described in subsection K of this section.

C. Requirements for a Standard Technical Diploma.

1. Beginning with the ninth-grade class of 2012-2013 and beyond, students shall earn the required standard and verified units of credit described in subdivision 2 of this subsection.

2. Credits required for graduation with a Standard Technical Diploma.

Discipline Area	Standard Units of Credit Required	Verified Credits Required
English	4	2
Mathematics ¹	3	1
Laboratory Science ^{2,5}	3	1
History and Social Sciences ^{3,5}	3	1
Health and Physical Education	2	

Fine Arts or Foreign Language	1	
Economics and Personal Finance	1	
Career and Technical Education ⁴	4	
Electives	1	
Student Selected ⁶		1
Total	22	6

¹Courses completed to satisfy this requirement shall include at least three different course selections from among: Algebra I, Geometry, Algebra Functions and Data Analysis, or Algebra II or other mathematics courses above the level of Algebra II. The board shall approve courses to satisfy this requirement.

²Courses completed to satisfy this requirement shall include course selections from at least three different science disciplines from among: earth sciences, biology, chemistry, or physics, or completion of the sequence of science courses required for the International Baccalaureate Diploma. The board shall approve courses to satisfy this requirement.

³Courses completed to satisfy this requirement shall include U.S. and Virginia History, U.S. and Virginia Government, and one course in either world history or geography or both. The board shall approve courses to satisfy this requirement.

⁴Courses completed to satisfy this requirement must include a career concentration as approved by the board. If a career concentration includes a specific assessment approved by the board and the student is eligible to take the assessment, then the student must take this assessment.

⁵Students who complete a career and technical education program sequence and pass an examination or occupational competency assessment in a career and technical education field that confers certification or an occupational competency credential from a recognized industry or trade or professional association or acquires a professional license in a career and technical education field from the Commonwealth of Virginia may substitute the certification competency credential or license for (i) the student selected verified credit and (ii) either a science or history and social science verified credit when the certification license or credential confers more than one verified credit. The examination or occupational competency assessment must be approved by the board as an additional test to verify student achievement.

~~⁶A student may utilize additional tests for earning verified credit in computer science, technology, career and technical education, economics or other areas as prescribed by the board in 8VAC20-131-110.~~

~~Students completing the requirements for the Standard Technical Diploma may be eligible to receive an honor deemed appropriate by the local school board as described in subsection K of this section.~~

~~D. C. Requirements for an Advanced Studies Diploma. Any student who meets the requirements for both the Advanced Studies and the Advanced Technical diploma may choose between these two diplomas.)~~

1. Beginning with the ninth-grade class of ~~2011-2012~~ 2013-2014 and beyond, students shall earn the required standard and verified units of credit described in subdivision 2 of this subsection.
2. Credits required for graduation with an Advanced Studies Diploma.

Discipline Area	Standard Units of Credit Required	Verified Credits Required
English	4	2
Mathematics ¹	4	2
Laboratory Science ²	4	2
History and Social Sciences ³	4	2
Foreign Language ⁴	3	
Health and Physical Education	2	
Fine Arts or Career and Technical Education	1	
Economics and Personal Finance	1	
Electives	3	
Student Selected Test ⁵		1
Total ⁶	26	9

¹Courses completed to satisfy this requirement shall include at least three different course selections from among: Algebra I, Geometry, Algebra II, or other mathematics courses above the level of Algebra II. The board shall approve courses to satisfy this requirement.

²Courses completed to satisfy this requirement shall include course selections from at least three different

science disciplines from among: earth sciences, biology, chemistry, or physics or completion of the sequence of science courses required for the International Baccalaureate Diploma. The board shall approve additional courses to satisfy this requirement.

³Courses completed to satisfy this requirement shall include U.S. and Virginia History, U.S. and Virginia Government, and two courses in either world history or geography or both. The board shall approve additional courses to satisfy this requirement.

⁴Courses completed to satisfy this requirement shall include three years of one language or two years of two languages.

⁵A student may utilize additional tests for earning verified credit in computer science, technology, career or technical education, economics or other areas as prescribed by the board in 8VAC20-131-110.

⁶Students shall successfully complete one virtual course, which may be a noncredit-bearing course, or may be a course required to earn this diploma that is offered online.

Students completing the requirements for the Advanced Studies Diploma may be eligible to receive an honor deemed appropriate by the local school board as described in subsection ~~K~~ H of this section.

~~E. Requirements for an Advanced Technical Diploma. Any student who meets the requirements for both the Advanced Studies and the Advanced Technical diploma may choose between these two diplomas.~~

1. ~~Beginning with the ninth grade class of 2012-2013 and beyond, students shall earn the required standard and verified units of credit described in subdivision 2 of this subsection.~~
2. ~~Credits required for graduation with an Advanced Technical Diploma.~~

Discipline Area	Standard Units of Credit Required	Verified Credits Required
English	4	<u>2</u>
Mathematics ¹	4	<u>2</u>
Laboratory Science ²	4	<u>2</u>
History and Social Sciences ³	4	<u>2</u>
Foreign Language ⁴	3	
Health and Physical Education	<u>2</u>	
Economics and	<u>1</u>	

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Personal Finance		
Fine Arts or Career and Technical Education	1	
Career and Technical Education ⁵	3	
Student Selected Test ⁶		1
Total	26	9

¹Courses completed to satisfy this requirement shall include at least three different course selections from among: Algebra I, Geometry, Algebra II, or other mathematics courses above the level of Algebra II. The board shall approve courses to satisfy this requirement.

²Courses completed to satisfy this requirement shall include course selections from at least three different science disciplines from among: earth sciences, biology, chemistry, or physics or completion of the sequence of science courses required for the International Baccalaureate Diploma. The board shall approve courses to satisfy this requirement.

³Courses completed to satisfy this requirement shall include U.S. and Virginia History, U.S. and Virginia Government, and two courses in either world history or geography or both. The board shall approve courses to satisfy this requirement.

⁴Courses completed to satisfy this requirement shall include three years of one language or two years of two languages.

⁵Courses completed to satisfy this requirement must include a career concentration as approved by the board. If a career concentration includes a specific assessment approved by the board, and the student is eligible to take the assessment, then the student must take this assessment.

⁶A student may utilize additional tests for earning verified credit in computer science, technology, career or technical education, economics, or other areas as prescribed by the board in 8VAC20-131-110.

Students completing the requirements for the Advanced Technical Diploma may be eligible to receive an honor deemed appropriate by the local school board as described in subsection K of this section.

F. Requirements for the Modified Standard Diploma.

1. Every student shall be expected to pursue a Standard Diploma, Standard Technical Diploma, Advanced Studies Diploma, or Advanced Technical Diploma. The Modified Standard Diploma program is intended for certain students

at the secondary level who have a disability and are unlikely to meet the credit requirements for a Standard Diploma. Eligibility and participation in the Modified Standard Diploma program shall be determined by the student's Individualized Education Program (IEP) team including the student, where appropriate, at any point after the student's eighth grade year.

2. The school must secure the informed written consent of the parent/guardian and the student to choose this diploma program after review of the student's academic history and the full disclosure of the student's options.

3. The student who has chosen to pursue a Modified Standard Diploma shall also be allowed to pursue the Standard Diploma, Standard Technical Diploma, Advanced Studies Diploma, or Advanced Technical Diploma at any time throughout that student's high school career, and the student must not be excluded from courses and tests required to earn these diplomas.

4. Students pursuing the Modified Standard Diploma shall pass literacy and numeracy competency assessments prescribed by the board.

5. Credits required for graduation with a Modified Standard Diploma:

Discipline Area	Standard Units of Credit Required
English	4
Mathematics ¹	3
Science ²	2
History and Social Sciences ³	2
Health and Physical Education	2
Fine Arts or Career and Technical Education	1
Electives ⁴	6
Total	20

¹Courses completed to satisfy this requirement shall include content from among applications of algebra, geometry, personal finance, and probability and statistics in courses that have been approved by the board.

²Courses completed shall include content from at least two of the following: applications of earth science, biology, chemistry, or physics in courses approved by the board.

³Courses completed to satisfy this requirement shall include one unit of credit in U.S. and Virginia History and one unit of credit in U.S. and Virginia

~~Government in courses approved by the board.~~

~~⁴Courses to satisfy this requirement shall include at least two sequential electives in the same manner required for the Standard Diploma.~~

~~6. The student must meet any additional criteria established by the Board of Education.~~

~~G. D.~~ In accordance with the requirements of the Standards of Quality, students with disabilities who complete the requirements of their Individualized Education Program (IEP) and do not meet the requirements for other diplomas shall be awarded Special Diplomas.

~~H. E.~~ In accordance with the requirements of the Standards of Quality, students who complete prescribed programs of studies defined by the local school board but do not qualify for Standard, ~~Standard Technical~~, Advanced Studies, ~~Advanced Technical~~, ~~Modified Standard~~, or Special, ~~or General Achievement~~ diplomas shall be awarded Certificates of Program Completion. The requirements for Certificates of Program Completion are developed by local school boards in accordance with the Standards of Quality. ~~Students receiving a general achievement diploma shall comply with 8VAC20-680, Regulations Governing the General Achievement Diploma.~~

~~I. F.~~ In accordance with the provisions of the compulsory attendance law and 8VAC20-360, Regulations Governing General Educational Development Certificates, students who do not qualify for diplomas may earn a high school equivalency credential.

~~J. G.~~ At a student's request, the local school board shall communicate or otherwise make known to institutions of higher education, potential employers, or other applicable third parties, in a manner that the local school board deems appropriate, that a student has attained the state's academic expectations by earning a Virginia diploma and that the value of such a diploma is not affected in any way by the accreditation status of the student's school.

~~K. H.~~ Awards for exemplary student performance. Students who demonstrate academic excellence and/or outstanding achievement may be eligible for one or more of the following awards:

1. Students who complete the requirements for an Advanced Studies Diploma ~~or Advanced Technical Diploma~~ with an average grade of "B" or better, and successfully complete college-level coursework that will earn the student at least nine transferable college credits in Advanced Placement (AP), International Baccalaureate (IB), Cambridge, or dual enrollment courses shall receive the Governor's Seal on the diploma.

2. Students who complete the requirements for a Standard Diploma, ~~Standard Technical Diploma~~, or Advanced Studies Diploma ~~or Advanced Technical Diploma~~ with an average grade of "A" shall receive a Board of Education Seal on the diploma.

3. The Board of Education's Career and Technical Education Seal will be awarded to students who earn a Standard Diploma, ~~Standard Technical Diploma~~, or Advanced Studies Diploma ~~or Advanced Technical Diploma~~ and complete a prescribed sequence of courses in a career and technical education concentration or specialization that they choose and maintain a "B" or better average in those courses; or (i) pass an examination or an occupational competency assessment in a career and technical education concentration or specialization that confers certification or occupational competency credential from a recognized industry, trade or professional association or (ii) acquire a professional license in that career and technical education field from the Commonwealth of Virginia. The Board of Education shall approve all professional licenses and examinations used to satisfy these requirements.

4. The Board of Education's Seal of Advanced Mathematics and Technology will be awarded to students who earn either a Standard Diploma, ~~Standard Technical Diploma~~, or Advanced Studies Diploma ~~or Advanced Technical Diploma~~ and (i) satisfy all of the mathematics requirements for the Advanced Studies Diploma ~~or Advanced Technical Diploma~~ (four units of credit including Algebra II; two verified units of credit) with a "B" average or better; and (ii) either (a) pass an examination in a career and technical education field that confers certification from a recognized industry, or trade or professional association; (b) acquire a professional license in a career and technical education field from the Commonwealth of Virginia; or (c) pass an examination approved by the board that confers college-level credit in a technology or computer science area. The Board of Education shall approve all professional licenses and examinations used to satisfy these requirements.

5. The Board of Education's Seal for Excellence in Civics Education will be awarded to students who earn either a ~~Modified Standard Diploma~~, Standard Diploma, ~~Standard Technical Diploma~~, or an Advanced Studies Diploma, ~~or Advanced Technical Diploma~~ and (i) complete Virginia and United States History and Virginia and United States Government courses with a grade of "B" or higher; (ii) have good attendance and no disciplinary infractions as determined by local school board policies; and (iii) complete 50 hours of voluntary participation in community service or extracurricular activities. Activities that would satisfy the requirements of clause (iii) of this subdivision include: (a) volunteering for a charitable or religious organization that provides services to the poor, sick or less fortunate; (b) participating in Boy Scouts, Girl Scouts, or similar youth organizations; (c) participating in JROTC; (d) participating in political campaigns or government internships, or Boys State, Girls State, or Model General Assembly; or (e) participating in school-sponsored extracurricular activities that have a civics focus. Any

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student who enlists in the United States military prior to graduation will be deemed to have met this community service requirement.

6. Students may receive other seals or awards for exceptional academic, career and technical, citizenship, or other exemplary performance in accordance with criteria defined by the local school board.

~~L.~~ I. Students completing graduation requirements in a summer school program shall be eligible for a diploma. The last school attended by the student during the regular session shall award the diploma unless otherwise agreed upon by the principals of the two schools.

~~M.~~ J. Students who complete Advanced Placement courses, college-level courses, or courses required for an International Baccalaureate Diploma shall be deemed to have completed the requirements for graduation under these standards provided they have earned the standard units of credit and earned verified units of credit in accordance with the requirements ~~of~~ for the Standard and Advanced Studies Diplomas, as specified in subsections B and C of this section.

~~N.~~ K. Students shall be counseled annually regarding the opportunities for using additional tests for earning verified credits as provided in accordance with the provisions of 8VAC20-131-110, and the consequences of failing to fulfill the obligations to complete the requirements for verified units of credit.

8VAC20-131-60. Transfer students.

A. The provisions of this section pertain generally to students who transfer into Virginia high schools. Students transferring in grades K-8 from Virginia public schools or nonpublic schools accredited by one of the approved accrediting constituent members of the Virginia Council for Private Education shall be given recognition for all grade-level work completed. The academic record of students transferring from all other schools shall be evaluated to determine appropriate grade placement in accordance with policies adopted by the local school board. The State Testing Identifier (STI) for students who transfer into a Virginia public school from another Virginia public school shall be retained by the receiving school.

B. For the purposes of this section, the term "beginning" means within the first 20 hours of instruction per course. The term "during" means after the first 20 hours of instruction per course.

C. Standard or verified units of credit earned by a student in a Virginia public school shall be transferable without limitation regardless of the accreditation status of the Virginia public school in which the credits were earned. Virginia public schools shall accept standard and verified units of credit from other Virginia public schools, Virginia's virtual learning program, Virtual Virginia, and state-operated programs. Standard units of credit also shall be accepted for courses satisfactorily completed in accredited colleges and

universities when prior written approval of the principal has been granted or the student has been given credit by the previous school attended.

D. A secondary school shall accept credits toward graduation received from Virginia nonpublic schools accredited by one of the approved accrediting constituent members of the Virginia Council for Private Education (VCPE). The Board of Education will maintain contact with the VCPE and may periodically review its accrediting procedures and policies as part of its policies under this section.

Nothing in these standards shall prohibit a public school from accepting standard units of credit toward graduation awarded to students who transfer from all other schools when the courses for which the student receives credit generally match the description of or can be substituted for courses for which the receiving school gives standard credit, and the school from which the child transfers certifies that the courses for which credit is given meet the requirements of 8VAC20-131-110 A.

Students transferring into a Virginia public school shall be required to meet the requirements prescribed in 8VAC20-131-50 to receive a Standard, ~~Standard Technical, or an Advanced Studies, Advanced Technical or Modified Standard~~ Diploma, except as provided by subsection G of this section. To receive a Special Diploma or Certificate of Program Completion, a student must meet the requirements prescribed by the Standards of Quality.

E. The academic record of a student transferring from other Virginia public schools shall be sent directly to the school receiving the student upon request of the receiving school in accordance with the provisions of the 8VAC20-150, Management of the Student's Scholastic Record in the Public Schools of Virginia. The State Testing Identifier (STI) for students who transfer into a Virginia public school from another Virginia public school shall be retained by the receiving school.

F. The academic record of a student transferring into Virginia public schools from other than a Virginia public school shall be evaluated to determine the number of standard units of credit that have been earned, including credit from schools outside the United States, and the number of verified units of credit needed to graduate in accordance with subsection G of this section. Standard units of credit also shall be accepted for courses satisfactorily completed in accredited colleges and universities when the student has been given credit by the previous school attended.

Students transferring above the tenth grade from schools or other education programs that do not require or give credit for health and physical education shall not be required to take these courses to meet graduation requirements.

G. Students entering a Virginia public high school for the first time after the tenth grade shall earn as many credits as possible toward the graduation requirements prescribed in

8VAC20-131-50. However, schools may substitute courses required in other states in the same content area if the student is unable to meet the specific content requirements of 8VAC20-131-50 without taking a heavier than normal course load in any semester, by taking summer school, or by taking courses after the time when he otherwise would have graduated. In any event, no such student shall earn fewer than the following number of verified units, nor shall such students be required to take SOL tests or additional tests as defined in 8VAC20-131-110 for verified units of credit in courses previously completed at another school or program of study, unless necessary to meet the requirements listed in subdivisions 1 and 2 of this subsection:

1. For a Standard Diploma ~~or Standard Technical Diploma~~:

- a. Students entering a Virginia high school for the first time during the ninth grade or at the beginning of the tenth grade shall earn credit as prescribed in 8VAC20-131-50;
- b. Students entering a Virginia high school for the first time during the tenth grade or at the beginning of the eleventh grade shall earn a minimum of four verified units of credit: one each in English, mathematics, history, and science. Students who complete a career and technical education program sequence may substitute a certificate, occupational competency credential or license for either a science or history and social science verified credit pursuant to 8VAC20-131-50; and
- c. Students entering a Virginia high school for the first time during the eleventh grade or at the beginning of the twelfth grade shall earn a minimum of two verified units of credit: one in English and one of the student's own choosing.

2. For an Advanced Studies Diploma ~~or Advanced Technical Diploma~~:

- a. Students entering a Virginia high school for the first time during the ninth grade or at the beginning of the tenth grade shall earn credit as prescribed in 8VAC20-131-50;
- b. Students entering a Virginia high school for the first time during the tenth grade or at the beginning of the eleventh grade shall earn a minimum of six verified units of credit: two in English and one each in mathematics, history, and science and one of the student's own choosing; and
- c. Students entering a Virginia high school for the first time during the eleventh grade or at the beginning of the twelfth grade shall earn a minimum of four verified units of credit: one in English and three of the student's own choosing.

H. Students entering a Virginia high school for the first time after the first semester of their eleventh grade year must meet the requirements of subdivision G 1 c or G 2 c of this section. Students transferring after 20 instructional hours per course of

their senior or twelfth grade year shall be given every opportunity to earn a Standard, ~~Standard Technical, or an Advanced Studies, Advanced Technical, or Modified Standard~~ Diploma. If it is not possible for the student to meet the requirements for a diploma, arrangements should be made for the student's previous school to award the diploma. If these arrangements cannot be made, a waiver of the verified unit of credit requirements may be available to the student. The Department of Education may grant such waivers upon request by the local school board in accordance with guidelines prescribed by the Board of Education.

I. Any local school division receiving approval to increase its course credit requirements for a diploma may not deny either the Standard, ~~Standard Technical, or the Advanced Studies, Advanced Technical, or Modified Standard~~ Diploma to any transfer student who has otherwise met the requirements contained in these standards if the transfer student can only meet the division's additional requirements by taking a heavier than normal course load in any semester, by taking summer school, or by taking courses after the time when he otherwise would have graduated.

J. The transcript of a student who graduates or transfers from a Virginia secondary school shall conform to the requirements of 8VAC20-160, Regulations Governing Secondary School Transcripts.

K. The accreditation status of a high school shall not be included on the student transcript provided to colleges, universities, or employers. The board expressly states that any student who has met the graduation requirements established in 8VAC20-131-50 and has received a Virginia diploma holds a diploma that should be recognized as equal to any other Virginia diploma of the same type, regardless of the accreditation status of the student's high school. It is the express policy of the board that no student shall be affected by the accreditation status of the student's school. The board shall take appropriate action, from time to time, to ensure that no student is affected by the accreditation status of the student's school.

8VAC20-131-110. Standard and verified units of credit.

A. The standard unit of credit for graduation shall be based on a minimum of 140 clock hours of instruction and successful completion of the requirements of the course. When credit is awarded in less than whole units, the increment awarded must be no greater than the fractional part of the 140 hours of instruction provided. If a school division elects to award credit on a basis other than the 140 clock hours of instruction required for a standard unit of credit defined in this subsection, the local school division shall develop a written policy approved by the superintendent and school board which ensures:

1. That the content of the course for which credit is awarded is comparable to 140 clock hours of instruction; and

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2. That upon completion, the student will have met the aims and objectives of the course.

B. A verified unit of credit for graduation shall be based on a minimum of 140 clock hours of instruction, successful completion of the requirements of the course, and the achievement by the student of a passing score on the end-of-course SOL test for that course or additional tests as described in this subsection. A student may also earn a verified unit of credit by the following methods:

1. In accordance with the provisions of the Standards of Quality, students may earn a standard and verified unit of credit for any elective course in which the core academic SOL course content has been integrated and the student passes the related end-of-course SOL test. Such course and test combinations must be approved by the Board of Education.

2. Upon the recommendation of the division superintendent and demonstration of mastery of course content and objectives, qualified students may receive a standard unit of credit and be permitted to sit for the relevant SOL test to earn a verified credit without having to meet the 140-clock-hour requirement.

3. Students who do not pass Standards of Learning tests in science or history and social science may receive locally awarded verified credits from the local school board in accordance with criteria established in guidelines adopted by the Board of Education.

C. The Board of Education may from time to time approve additional tests for the purpose of awarding verified credit. Such additional tests, which enable students to earn verified units of credit, must, at a minimum, meet the following criteria:

1. The test must be standardized and graded independently of the school or school division in which the test is given;

2. The test must be knowledge based;

3. The test must be administered on a multistate or international basis, or administered as part of another state's accountability assessment program; and

4. To be counted in a specific academic area, the test must measure content that incorporates or exceeds the SOL content in the course for which verified credit is given.

The Board of Education will set the score that must be achieved to earn a verified unit of credit on the additional test options.

D. With such funds as are appropriated by the General Assembly, the Board of Education will provide opportunities for students who meet criteria adopted by the board to have an expedited retake of a SOL test to earn verified credit ~~or to meet literacy and numeracy requirements for the Modified Standard Diploma.~~

Part VII

School and Community Communications

8VAC20-131-270. School and community communications.

A. Each school shall promote communication and foster mutual understanding with parents and the community. Each school shall:

1. Involve parents, citizens, community agencies, and representatives from business and industry in developing, disseminating, and explaining the biennial school plan; on advisory committees; in curriculum studies; and in evaluating the educational program.

2. Provide annually to the parents and the community the School Performance Report Card in a manner prescribed by the board. The information contained therein will be for the most recent three-year period. Such information shall include but not be limited to:

a. Virginia assessment program results by percentage of participation and proficiency and disaggregated by student subgroups.

b. The accreditation rating earned by the school.

c. Attendance rates for students.

d. Information related to school safety to include, but not limited to, incidents of crime and violence.

e. Information related to qualifications and educational attainment of the teaching staff.

f. In addition, secondary schools' School Performance Report Cards shall include the following:

(1) Advanced Placement (AP) information to include percentage of students who take AP courses and percentage of students who take AP tests;

(2) International Baccalaureate (IB) and Cambridge course information to include percentage of students who are enrolled in IB or Cambridge programs and percentage of students who receive IB or Cambridge Diplomas;

(3) College-level course information to include percentage of students who take college-level courses including dual enrollment courses;

(4) Number and percentage of (i) graduates by diploma type as prescribed by the Board of Education, (ii) certificates awarded to the senior class including GED credentials, and (iii) students who do not complete high school;

(5) As a separate category on the school report card, the number of students obtaining board-approved industry certifications, and passing state licensure examinations, national occupational competency assessments and Virginia workplace readiness skills assessments while still in high school and the number of career and technical education completers who graduated; and

(6) Number and percentage of drop-outs.

3. Cooperate with business and industry in formulating career and technical educational programs and conducting joint enterprises involving personnel, facilities, training programs, and other resources.

4. Encourage and support the establishment and/or continuation of a parent-teacher association or other organization and work cooperatively with it.

B. At the beginning of each school year, each school shall provide to its students' parents or guardians information on the availability of and source for receiving:

1. The learning objectives developed in accordance with the provisions of 8VAC20-131-70 to be achieved at their child's grade level or, in high school, a copy of the syllabus for each of their child's courses, and a copy of the school division promotion, retention, and remediation policies;

2. The Standards of Learning applicable to the child's grade or course requirements and the approximate date and potential impact of the child's next SOL testing; and

3. An annual notice to students in all grade levels of all requirements for Standard, Standard Technical, and Advanced Studies, ~~Advanced Technical and Modified Standard Diplomas~~, and the board's policies on promotion and retention as outlined in 8VAC20-131-30.

The division superintendent shall report to the department compliance with this subsection through the preaccreditation eligibility procedures in 8VAC20-131-290.

Part VIII
School Accreditation

8VAC20-131-280. Expectations for school accountability.

A. Schools will be accredited annually based on compliance with preaccreditation eligibility requirements and achievement of the school accountability requirements of 8VAC20-131-300 C.

B. Each school shall be accredited based, primarily, on achievement of the criteria established in 8VAC20-131-30 and in 8VAC20-131-50 as specified below:

1. The percentage of students passing the Virginia assessment program tests in the four core academic areas administered in the school with the accreditation rating calculated on a trailing three-year average that includes the current year scores and the scores from the two most recent years in each applicable academic area, or on the current year's scores, whichever is higher.

2. The percentage of students graduating from or completing high school based on a graduation and completion index prescribed by the Board of Education. The accreditation rating of any school with a twelfth grade shall be determined based on achievement of required SOL pass rates and percentage points on the board's graduation and completion index. School accreditation shall be determined by the school's current year index points or a trailing three-year average of index points that includes the

current year and the two most recent years, whichever is higher. The Board of Education's graduation and completion index shall include weighted points for diploma graduates (100 points), GED recipients (75 points), students not graduating but still in school (70 points), and students earning certificates of program completion (25 points). The Board of Education's graduation and completion index shall account for all students in the graduating class's ninth-grade cohort, plus students transferring in, minus students transferring out and deceased students. Those students who are not included in one of the preceding categories will also be included in the index.

3. The number of students who successfully complete a remediation recovery program.

4. Schools, with grade configurations that do not house a grade or offer courses for which SOL tests or additional tests approved by the Board of Education as outlined in 8VAC20-131-110 are administered, will be paired with another school in the division housing one or more of the grades in which SOL tests are administered. The pairing of such schools will be made upon the recommendation of the local superintendent. The schools should have a "feeder" relationship and the grades should be contiguous.

C. Subject to the provisions of 8VAC20-131-350, the governing school board of special purpose schools such as those provided for in § 22.1-26 of the Code of Virginia, Governor's schools, special education schools, alternative schools, or career and technical schools that serve as the student's school of principal enrollment may seek approval of an alternative accreditation plan from the Board of Education. Schools offering alternative education programs and schools with a graduation cohort of 50 or fewer students as defined by the graduation rate formula adopted by the board may request that the board approve an alternative accreditation plan to meet the graduation and completion index benchmark. Special purpose schools with alternative accreditation plans shall be evaluated on standards appropriate to the programs offered in the school and approved by the board prior to August 1 of the school year for which approval is requested. Any student graduating from a special purpose school with a Standard, Standard Technical, or an Advanced Studies, ~~Advanced Technical, or Modified Standard Diploma~~ must meet the requirements prescribed in 8VAC20-131-50.

In addition, pursuant to § 22.1-253.13:3 of the Code of Virginia, any school board, on behalf of one or more of its schools, may request the Board of Education for approval of an Individual School Accreditation Plan for the evaluation of the performance of one or more of its schools as authorized for special purpose schools.

D. When calculating the passing rates on Virginia assessment program tests for the purpose of school accreditation, the following tolerances for limited English proficient (LEP) and transfer students will apply:

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1. The scores of LEP students enrolled in Virginia public schools fewer than 11 semesters may be removed from the calculation used for the purpose of school accreditation required by 8VAC20-131-280 B and 8VAC20-131-300 C. Completion of a semester shall be based on school membership days. Membership days are defined as the days the student is officially enrolled in a Virginia public school, regardless of days absent or present. For a semester to count as a completed semester, a student must have been in membership for a majority of the membership days of the semester. These semesters need not be consecutive.

2. In accordance with the provisions of 8VAC20-131-30, all students who transfer into Virginia public schools are expected to take and pass all applicable SOL tests in the content areas in which they receive instruction.

3. All students who transfer within a school division shall have their scores counted in the calculation of the school's accreditation rating. Students who transfer into a Virginia school from home instruction, or from another Virginia school division, another state, or another country, in grades kindergarten through 8 shall be expected to take all applicable SOL tests or additional tests approved by the board as outlined in 8VAC20-131-110. If the transfer takes place after the 20th instructional day following the opening of school, the scores on these tests may be used in calculating school accreditation ratings.

4. Students who transfer into a Virginia middle or high school from home instruction, or from another state or country, and enroll in a course for which there is an end-of-course SOL test, shall be expected to take the test or additional tests for that course approved by the board as outlined in 8VAC20-131-110. If the transfer takes place after 20 instructional hours per course have elapsed following the opening of school or beginning of the semester, if applicable, the scores on those tests may be used in calculating school accreditation ratings in the year the transfer occurs.

5. Students who enroll on the first day of school and subsequently transfer to a school outside of the division for a total amount of instructional time equal to or exceeding 50% of a current school year or semester, whether the transfer was a singular or multiple occurrence, and return during the same school year shall be expected to take any applicable SOL test. The scores of those tests may be used in calculating the school accreditation rating in the year in which the transfers occur.

E. The Board of Education may adopt special provisions related to the administration and use of any Virginia assessment program test in a content area. The Board of Education may adopt special provisions related to the administration and use of the graduation and completion index, as prescribed by the board. The Board of Education may also alter the inclusions and exclusions from the accreditation calculations by providing adequate notice to

local school boards. The board may add new tests or discontinue the use of existing tests in the Virginia Assessment Program by providing adequate notice to local school boards.

F. As a prerequisite to the awarding of an accreditation rating as defined in 8VAC20-131-300, each new or existing school shall document, in a manner prescribed by the board, the following: (i) the division's promotion/retention policies developed in accordance with the requirements of 8VAC20-131-30, (ii) compliance with the requirements to offer courses that will allow students to complete the graduation requirements in 8VAC20-131-50, (iii) the ability to offer the instructional program prescribed in 8VAC20-131-70 through 8VAC20-131-100, (iv) the leadership and staffing requirements of 8VAC20-131-210 through 8VAC20-131-240, and (v) the facilities and safety provisions of 8VAC20-131-260. The division superintendent shall report to the department compliance with this subsection through the preaccreditation eligibility procedures in 8VAC20-131-290.

8VAC20-131-360. Effective date.

A. The provisions in 8VAC20-131-30 B relating to double testing and the provisions in 8VAC20-131-60 C relating to Virtual Virginia shall become effective July 31, 2009.

B. Graduation requirements prescribed in 8VAC20-131-50 B and ~~D C~~, for the Standard and Advanced Studies Diplomas, shall become effective with the ninth-grade class of ~~2011-2012~~ 2013-2014.

~~C. Graduation requirements prescribed in 8VAC20-131-50 C and E shall become effective with the ninth grade class of 2012-2013.~~

~~D. C.~~ Schools with a graduating class shall meet prescribed thresholds on a graduation and completion rate index as prescribed in 8VAC20-131-280 and 8VAC20-131-300 for accreditation ratings earned in 2010-2011 and awarded in 2011-2012.

~~E. D.~~ Accreditation ratings prescribed in 8VAC20-131-300 C 1 a shall become effective with tests administered in 2010-2011 and 2011-2012 for ratings awarded in 2011-2012 and 2012-2013.

~~F. E.~~ Accreditation ratings prescribed in 8VAC20-121-300 C 1 c shall become effective with tests administered in 2012-2013 for ratings awarded in 2013-2014 and beyond.

~~G. F.~~ The Academic and Career Plan prescribed in 8VAC20-131-140 shall become effective in 2013-2014.

~~H. G.~~ Unless otherwise specified, the remainder of these regulations shall be effective beginning with the 2011-2012 academic year.

VA.R. Doc. No. R13-3304; Filed April 9, 2013, 9:48 a.m.



TITLE 9. ENVIRONMENT**STATE WATER CONTROL BOARD****Forms**

Title of Regulation: **9VAC25-193. General Virginia Pollutant Discharge Elimination System (VPDES) Permit for Concrete Products Facilities.**

Contact Information: Debra A. Harris, Policy and Planning Specialist, Department of Environmental Quality, 629 East Main Street, Richmond, VA 23219, telephone (804) 698-4209, FAX (804) 698-4346, or email debra.harris@deq.virginia.gov.

NOTICE: Forms used in administering the following regulation have been filed by the State Water Control Board. The forms are not being published; however, online users of this issue of the Virginia Register of Regulations may click on the name of the new or amended form to access it. The forms are also available from the agency contact or may be viewed at the Office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia 23219.

FORMS (9VAC25-193)

~~Department of Environmental Quality Water Division
Permit Application Fee~~

[Water Division Permit Application Fee Form \(rev. 11/12\).](#)

[Registration Statement for the General Virginia Pollutant Discharge Elimination System \(VPDES\) Permit for Concrete Products Facilities, VAG11 \(rev. 4/13\).](#)

VA.R. Doc. No. R13-3669; Filed April 10, 2013, 11:01 a.m.

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TITLE 12. HEALTH

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Fast-Track Regulation

Title of Regulation: **12VAC30-120. Waivered Services (repealing 12VAC30-120-140 through 12VAC30-120-190, 12VAC30-120-195, 12VAC30-120-201).**

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

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: June 5, 2013.

Effective Date: June 20, 2013.

Agency Contact: Brian McCormick, Regulatory Supervisor, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 371-8856, FAX (804) 786-1680, or email brian.mccormick@dmas.virginia.gov.

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

Purpose: This action repeals the regulations for the Medicaid HIV/AIDS waiver. This waiver's population has steadily declined from slightly more than 600 (in 1997) to now less than 25. Advances in medical treatments are enabling longer and healthier lifestyles for individuals with HIV/AIDS. As with all Medicaid § 1915(c) waivers, it must be determined to be cost effective in order to secure federal financial participation. With the declining population and the improved health of the affected individuals, this required cost effectiveness can no longer be demonstrated.

This regulatory action does not affect the health, safety, or welfare of citizens of the Commonwealth. Individuals who have been on this waiver and who continue to qualify for waiver services have been offered their choice of an alternative waiver, community care, or nursing facility placement.

This action also complies with the directive to DMAS as set out in the 2012 Acts of Assembly, Chapter 3, Item 307 JJJ, which provides: "The Department of Medical Assistance Services shall have the authority to amend the § 1915(c) home-and-community-based Elderly or Disabled with Consumer-Direction waiver, subject to approval by the Centers for Medicare and Medicaid Services to incorporate the HIV/AIDS waiver. Pending CMS approval, the HIV/AIDS waiver will cease as of June 30, 2011. The department shall implement this change effective July 1, 2012, and prior to the completion of any regulatory process undertaken in order to effect such changes."

Rationale for Using Fast-Track Process: DMAS expects this rulemaking action to be noncontroversial because the individuals who are participating will still be receiving the services that they require, just from other sources. The personal and respite care providers participate in other Medicaid waivers. There have been no private duty nursing providers used by AIDS waiver enrollees for about five years. The two remaining case management providers have only been caring for five individuals so that is not expected to constitute a major financial loss. The durable medical equipment providers who have been providing enteral nutrition services will continue to care for other Medicaid individuals who are not waiver participants.

Substance: The regulations that are affected by this action are the HIV/AIDS Waiver regulations (12VAC30-120-140 through 12VAC30-120-201). These regulations are recommended for repeal. DMAS initiated this waiver in

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January 1991 to initially provide personal care, respite care, case management, private duty nursing, and nutritional supplements to 80 individuals at risk of institutionalization who were either HIV symptomatic or who had diagnoses of AIDS. In 2003, the waiver was modified, with federal approval, to also cover consumer-directed personal attendant and respite services. These individuals had to meet the nursing facility level of care criteria (functionally dependent and requiring medical/nursing supervision of care) and were determined to be at risk of nursing facility placement and for whom community-based care services via the waiver were critical to enable them to remain at home.

In 1997, this waiver cared for slightly more than 600 individuals. Total expenditures at that time slightly exceeded \$1.6 million with cost per individual at \$2,529. Since that time, there has been a steady decline in population to today's 22 individuals.

In the last five years, only one individual, a child, has required private duty nursing services. Children who have HIV/AIDS will be able to receive private duty nursing services through the Medicaid State Plan's Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) benefit (42 CFR 440-40).

Durable medical equipment providers are now able to provide enteral nutrition services to these individuals under State Plan services (12VAC30-50-165).

The Medicaid-eligible individuals who remain in this waiver are being offered their choice of either moving into the Elderly and Disabled with Consumer Direction waiver, moving into a Program of All Inclusive Care for the Elderly (PACE), accessing community services, or moving into a nursing facility. The remaining 22 individuals have made a variety of optional choices as best meets their needs.

Issues: There are no advantages or disadvantages to citizens in this repeal action. There are no advantages or disadvantages to the individuals who have been receiving care via this waiver because they will continue to have all of their needs met via either an alternative waiver, care in the community, or, at their choice, nursing facility placement.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. Pursuant to Item 307 JJJ, Chapter 3, 2012 Acts of Assembly, the proposed changes repeal the Medicaid HIV/AIDS waiver regulations.

Result of Analysis. While the proposed changes may have an adverse economic impact on a few specific individuals and providers, providing HIV/AIDS waiver services from other available sources within the Medicaid program seems to be more cost effective.

Estimated Economic Impact. Pursuant to Item 307 JJJ, Chapter 3, 2012 Acts of Assembly, the proposed changes repeal the Medicaid HIV/AIDS waiver regulations.

According to the Department of Medical Assistance Services (DMAS), continued decline in the population served by the HIV/AIDS waiver made it impossible to demonstrate the cost effectiveness of this program which is necessary for renewal. Advances in medical treatments have caused the waiver population to fall to 22 as of July 2012 from more than 600 individuals in 1997. The decline in the HIV/AIDS waiver population has increased the average costs per recipient which in turn made it relatively more expensive to maintain this program compared to caring for these individuals through other available options.

The recipients had the option of moving to either the Elderly and Disabled Waiver with Consumer Direction, a Program of All-Inclusive Care for the Elderly, other community services, or nursing facility placement. Of the 22 individuals, 19 joined the EDCD waiver, two moved into nursing homes¹, and one has since been deceased. The HIV/AIDS waiver covered personal care, respite care, case management, private duty nursing, and nutritional supplements. All of these services except case management are available to the affected population from other sources. There were five individuals who utilized \$2,745 worth of case management services from two providers in fiscal year 2011.

The proposed changes would represent an economic loss to the HIV/AIDS recipients when and if they need case management services. Similarly, the affected two case management providers may realize a small revenue loss. However, the affected individuals will be able to access almost all of the services from other sources. Also, while the repeal of a waiver program may free some administrative resources, DMAS plans to allocate these resources in other areas needing them. Moreover, the cost effectiveness test indicates that it is cheaper to provide these services from sources other than the HIV/AIDS waiver.

Businesses and Entities Affected. As of July 2012, there were 22 HIV/AIDS waiver recipients. Only five of these recipients had utilized case management services from two providers which will no longer be available.

Localities Particularly Affected. The proposed changes do not affect any locality more than others.

Projected Impact on Employment. The proposed changes may reduce the case management services provided and reduce the demand for administrative resources. However, the amount of reduction in case management services is very small and DMAS plans to reallocate any freed administrative services to other areas. Thus, no significant economic impact on employment is expected.

Effects on the Use and Value of Private Property. The proposed changes do not have any direct impact on the use and value of private property. The probable reduction in case management service revenues is so small that no significant adverse impact on the asset values of the affected two providers is expected.

Small Businesses: Costs and Other Effects. The proposed changes may cause a very small reduction in revenues of case management service providers.

Small Businesses: Alternative Method that Minimizes Adverse Impact. There is no known alternative method that would minimize the probable reduction in case management services.

Real Estate Development Costs. No effect on real estate development costs is expected.

Legal Mandate. The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Administrative Process Act and Executive Order Number 14 (10). Section 2.2-4007.04 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. Further, if the proposed regulation has adverse effect on small businesses, § 2.2-4007.04 requires that such economic impact analyses include (i) an identification and estimate of the number of small businesses subject to the regulation; (ii) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the regulation, including the type of professional skills necessary for preparing required reports and other documents; (iii) a statement of the probable effect of the regulation on affected small businesses; and (iv) a description of any less intrusive or less costly alternative methods of achieving the purpose of the regulation. The analysis presented above represents DPB's best estimate of these economic impacts.

¹ These appear to be unrelated to the expiration of HIV/AIDS waiver.

Agency's Response to Economic Impact Analysis: The Department of Medical Assistance Services has reviewed the economic impact analysis prepared by the Department of Planning and Budget regarding the regulations concerning Waivered Services: Repeal HIV/AIDS Waiver (12VAC30-120-140 through 12VAC30-120-201). The agency concurs with this analysis.

Summary:

This regulatory action repeals the agency's regulations for its HIV/AIDS waiver. The regulations are no longer required as that waiver has expired. The remaining individuals who were still participating in this waiver have been given their choice of moving to either the Elderly and Disabled with Consumer Direction (EDCD) waiver, a Program of All-Inclusive Care for the Elderly (PACE), other community services, or nursing facility placement.

Part III

Home and Community Based Services for Individuals with Acquired Immunodeficiency Syndrome (AIDS) and AIDS-Related Complex

12VAC30-120-140. Definitions. (Repealed.)

~~"Acquired Immune Deficiency Syndrome" or "AIDS" means the most severe manifestation of infection with the Human Immunodeficiency Virus (HIV). The Centers for Disease Control and Prevention (CDC) lists numerous opportunistic infections and cancers that, in the presence of HIV infection, constitute an AIDS diagnosis.~~

~~"Activities of daily living" or "ADL" means personal care tasks, e.g., bathing, dressing, toileting, transferring, and eating/feeding. An individual's degree of independence in performing these activities is part of determining appropriate level of care and service needs.~~

~~"Agency directed services" means services for which the provider agency is responsible for hiring, training, supervising, and firing of the staff.~~

~~"Appeal" means the process used to challenge DMAS when it takes action or proposes to take action that will adversely affect, reduce, or terminate the receipt of benefits.~~

~~"Assistive technology" means specialized medical equipment and supplies including those devices, controls, or appliances specified in the plan of care but not available under the State Plan for Medical Assistance that enable individuals to increase their abilities to perform activities of daily living, or to perceive, control, or communicate with the environment in which they live, or that are necessary to the proper functioning of the specialized equipment. 12VAC30-120-762 provides the service description, criteria, service units and limitations, and provider requirements for this service. This service shall be available only to those AIDS waiver enrollees who are also enrolled in the Money Follows the Person demonstration program.~~

~~"Asymptomatic" means without symptoms. This term is usually used in the HIV/AIDS literature to describe an individual who has a positive reaction to one of several tests for HIV antibodies but who shows no clinical symptoms of the disease.~~

~~"Case management" means continuous reevaluation of need, monitoring of service delivery, revisions to the plan of care and coordination of services for individuals enrolled in the HIV/AIDS waiver.~~

~~"Case manager" means the person who provides services to individuals who are enrolled in the waiver that enable the continuous assessment, coordination, and monitoring of the needs of the individuals who are enrolled in the waiver. The case manager must possess a combination of work experience and relevant education that indicates that the case manager possesses the knowledge, skills, and abilities at entry level, as established by the Department of Medical Assistance Services in 12VAC30-120-170 to conduct case management.~~

Regulations

"Cognitive impairment" means a severe deficit in mental capability that affects areas such as thought processes, problem solving, judgment, memory, or comprehension and that interferes with such things as reality orientation, ability to care for self, ability to recognize danger to self or others, or impulse control.

"Consumer directed services" means services for which the individual or family/caregiver is responsible for hiring, training, supervising, and firing of the staff.

"Consumer directed (CD) services facilitator" means the DMAS-enrolled provider who is responsible for supporting the individual and family/caregiver by ensuring the development and monitoring of the consumer directed plan of care, providing employee management training, and completing ongoing review activities as required by DMAS for consumer directed personal assistance and respite care services. The CD services facilitator cannot be the individual, the individual's case manager, direct service provider, spouse, or parent of the individual who is a minor child, or a family/caregiver who is responsible for employing the assistant.

"Current functional status" means the degree of dependency in performing activities of daily living.

"DMAS" means the Department of Medical Assistance Services.

"DMAS 96 form" means the Medicaid Funded Long Term Care Service Authorization Form, which is a part of the preadmission screening packet and must be completed by a Level One screener on a Preadmission Screening Team. It designates the type of service the individual is eligible to receive.

"DMAS 122 form" means the Patient Information Form used by the provider and the local DSS to exchange information regarding the responsibility of a Medicaid-eligible individual to make payment toward the cost of services or other information that may affect the eligibility status of an individual.

"DSS" means the Department of Social Services.

"Designated preauthorization contractor" means the entity that has been contracted by DMAS to perform preauthorization of services.

"Enteral nutrition products" means enteral nutrition listed in the durable medical equipment manual that is prescribed by a physician to be necessary as the primary source of nutrition for the individual's health care plan (due to the prevalence of conditions of wasting, malnutrition, and dehydration) and not available through any other food program.

"Environmental modifications" means physical adaptations to a house, place of residence, primary vehicle or work site, when the work site modification exceeds reasonable accommodation requirements of the Americans with Disabilities Act (42 USC § 1201 et seq.), necessary to ensure the individuals' health and safety or enable functioning with

greater independence when the adaptation is not being used to bring a substandard dwelling up to minimum habitation standards and is of direct medical or remedial benefit to individuals. 12VAC30-120-758 provides the service description, criteria, service units and limitations, and provider requirements for this service. This service shall be available only to those AIDS waiver enrollees who are also enrolled in the Money Follows the Person demonstration program.

"Fiscal agent" means an agency or organization that may be contracted by DMAS to handle employment, payroll, and tax responsibilities on behalf of the individual who is receiving consumer directed personal assistance services and consumer directed respite services.

"HIV symptomatic" means having the diagnosis of HIV and having symptoms related to the HIV infection.

"Home and community based care" means a variety of in-home and community based services reimbursed by DMAS (case management, personal care, private duty nursing, respite care consumer directed personal assistance, consumer directed respite care, and enteral nutrition products) authorized under a Social Security Act § 1915(e) AIDS Waiver designed to offer individuals an alternative to inpatient hospital or nursing facility placement. Individuals may be preauthorized to receive one or more of these services either solely or in combination, based on the documented need for the service or services to avoid inpatient hospital or nursing facility placement. DMAS, or the designated preauthorization contractor, shall give prior authorization for any Medicaid-reimbursed home and community-based care.

"Human Immunodeficiency Virus (HIV)" means the virus which leads to acquired immune deficiency syndrome (AIDS). The virus weakens the body's immune system and, in doing so, allows "opportunistic" infections and diseases to attack the body.

"Instrumental activities of daily living" or "IADL" means tasks such as meal preparation, shopping, housekeeping, laundry, and money management.

"Participating provider" means an individual, institution, facility, agency, partnership, corporation, or association that has a valid contract with DMAS and meets the standards and requirements set forth by DMAS and has a current, signed provider participation agreement with DMAS to provide Medicaid waiver services.

"Personal assistance services" or "PAS" means long term maintenance or support services necessary to enable an individual to remain at or return home rather than enter an inpatient hospital or a nursing facility. Personal assistance services include care specific to the needs of a medically stable, physically disabled individual. Personal assistance services include, but are not limited to, assistance with ADLs, bowel/bladder programs, range of motion exercises, routine wound care that does not include sterile technique, and external catheter care. Supportive services are those that

substitute for the absence, loss, diminution, or impairment of a physical function. When specified, supportive services may include assistance with IADLs that are incidental to the care furnished or that are essential to the health and welfare of the individual. Personal assistance services shall not include either practical or professional nursing services as defined in § 32.1-162.7 of the Code of Virginia and 12VAC5-381-360, as appropriate.

"Personal assistant" means a domestic servant for purposes of this part and exemption from Worker's Compensation.

"Personal care agency" means a participating provider that renders services designed to offer an alternative to institutionalization by providing eligible individuals with personal care aides who provide personal care services.

"Personal care services" means long term maintenance or support services necessary to enable the individual to remain at or return home rather than enter an inpatient hospital or a nursing facility. Personal care services are provided to individuals in the areas of activities of daily living, instrumental activities of daily living, access to the community, monitoring of self administered medications or other medical needs, and the monitoring of health status and physical condition. It shall be provided in home and community settings to enable an individual to maintain the health status and functional skills necessary to live in the community or participate in community activities.

"Personal emergency response systems" or "PERS" means an electronic device and monitoring service that enable certain individuals at high risk of institutionalization to secure help in an emergency. PERS services are limited to those individuals who live alone or are alone for significant parts of the day and who have no regular caregiver for extended periods of time, and who would otherwise require extensive routine supervision. 12VAC30-120-970 provides the service description, criteria, service units and limitations, and provider requirements for this service.

"Plan of care" means the written plan developed by the provider related solely to the specific services required by the individual to ensure optimal health and safety for the delivery of home and community based care.

"Preadmission Screening Authorization Form" means a part of the preadmission screening packet that must be filled out by a Level One screener on a preadmission screening team. It gives preadmission authorization to the provider and the individual for Medicaid services, and designates the type of service the individual is authorized to receive.

"Preadmission screening" or "PAS" means the process to (i) evaluate the functional, 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 services are available to meet the individuals' needs; and (iv) develop the service plan.

"Preadmission screening committee/team" or "PAS committee" or "PAS team" means the entity contracted with DMAS that is responsible for performing preadmission screening. For individuals in the community, this entity is a committee comprised of a nurse from the local health department and a social worker from the local department of social services. For individuals in an acute care facility who require preadmission screening, this entity is a team of nursing and social work staff. A physician must be a member of both the local committee and the acute care team.

"Private duty nursing" means individual and continuous nursing care provided by a registered nurse or a licensed practical nurse under the supervision of a registered nurse.

"Program" means the Virginia Medicaid program as administered by DMAS.

"Reconsideration" means the supervisory review of information submitted to DMAS or the designated preauthorization contractor in the event of a disagreement of an initial decision that is related to a denial in the reimbursement of services already rendered by a provider.

"Respite care" means services specifically designed to provide a temporary, periodic relief to the primary caregiver of an individual who is incapacitated or dependent due to AIDS. Respite care services include assistance with personal hygiene, nutritional support and environmental maintenance authorized as either episodic, temporary relief or as a routine periodic relief of the caregiver.

Consumer directed respite care services may only be offered to individuals who have an unpaid primary caregiver who requires temporary relief to avoid institutionalization of the individual. Respite services are designed to focus on the need of the unpaid caregiver for temporary relief and to help prevent the breakdown of the unpaid caregiver due to the physical burden and emotional stress of providing continuous support and care to the individual.

"Respite care agency" means a participating provider that renders services designed to prevent or reduce inappropriate institutional care by providing eligible individuals with respite care aides who provide respite care services.

"Service plan" means the written plan of services certified by the PAS team physician as needed by the individual to ensure optimal health and safety for the delivery of home and community based care.

"State Plan for Medical Assistance" or "the Plan" or "the State Plan" means the document containing the covered groups, covered services and their limitations, and provider reimbursement methodologies as provided for under Title XIX of the Social Security Act.

"Transition services" means set up expenses for individuals who are transitioning from an institution or licensed or certified provider operated living arrangement to a living arrangement in a private residence where the person is directly responsible for his own living expenses. 12VAC30-

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120-2010 provides the service description, criteria, service units and limitations, and provider requirements for this service.

"Uniform Assessment Instrument" or "UAI" means the standardized multidimensional questionnaire that assesses an individual's social, physical health, mental health, and functional abilities.

12VAC30-120-150. General coverage and requirements for home and community-based care services for individuals with AIDS. (Repealed.)

A. Coverage statement.

1. Coverage shall be provided under the administration of DMAS for individuals with HIV infection, who have been diagnosed and are experiencing the symptoms associated with AIDS, who would otherwise require the level of care provided in an inpatient hospital or nursing facility.

2. These services shall be medically appropriate and necessary to maintain these individuals in the community.

B. Patient eligibility requirements.

1. DMAS will apply the financial eligibility criteria contained in the State Plan for the categorically needy and the medically needy. Virginia has elected to cover the optional categorically needy group under 42 CFR 435.211, 435.231 and 435.217. The income level used for 435.211, 435.231 and 435.217 is 300% of the current Supplemental Security Income payment standard for one person.

Under this waiver, the coverage groups authorized under § 1902(a)(10)(A)(ii)(VI) of the Social Security Act will be considered as if they were institutionalized for the purpose of applying institutional deeming rules. The medically needy individuals participating in the waiver will also be considered as if they were institutionalized for the purpose of applying the institutional deeming rules.

2. Virginia will reduce its payment for home and community based services provided to an individual who is eligible for Medicaid services under 42 CFR 435.217 by that amount of the individual's total income (including amounts disregarded in determining eligibility) that remains after allowable deductions for personal maintenance needs, deductions for other dependents and medical needs have been made, according to the guidelines in 42 CFR 435.735 and § 1915(e)(3) of the Social Security Act as amended by the Consolidated Omnibus Budget Reconciliation Act of 1986. DMAS will reduce its payment for home and community based services provided to an individual eligible for home and community based waiver services by the amount that remains after deducting the following amounts in the following order from the individual's income:

a. For individuals to whom § 1924(d) applies:

(1) An amount for the maintenance needs of the individual that is equal to 300% of the categorically

needy income standard for a noninstitutionalized individual.

(2) For an individual with only a spouse living at home, the community spousal income allowance determined in accordance with § 1924(d) of the Social Security Act, the same as that applied for the institutionalized patient.

(3) For an individual with a family at home, an additional amount for the maintenance needs of the family determined in accordance with § 1924(d) of the Social Security Act, the same as that applied for the institutionalized patient.

(4) Amounts for incurred expenses for medical or remedial care that are not subject to payment by a third party including:

(a) Medicare and other health insurance premiums, deductibles, or coinsurance charges; and

(b) Necessary medical or remedial care recognized under state law, but not covered under the state's Medicaid Plan.

b. For all other individuals:

(1) An amount for the maintenance needs of the individual which is equal to 300% of the categorically needy income standard for a noninstitutionalized individual.

(2) For an individual with a family at home, an additional amount for the maintenance needs of the family which shall be equal to the medically needy income standard for a family of the same size.

(3) Amounts for incurred expenses for medical or remedial care that are not subject to payment by a third party including:

(a) Medicare and other health insurance premiums, deductibles, or coinsurance charges; and

(b) Necessary medical or remedial care recognized under state law, but not covered under the state's Medicaid Plan.

C. Assessment and authorization of home and community-based care services for individuals on the HIV/AIDS waiver.

1. To ensure that Virginia's home and community based care waiver programs serve only individuals who would otherwise be placed in an inpatient hospital or nursing facility, home and community based care services shall be considered only for individuals who meet DMAS' inpatient hospital or nursing facility criteria or for individuals who are at imminent risk, defined as within one month, of nursing facility admission. Home and community based care services shall be the critical service that enables the individual to remain at home rather than being placed in an inpatient hospital or nursing facility.

2. The individual's eligibility for home and community-based care services shall be determined by the preadmission screening team after completion of a

thorough assessment of the individual's needs and available supports. If an individual meets nursing facility or inpatient hospital criteria, the PAS team shall give the individual the choice of receiving community based care or care in a nursing facility. In order to meet inpatient hospital criteria, the individual must have had an inpatient hospital admission within three months of the request for waiver services for an HIV symptomatic or AIDS related reason.

3. Before Medicaid will assume payment responsibility of home and community based care services, preauthorization must be obtained from the designated preauthorization contractor on all services requiring preauthorization. Providers must submit the required information to the designated preauthorization contractor within 10 business days of initiating care. If the provider submits all required information to the designated preauthorization contractor within 10 business days of initiating care, services may be authorized beginning from the date the provider initiated services but not preceding the date of the physician's signature on the Medicaid Funded Long Term Care Service Authorization Form (DMAS 96). If the provider does not submit the required information to the designated preauthorization contractor within 10 business days of initiating care, the services may be authorized beginning from the date all required information was received by the designated preauthorization contractor, but not preceding the date of the PAS team physician's signature on the DMAS 96.

4. The PAS team shall explore alternative settings and/or services to provide the care needed by the individual. If nursing facility placement or a combination of other services are determined to be appropriate, the screening team shall initiate referrals for service. If Medicaid funded home and community based care services are determined to be the critical services to delay or avoid inpatient hospital or nursing facility placement, the PAS team shall develop an appropriate service plan and initiate referrals for service.

5. The individual may be determined to be eligible to receive services through the HIV/AIDS waiver by the preadmission screening team if:

a. The physician who is part of the designated preadmission screening team specifically states the individual has a diagnosis of AIDS or is HIV symptomatic.

b. The preadmission screening team can document that the individual is experiencing medical and functional symptoms associated with AIDS that would, in the absence of waiver services, require the level of care provided in a hospital, or nursing facility, the cost of which would be reimbursed under the State Medicaid Plan. Individuals who would revert to a nursing facility level of care without continuation of waiver services will be allowed to continue to participate in the waiver.

6. Home and community based care services shall not be provided to any individual who resides in a nursing facility, an intermediate care facility for the mentally retarded, a hospital, an assisted living facility licensed or certified by DSS, or a group home licensed by the Department of Mental Health, Mental Retardation and Substance Abuse Services. Additionally, home and community based care services shall not be provided to any individual who resides outside of the physical boundaries of the Commonwealth, with the exception of brief periods of time as approved by DMAS or the designated preauthorization contractor. Brief periods of time may include, but are not necessarily restricted to, vacation or illness.

7. The average annual cost of care for home and community based care services shall not exceed the average annual cost of inpatient hospital or nursing facility care. For purposes of this subdivision, the average annual cost of care for home and community based care services shall include all costs of all Medicaid covered services that would actually be received by individuals. The average annual cost of nursing facility care shall be determined by DMAS and shall be updated annually.

8. Individuals should not be screened multiple times within a short period of time for the same type of service. Preadmission screenings are valid for the following periods of time: (i) months 0 up to 6 no updates needed; (ii) months 6 up to 12 update needed (do not submit for reimbursement); and (iii) over 12 months old new screening must be completed (submit for reimbursement).

D. Appeals. Recipient appeals shall be considered pursuant to 12VAC30-110-10 through 12VAC30-110-380. Provider appeals shall be considered pursuant to 12VAC30-10-1000 and 12VAC30-20-500 through 12VAC30-20-560.

12VAC30-120-160. General conditions and requirements for all providers for home and community based care services participating providers. (Repealed.)

A. All providers must meet the general requirements and conditions for provider participation. In addition, there are specific requirements for each of the service providers (case management, personal care, respite care private duty nursing, enteral nutrition, consumer directed personal assistance services, and consumer directed respite care services) which are set forth in 12VAC30-120-155 through 12VAC30-120-201.

B. General requirements. Providers approved for participation shall, at a minimum, perform the following activities:

1. Immediately notify DMAS, in writing, of any change in the information which the provider previously submitted to DMAS to include the provider's physical and mailing addresses, executive staff and officers, and contact person's name, telephone number, and fax number.

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~~2. Assure freedom of choice to individuals in seeking medical care from any institution, pharmacy, practitioner, or other provider qualified to perform the service or services required and participating in the Medicaid Program at the time the service or services were performed.~~

~~3. Assure the individual's freedom to reject medical care and treatment.~~

~~4. Accept referrals for services only when staff is available to initiate services.~~

~~5. Provide services and supplies to individuals in full compliance with (i) Title VI of the Civil Rights Act of 1964 (42 USC § 2000 et seq.); (ii) § 504 of the Rehabilitation Act of 1973 (29 USC § 70 et seq.); (iii) Title II of the Americans with Disabilities Act of 1990 (42 USC § 126 et seq.); and (iv) all other applicable state and federal laws and regulations.~~

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

~~7. Charge DMAS for the provision of services and supplies to individuals in amounts not to exceed the provider's usual and customary charges to the general public.~~

~~8. Accept Medicaid payment from the first day of eligibility.~~

~~9. Accept as payment in full the amount established by DMAS.~~

~~10. Use program designated billing forms for submission of charges.~~

~~11. Maintain and retain business and professional records sufficient to document fully and accurately the nature, scope and details of the health care provided.~~

~~a. Such records shall be retained for at least five years from the last date of service or as provided by applicable federal or state laws, whichever period is longer. If an audit is initiated within the required retention period, the records shall be retained until the audit is completed and every exception resolved. Records of minors shall be kept for at least five years after such minor has reached the age of 18 years.~~

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

~~12. Furnish to authorized state and federal personnel, in the form and manner requested, access to records and facilities.~~

~~13. Disclose, as requested by DMAS, all financial, beneficial ownership, equity, surety, or other interests in any and all firms, corporations, partnerships, associations,~~

~~business enterprises, joint ventures, agencies, institutions, or other legal entities providing any form of health care services to recipients of Medicaid.~~

~~14. Comply with all Health Insurance Portability and Accountability Act (HIPAA) guidelines.~~

~~15. When ownership of the provider agency changes, DMAS shall be notified within 15 calendar days prior to the date of the change.~~

~~C. Requests for participation will be screened by DMAS or the designated contractor to determine whether the provider applicant meets the basic requirements for participation.~~

~~D. For DMAS to approve contracts with home and community based care providers, providers must meet staffing, financial solvency, disclosure of ownership and assurance of comparability of services requirements.~~

~~E. In addition to compliance with the general conditions and requirements, all providers enrolled by DMAS shall adhere to the conditions of participation outlined in their individual provider agreements and in the applicable DMAS provider service manual.~~

~~F. DMAS is responsible for assuring continued adherence to provider participation standards. DMAS shall conduct ongoing monitoring of compliance with provider participation standards and DMAS policies.~~

~~G. Individual choice of provider agencies. If there is more than one approved provider agency offering services in the community, the individual will have the option of selecting the provider agency of his choice from among those agencies that can appropriately meet the individual's needs.~~

~~H. If a participating provider wishes to voluntarily terminate his participation in Medicaid, the provider must give DMAS written notification 30 days prior to the desired termination date.~~

~~I. Termination of provider participation. DMAS may administratively terminate a provider from participation upon 30 days' written notification. DMAS may also cancel a provider agreement immediately or may give notification in the event of a breach of the provider agreement by the provider as specified in the DMAS provider agreement. Payment by DMAS is prohibited for services provided to individuals subsequent to the date specified in the termination notice. DMAS may terminate the provider's Medicaid provider agreement pursuant to § 32.1-325 of the Code of Virginia and as may be required for federal financial participation. Such provider agreement terminations shall conform to 12VAC30-10-690 and Part XII (12VAC30-20-500 et seq.) of 12VAC30-20. DMAS shall not reimburse for services that may be rendered subsequent to such terminations.~~

~~J. Reconsideration of adverse actions. Adverse actions may include, but shall not be limited to disallowed payment of claims for services rendered that are not in accordance with DMAS policies and procedures, caseload restrictions, and~~

contract limitation or termination. The following procedures will be available to all providers when DMAS takes adverse action:

1. The reconsideration process shall consist of three phases:
 - a. A written response and reconsideration to the preliminary findings;
 - b. The informal conference; and
 - c. The formal evidentiary hearing.
2. The provider shall have 30 days to submit information for written reconsideration, 30 days from the date of the notice to request the informal conference, and 30 days to request the formal evidentiary hearing.
3. An appeal of adverse actions shall be heard in accordance with 12VAC30-10-1000 and Part XII (12VAC30-20-500 et seq.) of 12VAC30-20.

K. Section 32.1-325 of the Code of Virginia mandates that "Any such (Medicaid) agreement or contract shall terminate upon conviction of the provider of a felony." A provider convicted of a felony in Virginia or in any other of the 50 states or the District of Columbia must, within 30 days, notify the Virginia Medicaid Program of this conviction and relinquish its provider agreement. Reinstatement will be contingent upon provisions of the laws of the Commonwealth. Additionally, termination of a provider contract will occur as may be required for federal financial participation.

L. Participating provider agency's responsibility for the Medicaid Long Term Care Communication Form (DMAS-225). It is the responsibility of the provider agency to notify DMAS or the designated preauthorization contractor, in writing, when any of the following circumstances occur:

1. Home and community based care services are implemented.
2. An individual receiving services dies; or
3. An individual is discharged or terminated from services.

M. Participating provider agency's responsibility for the Medicaid Long Term Care Communication Form (DMAS-225). It is the responsibility of the provider agency to notify the local DSS, in writing, when any circumstances (including hospitalization) cause home and community based care services to cease or be interrupted for more than 30 days.

N. Changes or termination of care.

1. Decreases in the amount of authorized care.
 - a. The provider may decrease the amount of authorized care if the newly developed plan of care is appropriate and based on the needs of the individual. If the individual disagrees with the proposed decrease, the individual has the right to appeal to DMAS.

b. The participating provider is responsible for developing the new plan of care and calculating the new hours of service delivery.

e. The person responsible for supervising the individual's care shall discuss the decrease in care with the individual or family, document the conversation in the individual's record, and shall notify the designated preauthorization contractor and the individual or family of the change by letter. This letter shall give the individual the right to appeal.

2. Increases in the amount of authorized personal care. If a change in the individual's condition necessitates an increase in care, the participating provider shall assess the need for increase and, if appropriate, develop a plan of care for services to meet the changed needs. The provider may implement the increase in hours without approval from DMAS or the designated preauthorization contractor, if the amount of service does not exceed the amount established by DMAS or the designated preauthorization contractor, as the maximum for the level of care designated for that individual. Any increase to an individual's plan of care that exceeds the number of hours allowed for that individual's level of care or any change in the individual's level of care must be preauthorized by DMAS or the designated preauthorization contractor.

3. Nonemergency termination of home and community-based care services by the participating provider. The participating provider shall give the individual or family, or both, five days' written notification of the intent to terminate services. The letter shall provide the reasons for and effective date of the termination. The effective date of services termination shall be at least five days from the date of the termination notification letter. This includes a provider's voluntary termination of its provider agreement with DMAS.

4. Emergency termination of home and community-based care services by the participating provider. In an emergency situation when the health and safety of the individual or provider agency personnel is endangered, DMAS or the designated preauthorization contractor must be notified prior to termination. The five day written notification period shall not be required. If appropriate, the local DSS Adult or Child Protective Services must be notified immediately.

5. Nonemergency termination of home and community-based care services by DMAS, or the designated preauthorization contractor. The effective date of termination will be at least 10 days from the date of the termination notification letter. DMAS, or the designated preauthorization contractor, has the responsibility and the authority to terminate the receipt of home and community-based care services by the individual for any of these reasons:

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- a. ~~The home and community based care services are no longer the critical alternative to prevent or delay institutional placement;~~
- b. ~~The individual no longer meets the level of care criteria;~~
- c. ~~The individual's environment does not provide for his health, safety, and welfare; or~~
- d. ~~An appropriate and cost effective plan of care cannot be developed.~~

6. ~~If the individual disagrees with the service termination decision, DMAS Appeals Division shall conduct a review of the individual's service need as part of the appeals process. The individual, when requesting an appeal, should submit documentation to indicate why the decision to deny was incorrect. As a result of this review, DMAS Appeals Division will either uphold or overturn the termination decision. If the termination decision is upheld, the individual has the right to file a formal appeal to the local circuit court. The individual filing the appeal shall have a right to the continuation of services pending the final appeal decision pursuant to 12VAC30-110-100.~~

O. ~~Suspected abuse or neglect. Pursuant to §§ 63.2-1509 and 63.2-1606 through 63.2-1610 of the Code of Virginia, if a participating provider agency knows or suspects that an individual receiving home and community based care services is being abused, neglected, or exploited, the party having knowledge or suspicion of the abuse, neglect, or exploitation shall report this immediately to the local DSS Adult Protective Services or Child Protective Services, as appropriate, and to DMAS.~~

P. ~~DMAS shall conduct ongoing monitoring of compliance with provider participation standards and DMAS policies. A provider's noncompliance with DMAS regulations, policies, and procedures, as required in the provider's agreement with DMAS, may result in a denial of Medicaid payment or termination of the provider agreement.~~

Q. ~~Waiver desk reviews. DMAS will request, on an annual basis, information on every individual, that is used to assess the individual's ongoing need for Medicaid-funded long term care. With this request, the provider will receive a list that specifies the information that is being requested. If an individual is identified as not meeting criteria for the waiver, the individual will be given 10 days' notice of termination from services and be terminated from the waiver and will also be given appeal rights.~~

12VAC30-120-170. Case management services. (Repealed.)

A. ~~General. Case management services are offered to enable continuous assessment, coordination and monitoring of the needs of HIV/AIDS waiver individuals. Every HIV/AIDS waiver individual authorized for home and community based services shall be offered case management services as an adjunct to other offered services. A Medicaid eligible~~

~~individual may not be authorized for home and community-based services unless that individual is both diagnosed with AIDS or HIV and is experiencing symptoms that require delivery of a home and community based service other than case management. An individual authorized for home and community based services for conditions of AIDS may continue to receive case management services during periods when other home and community based services are not being utilized as long as receipt of case management services can be shown to continue to prevent the individual's institutionalization. In instances where a case management provider cannot be located, one of the other providers (personal/respite care provider, private duty nursing provider, or consumer directed service facilitation provider) may act as the case management provider as long as he meets the case management provider qualifications and is enrolled with DMAS to provide case management services. If an AIDS waiver individual requires case management services, this service shall be provided as a part of the AIDS waiver. There shall be no duplication of AIDS waiver case management services with other Medicaid state plan case management services.~~

B. ~~Special provider participation conditions. To be a participating case management provider the following conditions shall be met:~~

1. ~~The case management provider shall employ case management staff responsible for the reevaluation of need, monitoring of service delivery, revisions to the plan of care and coordination of services. Each case manager shall possess, at a minimum:~~

a. ~~A bachelor's degree in human services (i.e., social work, psychology, sociology, counseling, or a related field) or nursing;~~

b. ~~Knowledge of the infectious disease process (specifically HIV) and the needs of the terminally ill population, knowledge of the community service network and eligibility requirements and the application procedures for applicable assistance programs;~~

c. ~~Ability to access other health and social work professionals in the community to serve as members of a multidisciplinary team for reevaluation and coordination of services activities, ability to organize and monitor an integrated service plan for individuals with multiple problems and limited resources, ability to access (or have expertise in) medical and clinical expertise related to HIV infection and ability to demonstrate liaisons with clinical facilities providing diagnostic evaluation and/or treatment for individuals with HIV; and~~

d. ~~Skills in communication, service plan development, client advocacy and monitoring of a continuum of managed care.~~

~~Documentation of all staffs' credentials shall be maintained in the provider's personnel file for review by DMAS staff. Providers of case management may utilize the services of~~

volunteers or employees who do not meet these criteria to perform the day to day interactions with recipients individuals commonly included in the case management process. There shall be, however, a case manager responsible for supervision of these volunteers or employees to include at a minimum weekly case consultations, decision making related to the individual's plan of care and appropriateness for waiver services and training of the volunteers or employees interacting with the waiver individual. The use of volunteers or other employees to perform the day to day interactions does not relieve the case manager from responsibility for direct contact (as defined below) with the individual and overall responsibility for care management.

2. Designate a qualified staff person as case manager who shall:

- a. Complete a comprehensive initial assessment.
- b. Contact the waiver individual, at a minimum, once every 30 days. If the waiver individual has a volunteer or volunteers or other staff assigned for regular face to face contact, this contact by the case manager may be a telephone contact. Otherwise, the contact by the case manager shall be a face to face interaction. At a minimum, the case manager must have face to face contact with the individual quarterly.
- c. Contact the providers of direct waiver service or services, at a minimum, once every 30 days. Collateral contacts with other supports shall be made periodically, as determined by the needs of the individual and extent of the support system. Contacts must be documented in the individual's record.
- d. Maintain a file for each individual that includes:
 - (1) An ongoing progress report that documents all communications between the case manager and individual, providers, and other contacts. This must include the amount of time the case manager interacted with the individual on the telephone or face to face. If the case manager is supervising a volunteer or employee who is assigned to provide day to day case management interactions with the individual, the volunteer or employee must submit to the case manager a monthly summary of all interactions between the volunteer or employee and the individual;
 - (2) The individual's assessment documentation and documentation of reassessments of level of care and need for services conducted quarterly by the case manager and the individual's case management team;
 - (3) The initial plan of care and all subsequent revisions; and
 - (4) Communication from DMAS, physician, service providers, and any other parties related to the individual's Medicaid services or medical care.

e. Review of the plan of care every three months, or more frequently if necessary, and continue any revisions indicated by the changed needs or support of the individual. These reviews shall be documented in the individual's file. The documentation shall note all members of the case management team who provided input to the plan of care.

3. Maintain a ratio of case manager staff to individual caseload that allows optimum monitoring and reevaluation ability. The caseload ability of the case manager may vary according to other duties, availability of resources, stage of individuals in caseload, and utilization of volunteers.

12VAC30-120-180. Agency-directed personal care services. (Repealed.)

A. General. Agency directed personal care services may be offered to waiver individuals. Personal care may be offered either as the sole home and community based care service that avoids institutionalization or in conjunction with the other AIDS waiver services. Individuals may continue to work or attend post secondary school, or both, while they receive services under this waiver. The personal care assistant who assists the individual may accompany the individual to work or school or both and may assist the individual with personal needs while the individual is at work or school or both. DMAS will also pay for any personal care services that the assistant gives to the individual to assist him in getting ready for work or school or both or when he returns home. DMAS or the designated preauthorization contractor will review the individual's needs and the complexity of the disability when determining the services that will be provided to the individual in the workplace or school or both.

1. Effective July 1, 2011, agency directed personal care services shall be limited to 56 hours of medically necessary services per week for 52 weeks per year.
2. Individual exceptions may be granted based on criteria established by DMAS.

B. DMAS will not duplicate services that are required as a reasonable accommodation as a part of the Americans with Disabilities Act (ADA) (42 USC §§ 12131 through 12165) or the Rehabilitation Act of 1973. For example, if the individual's only need is for assistance during lunch, DMAS would not pay for the assistant to be with the individual for any hours extending beyond lunch. For an individual whose speech is such that he cannot be understood without an interpreter (not translation of a foreign language), or the individual is physically unable to speak or make himself understood even with a communication device, the assistant's services may be necessary for the length of time the individual is at work or school or both. Workplace or school supports through the HIV/AIDS waiver are not provided if the services are an employer's responsibility under the Americans with Disabilities Act or § 504 of the Rehabilitation Act.

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C. The provider agency must develop an individualized plan of care that addresses the individual's needs at home, at work or school and in the community. DMAS will not pay for the assistant to assist the enrolled individual with any functions related to the individual completing his job or school functions or for supervision time during work, school, or both.

D. Special provider participation conditions. The personal care provider shall:

1. Operate from a business office.

2. Employ (or subcontract with) and directly supervise a registered nurse who will provide ongoing supervision of all personal care aides.

a. The registered nurse shall be currently licensed to practice in the Commonwealth of Virginia and have at least two years of related clinical nursing experience (which may include work in an acute care hospital, public health clinic, home health agency, rehabilitation hospital, nursing facility, or as a licensed practical nurse (LPN)).

b. The registered nurse shall have a satisfactory work record, as evidenced by references from prior job experience, including no evidence of abuse, neglect, or exploitation of incapacitated or older adults and children. Providers are responsible for complying with § 32.1-162.9:1 of the Code of Virginia regarding criminal record checks. The criminal record check documentation shall be available for review by DMAS staff who are authorized by the agency to review these files, as a part of the utilization review process.

c. The registered nurse supervisor shall make an initial home assessment on or before the start of care for all new individuals admitted to personal care, when individuals are readmitted after being discharged from services, or are transferred from another personal care provider.

d. The registered nurse supervisor shall make supervisory visits as often as needed, but no fewer visits than provided as follows, to ensure both quality and appropriateness of services.

(1) A minimum frequency of these visits is every 30 days for individuals with a cognitive impairment, as defined herein, and every 90 days for individuals who do not have a cognitive impairment.

(2) The initial home assessment visit by the registered nurse shall be conducted to create the plan of care and assess individuals' needs. The registered nurse shall return for a follow up visit within 30 days after the initial visit to assess the individual's needs and make a final determination that there is no cognitive impairment. This determination must be documented in the individual's record by the registered nurse. Individuals who are determined to have a cognitive impairment will continue to have supervisory visits every 30 days.

(3) If there is no cognitive impairment, the registered nurse may give the individual or caregiver or both the option of having the supervisory visit every 90 days or any increment in between, not to exceed 90 days. The registered nurse must document this conversation in the individual's record and the option that was chosen.

(4) The provider has the responsibility of determining if 30 day registered nurse supervisory visits are appropriate for the individual. The provider may offer the extended registered nurse supervisory visits, or the agency may choose to continue the 30 day supervisory visits based on the needs of the individual. The decision must be documented in the individual's record.

(5) If an individual's personal care assistant is supervised by the provider's registered nurse less often than every 30 days and DMAS or the designated preauthorization contractor determines that the individual's health, safety, or welfare is in jeopardy, DMAS or the designated preauthorization contractor may require the provider's registered nurse to supervise the personal care aide every 30 days or more frequently than what has been determined by the registered nurse. This will be documented and entered in the individual's record.

e. During visits to the individual's home, the registered nurse shall observe, evaluate, and document the adequacy and appropriateness of personal care services with regard to the individual's current functioning status, medical, and social needs. The personal care aide's record shall be reviewed and the recipient's (or family's) satisfaction with the type and amount of service discussed. The registered nurse summary shall note:

(1) Whether personal care services continue to be appropriate.

(2) Whether the plan is adequate to meet the individual's needs or if changes need to be made in the plan of care.

(3) Any special tasks performed by the aide and the aide's qualifications to perform these tasks.

(4) Individual's satisfaction with the service.

(5) Hospitalization or change in the medical condition or functioning status of the individual.

(6) Other services received by the individual and the amount; and

(7) The presence or absence of the aide in the home during the registered nurse's visit.

f. A registered nurse shall be available to the personal care aide for conference pertaining to individuals being served by the aide and shall be available to aides by telephone at all times that the aide is providing services to personal care individuals.

g. The registered nurse supervisor shall evaluate the aides' performance and the individual's needs to identify any insufficiencies in the aide's abilities to function

competently and shall provide training as indicated. This shall be documented in the individual's record.

h. If there is a delay in the registered nurses' supervisory visits, because the individual was unavailable, the reason for the delay must be documented in the individual's record.

3. Employ and directly supervise personal care aides who provide direct care to personal care individuals. Each aide hired by the provider agency shall be evaluated by the provider agency to ensure compliance with qualifications required by DMAS. Each aide shall:

- a. Be able to read and write.
- b. Complete a minimum of 40 hours of training consistent with DMAS standards. Prior to assigning an aide to an individual, the provider agency shall ensure that the aide has satisfactorily completed a training program consistent with DMAS standards.
- c. Be physically able to do the work.
- d. Have a satisfactory work record, as evidenced by references from prior job experience, including no evidence of abuse, neglect or exploitation of incapacitated or older adults and children. Providers are responsible for complying with § 32.1-162.9:1 of the Code of Virginia regarding criminal record checks. The criminal record check shall be available for review by DMAS staff who are authorized by the agency to review these files; and
- e. Not be (i) the parents of minor children who are receiving waiver services or (ii) spouses of individuals who are receiving waiver services.

Payment may be made for services furnished by other family members when there is objective written documentation as to why there are no other providers available to provide the care. These family members must meet the same requirements as aides who are not family members.

E. Required documentation for individuals' records. The provider agency shall maintain all records of each personal care recipient. These records shall be separate from those of nonhome and community based care services, such as companion or home health services. These records shall be reviewed periodically by the DMAS staff who are authorized by DMAS to review these files during utilization review. At a minimum these records shall contain:

- 1. The most recently updated Long Term Care Uniform Assessment Instrument (UAI), documentation of any inpatient hospital admissions, the Medicaid Funded Long Term Care Service Authorization form (DMAS 96), the Screening Team Service Plan for Medicaid Funded Long Term Care (DMAS 97), the Consent to Exchange Information (DMAS 20), all Provider Agency Plans of Care (DMAS 97A), all Community Based Care Recipient Assessment Reports (DMAS 99), all Patient

Information Forms (DMAS 122), and the Service Agreement Between the Consumer and the Service Facilitator.

- 2. The initial assessment by a registered nurse completed prior to or on the date that services are initiated.
- 3. Registered nurses' notes recorded and dated during any significant contacts with the personal care aide and during supervisory visits to the individual's home.
- 4. All correspondence to the individual, DMAS, the designated preauthorization contractor.
- 5. Reassessments made during the provision of services.
- 6. Significant contacts made with family, physicians, DMAS, the designated preauthorization contractor, formal and informal service providers and all professionals related to the individual's Medicaid services or medical care.
- 7. All Provider Aide/LPN Records (DMAS 90). The Provider Aide/LPN Record shall contain:
 - a. The specific services delivered to the individual by the aide and the individual's response to this service;
 - b. The aide's daily arrival and departure times;
 - c. The aide's weekly comments or observations about the individual, including observations of the individual's physical and emotional condition, daily activities, and responses to services rendered; and
 - d. The aide's and individual's, or responsible caregiver's, weekly signatures, including the date, to verify that personal care services have been rendered during that week as documented in the record. An employee of the provider cannot sign for the individual unless he is a family member or legal guardian of the individual. Signatures, times and dates shall not be placed on the aide record prior to the last date of the week that the services are delivered.
- 8. All individual progress reports.

12VAC30-120-190. Agency directed respite care services. (Repealed.)

A. General. Agency directed respite care services may be offered to individuals as an alternative to institutional care. Respite care may be offered to individuals in their homes or places of residence, in a Medicaid certified nursing facility, or in a licensed respite care facility. Respite care is distinguished from other services in the continuum of long-term care because it is specifically designed to focus on the need of the unpaid primary caregiver for temporary relief. Respite care may only be offered to individuals who have an unpaid primary caregiver living in the home who requires temporary relief to avoid institutionalization of the individual. Effective July 1, 2011, the authorization of respite care is limited to 480 hours per year per individual. An individual who transfers to a different provider or is discharged and readmitted into the HIV/AIDS waiver program within the same year will not receive an additional 480 hours of respite

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care. Reimbursement shall be made on an hourly basis not to exceed a total of 480 hours per year. If an individual is receiving both agency directed and consumer directed respite care, the total number of respite care hours cannot exceed a total of 480 hours combined per year.

B. Special provider participation conditions. To be approved for respite care contracts with DMAS, the respite care provider shall:

1. Operate from a business office.

2. Employ (or subcontract) with and directly supervise a registered nurse who will provide ongoing supervision of all respite care aides.

a. The registered nurse shall be currently licensed to practice in the Commonwealth and have at least two years of related clinical nursing experience which may include work in an acute care hospital, public health clinic, home health agency, rehabilitation hospital, nursing facility or as an LPN.

b. The registered nurse shall have a satisfactory work record, as evidenced by references from prior job experience, including no evidence of abuse, neglect, or exploitation of incapacitated or older adults and children. Providers are responsible for complying with § 32.1-162.9:1 of the Code of Virginia regarding criminal record checks. The criminal record check shall be available for review by DMAS staff who are authorized by the agency to review these files.

c. Based on continuing evaluations of the aides' performance and the individuals' needs, a registered nurse supervisor shall identify any insufficiencies in the aides' abilities to function competently and shall provide training as indicated.

d. A registered nurse supervisor shall make an initial home assessment visit on or before the start of care for any individual admitted to respite care.

e. A registered nurse supervisor shall make supervisory visits as often as needed to ensure both quality and appropriateness of services.

(1) When respite care services are received on a routine basis, the minimum acceptable frequency of these visits shall be every 30 days.

(2) When respite care services are not received on a routine basis, but are episodic in nature, a registered nurse shall not be required to conduct a supervisory visit every 30 days. Instead, a registered nurse shall conduct the initial home visit with the respite care aide on or before the start of care and make a second home visit during the second respite care visit.

(3) When respite care services are routine in nature and offered in conjunction with personal care, the supervisory visit conducted for personal care services may serve as the registered nurse supervisory visit for respite care. However, the registered nurse supervisor shall document

supervision of respite care separately from the personal care documentation. For this purpose, the same individual record can be used with a separate section for respite care documentation.

f. During visits to the individual's home, the registered nurse shall observe, evaluate, and document the adequacy and appropriateness of respite care services with regard to the individual's current functioning status, medical, and social needs. The respite care aide's record shall be reviewed and the recipient's or family's satisfaction with the type and amount of service discussed. The registered nurse shall document in a summary note:

(1) Whether respite care services continue to be appropriate;

(2) Whether the plan of care is adequate to meet the individual's needs or if changes need to be made in the plan of care;

(3) The individual's satisfaction with the service;

(4) Any hospitalization or change in the medical condition or functioning status of the individual;

(5) Other services received by the individual and the amount of services received; and

(6) The presence or absence of the aide in the home during the registered nurse's visit.

g. A registered nurse shall be available to the respite care aide for conference pertaining to individuals being served by the aide and shall be available to the aides by telephone at all times that aides are providing services to respite care individuals.

h. If there is a delay in the registered nurse's supervisory visits because the individual is unavailable, the reason for the delay must be documented in the individual's record.

3. Employ and directly supervise respite care aides who provide direct care to respite care individuals. Each aide hired by the provider agency shall be evaluated by the provider agency to ensure compliance with qualifications as required by DMAS. Each aide must:

a. Be able to read and write in English to the degree necessary to perform the tasks expected.

b. Have completed a minimum 40 hours of training consistent with DMAS standards. Prior to assigning an aide to an individual, the provider agency shall ensure that the aide has satisfactorily completed a training program consistent with DMAS standards.

c. Be evaluated in his job performance by the registered nurse supervisor.

d. Be physically able to do the work.

e. Have a satisfactory work record, as evidenced by references from prior job experience, including no evidence of abuse, neglect, or exploitation of incapacitated or older adults and children. Providers are

responsible for complying with § 32.1-162.9:1 of the Code of Virginia regarding criminal record checks. The criminal record check documentation shall be available for review by DMAS staff who are authorized by the agency to review these files.

f. Not be (i) the parents of minor children who are receiving waiver services or (ii) the spouses of individuals who are receiving waiver services.

Payment may be made for services furnished by other family members when there is objective written documentation as to why there are no other providers available to provide the care. These family members must meet the same requirements as aides who are not family members.

4. The respite care agency may employ a licensed practical nurse (LPN) to perform skilled respite care services which shall be reimbursed by DMAS under the following circumstances:

a. The LPN shall be currently licensed to practice in the Commonwealth. The LPN must have a satisfactory work record, as evidenced by references from prior job experience, including no evidence of abuse, neglect, or exploitation of incapacitated or older adults and children. Providers shall be responsible for complying with § 32.1-162.9:1 of the Code of Virginia regarding criminal record checks. The criminal record check documentation shall be available for review by DMAS staff who are authorized by the agency to review these files.

b. The individual has a need for routine skilled care that cannot be provided by unlicensed personnel. This individual would typically require a skilled level of care if in a nursing facility (i.e., individuals on a ventilator, individuals requiring nasogastric or gastrostomy feedings, etc.).

c. No other person in the individual's support system is able to supply the skilled component of the individual's care during the caregiver's absence.

d. The individual is unable to receive skilled nursing visits from any other source which could provide the skilled care usually given by the caregiver.

e. The agency must document in the individual's record the circumstances which require the provision of services by an LPN.

f. A physician's order for the skilled respite service, on the Home Health Certification and Plan of Care (CMS-485) is obtained prior to the initiation of service and is updated every six months. This order must specifically identify the skilled tasks to be performed.

The registered nurse shall review the medications and treatments rendered by the LPN every 60 days and verify the physician's orders.

C. Required documentation for individuals' records. The provider agency shall maintain all records of each respite care

individual. These records shall be separate from those of nonhome and community based care services, such as companion or home health services. These records shall be reviewed periodically by the DMAS staff who are authorized by the agency to review these files during utilization review. At a minimum these records shall contain:

1. The most recently updated Long Term Care Uniform Assessment Instrument (UAI), documentation of any inpatient hospital admissions, the Medicaid Funded Long-Term Care Service Authorization form (DMAS 96), the Screening Team Service Plan for Medicaid Funded Long-Term Care (DMAS 97), all Community Based Care Assessment Reports (DMAS 99), all Provider Agency Plans of Care (DMAS 97A and CMS 485), and all Patient Information Forms (DMAS 122).

2. The initial assessment by a registered nurse completed prior to or on the date services are initiated.

3. Registered nurse's notes recorded and dated during significant contacts with the respite care aide or LPN and during supervisory visits to the individual's home.

4. All correspondence to the individual, DMAS, and the designated preauthorization contractor.

5. Reassessments made during the provision of services.

6. Significant contacts made with family, physicians, DMAS, the designated preauthorization contractor, formal and informal service providers, and all professionals related to the individual's Medicaid services or medical care.

7. All Provider Aide/LPN Records (DMAS 90). The provider aide/LPN record shall contain:

a. The specific services delivered to the individual by the respite care aide, or LPN, and the individual's response to this service.

b. The daily arrival and departure times of the aide or LPN for respite care services.

c. Comments or observations recorded weekly about the individual. Aide or LPN comments shall include but not be limited to observation of the individual's physical and emotional condition, daily activities, and the individual's response to services rendered.

d. The signatures of the aide, or LPN, and the individual once each week to verify that respite care services have been rendered.

Signatures, times, and dates shall not be placed on the aide record prior to the last date of the week that the services are delivered. If the individual is unable to sign the aide record, it must be documented in the individual's record how or who will sign in his place. An employee of the provider shall not sign for the individual unless he is a family member or legal guardian of the individual and has direct knowledge of the care received by the individual.

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8. All recipient progress reports.

12VAC30-120-195. ~~Enteral nutrition products.~~ (Repealed.)

A. General requirements and conditions.

1. ~~Enteral nutrition products shall only be provided by enrolled durable medical equipment (DME) providers as defined in 12VAC30-50-165.~~

2. ~~DME providers shall adhere to all applicable DMAS policies, laws, and regulations for enteral nutrition products. DME providers shall also comply with all other applicable Virginia laws and regulations requiring licensing, registration, or permitting. Failure to comply with such laws and regulations shall result in denial of coverage for enteral nutrition that is regulated by such licensing agency or agencies.~~

B. Service units and service limitations.

1. ~~DME and supplies must be furnished pursuant to the AIDS Waiver Enteral Nutrition Evaluation Form (DMAS-116).~~

2. ~~A DMAS 116 shall be required for all AIDS waiver recipients receiving enteral nutrition products. Enteral nutrition products that do not contain a legend drug may be obtained for the individual receiving waiver services for conditions of AIDS and HIV symptomatic when the enteral nutrition product is certified by the practitioner as the primary source of nutrition, is administered orally or through a nasogastric or gastrostomy tube, and is necessary for the successful implementation of the individual's health care plan and the individual is not able to purchase enteral nutrition products through other means. Coverage of enteral nutrition products does not include the provision of routine infant formula. The amount of enteral nutrition products that shall be reimbursed by Medicaid shall be limited by medical necessity and cost effectiveness.~~

3. ~~"Primary source" means that enteral nutrition products are medically indicated for the treatment of the individual's condition if the individual is unable to tolerate other forms of nutrition. The individual may either be unable to take any oral nutrition or the oral intake that can be tolerated is inadequate to sustain life. The focus must be on the maintenance of weight and strength commensurate with the individual's medical condition.~~

4. ~~The DMAS 116 shall contain a practitioner's order for the enteral nutrition products that are medically necessary to treat the diagnosed condition and the individual's functional limitation. The order for enteral nutrition products must be justified in the written documentation either on the DMAS 116 or attached thereto. The DMAS 116 shall be valid for a maximum period of six months. The validity of the DMAS 116 shall terminate when the individual's medical need for the prescribed enteral nutrition products either ends or when the enteral nutrition products are no longer the primary source of nutrition.~~

5. ~~A face to face nutritional assessment completed by trained clinicians (e.g., physician, physician assistant, nurse practitioner, registered nurse, or a registered dietitian) must be completed as required documentation of the need for enteral nutrition products for both the initial order and every six months. The DMAS 116 is required every six months.~~

6. ~~The DMAS 116 shall not be changed, altered, or amended after the practitioner has signed it. As indicated by the individual's condition, if changes are necessary in the ordered enteral nutrition products, the DME provider must obtain a new DMAS 116. New DMAS 116s must be signed and dated by the practitioner within 60 days from the time the ordered enteral nutrition products are furnished by the DME provider. The order cannot be back-dated to cover prior dispensing of enteral nutrition products. If the order is not signed within 60 days of the service initiation, then the date the order is signed becomes the effective date.~~

7. ~~Preauthorization of enteral nutrition products is not required. The DME provider must assure that there is a valid DMAS 116 completed every six months in accordance with DMAS policy and on file for all Medicaid individuals for whom enteral nutrition products are provided. The DME provider is further responsible for assuring that enteral nutrition products are provided in accordance with DMAS reimbursement criteria. Upon post payment review, DMAS will deny reimbursement for any enteral nutrition products that have not been provided and billed in accordance with these regulations.~~

8. ~~DMAS shall have the authority to determine that the DMAS 116 is valid for less than six months based on medical documentation submitted.~~

C. Provider responsibilities.

1. ~~The DME provider must provide the enteral nutrition products as prescribed by the practitioner on the DMAS-116. Orders shall not be changed unless the DME provider obtains a new DMAS 116 prior to ordering or providing the enteral nutrition products to the individual.~~

2. ~~The practitioner's order (DMAS 116) must state that the enteral nutrition products are the primary source of nutrition for the individual and specify either a brand name of the enteral nutrition product being ordered or the category of enteral nutrition products that must be provided. If a practitioner orders a specific brand of enteral nutrition product, the DME provider must supply the brand prescribed. The practitioner order must include the daily caloric order and the route of administration for the enteral nutrition product. Supporting documentation may be attached to the DMAS 116 but the entire order must be on the DMAS 116.~~

3. ~~Enteral nutrition products must be furnished exactly as ordered by the practitioner on the DMAS 116. The DMAS 116 and any supporting verifiable documentation~~

must be complete (signed and dated by the practitioner) and in the DME provider's possession within 60 days from the time the ordered enteral nutrition product is initially furnished by the DME provider.

4. The DMAS 116 may be completed by the registered nurse, registered dietitian, physician, physician assistant, or nurse practitioner, but it must be signed and dated by the physician.

5. The DMAS 116 must be signed and dated by the assessor and the practitioner within 60 days of the DMAS 116 begin service date. If the DMAS 116 is not signed and dated by the assessor and the practitioner within 60 days of the DMAS 116 begin service date, the DMAS 116 will not become valid until the date of the practitioner's signature.

6. The DMAS 116 must include all of the following elements:

- a. Height (or length for pediatric patients);
- b. Weight. For initial assessments, indicate the individual's weight loss over time;
- c. Tolerance of enteral nutrition product (e.g., is the individual experiencing diarrhea, vomiting, constipation). This element is only required if the individual is already receiving enteral nutrition products;
- d. Indication of whether or not the enteral nutrition product is the primary or sole source of nutrition;
- e. Route of administration;
- f. The daily caloric order and the number of calories per package, can, etc.;
- g. Extent to which the quantity of the enteral nutrition product is available through WIC; and
- h. Title, signature, and date of the assessor and the practitioner.

7. The DME provider shall retain a copy of the DMAS 116 and all supporting verifiable documentation on file for DMAS' post payment review purposes. DME providers shall not create or revise DMAS 116s or supporting documentation for this service after the initiation of the post payment review process. Practitioners shall not complete, or sign and date, DMAS 116s once the post payment review has begun.

8. DME providers shall retain copies of the DMAS 116 and all applicable supporting documentation on file for post payment reviews. Enteral nutrition products that are not ordered on the DMAS 116 for which reimbursement has been made by Medicaid will be denied. Supporting documentation is allowed to justify the medical need for enteral nutrition products. Supporting documentation does not replace the requirement of a properly completed DMAS 116. The dates of the supporting documentation must coincide with the dates of service on the DMAS 116 and the medical practitioner providing the supporting documentation must be identified by name and title. DME

providers shall not create or revise DMAS 116s or supporting documentation for enteral nutrition products provided after the post payment review has been initiated.

9. To receive reimbursement, the DME provider is expected to:

- a. Deliver only the item or items ordered by the practitioner and approved by DMAS or the designated preauthorization contractor;
- b. Deliver only the quantities ordered by the practitioner and approved by DMAS or the designated preauthorization contractor;
- c. Deliver only the item or items for the periods of service covered by the practitioner's order and approved by DMAS or the designated preauthorization contractor;
- d. Maintain a copy of the practitioner's order and all verifiable supporting documentation for all DME ordered; and
- e. Document all supplies provided to an individual in accordance with the practitioner's orders. The delivery ticket must document the individual's name and Medicaid number, the date of delivery, what was delivered, and the quantity delivered.

10. DMAS will deny payment to the DME provider if any of the following occur:

- a. No presence of a current, fully completed DMAS 116 appropriately signed and dated by the practitioner;
- b. Documentation does not verify that the item was provided to the individual;
- c. Lack of medical documentation, signed by the practitioner to justify the enteral nutrition products; or
- d. Item is noncovered or does not meet DMAS criteria for reimbursement.

11. The enteral nutrition product vendor must provide the supplies as prescribed by the practitioner on the DMAS 116. Orders shall not be changed unless the vendor obtains a new DMAS 116 prior to ordering or providing the enteral nutrition product to the individual.

12. Medicaid shall not provide reimbursement to the vendor for services provided prior to the date prescribed by the practitioner or prior to the date of the delivery or when services are not provided in accordance with published policies and procedures. If reimbursement is denied for one of these reasons, the DME provider may not bill the Medicaid recipient for the service that was provided.

13. The following criteria must be satisfied through the submission of adequate and verifiable documentation satisfactory to DMAS. Medically necessary DME and supplies shall be;

- a. Ordered by the practitioner on the DMAS 116;
- b. A reasonable and necessary part of the individual's treatment plan;

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- e. Consistent with the individual's diagnosis and medical condition, particularly the functional limitations and symptoms exhibited by the individual;
- d. Not furnished solely for the convenience, safety, or restraint of the individual, the family, attending practitioner, or other practitioner or supplier;
- e. Consistent with generally accepted professional medical standards (i.e., not experimental or investigational); and
- f. Furnished at a safe, efficacious, and cost effective level suitable for use in the individual's home environment.

12VAC30-120-201. Private duty nursing services. (Repealed.)

A. General. Private duty nursing services shall be offered to individuals enrolled in the HIV/AIDS waiver when such services are deemed necessary by the attending physician to avoid institutionalization by assessing and monitoring the medical condition, providing interventions, and communicating with the physician regarding changes in the individual's status. The hours of private duty nursing shall be limited by medical necessity. The purpose of private duty nursing is to provide for ongoing monitoring, continued nursing supervision, and skilled care. This service should not be authorized when intermittent skilled nursing visits could be utilized. Private duty nursing services should not be provided simultaneously with LPN respite care.

B. Special provider participation conditions. To be approved for private duty nursing contracts with DMAS, the private duty nursing provider shall:

1. Be a home health agency licensed or certified by the Virginia Department of Health for Medicaid participation and with which DMAS has a signed participation agreement for private duty nursing services.
2. Demonstrate prior successful health care delivery.
3. Operate from a business office.
4. Employ (or subcontract with) and directly supervise a registered nurse or a licensed practical nurse.
 - a. The registered nurse shall be currently licensed to practice in the Commonwealth and have at least two years of related clinical nursing experience, which may include work in an acute care hospital, public health clinic, home health agency, rehabilitation hospital, nursing facility, or as an LPN.
 - b. The LPN shall be currently licensed to practice in the Commonwealth.

C. Limits to services.

1. Private duty nursing shall be reimbursed for a maximum of 16 hours within a 24-hour period per household.
2. In no instance shall the designated preauthorization contractor approve an ongoing plan of care or ongoing multiple plans of care per household that result in approval

of more than 16 hours of private duty nursing in a 24-hour period per household.

3. Congregate private duty nursing. When two waiver individuals share a residence, there shall be a maximum ratio of one private duty nurse to two waiver individuals. When three or more waiver individuals share a residence, ratios will be determined by the combined needs of the individuals.

D. Provider reimbursement.

1. All private duty nursing services shall be reimbursed at an hourly rate determined by DMAS.
2. If the AIDS Waiver individual needs skilled nursing and has another payer (Medicare or private insurance), the skilled nursing must be covered by the other payer or payers first. Whatever skilled nursing services are not covered under the primary insurance, Medicaid may cover. There shall be no duplication of nursing services with other payers or other Medicaid State Plan services.
3. RN/LPN shall not practice without signed physician orders specifically identifying skilled tasks to be performed for the individual.
4. The registered nurse shall review the medications and treatments rendered by the LPN every 60 days and verify the physician's orders.

E. Assessment and plan of care requirements.

1. The case manager shall be responsible for ensuring that the assessment, care planning, monitoring, and review activities required by DMAS are accomplished and documented, consistent with DMAS requirements.
2. Development of the plan of care.
 - a. Upon completion of the required assessments and a determination that the individual needs substantial and ongoing skilled nursing care, the hours of nursing service required shall be developed and approved by the designated preauthorization contractor.
 - b. At a minimum, the plan of care shall include:
 - (1) Identification of the type, frequency, and amount of nursing care needed. This shall include the name of the provider agency, whether the nurse is an RN or LPN, and verification that the nurse is licensed to practice in the Commonwealth.
 - (2) Identification of the type, frequency, and amount of care that the family or other informal caregivers shall provide.

F. Individual selection of waiver services.

1. The case manager shall give the legally competent individual, or the individual's legal guardian, or the parent of a minor child, the choice of waiver services or institutionalization. This choice must be documented.
2. If waiver services are chosen, the individual applicant or his legally responsible entity will also be given the

opportunity to choose the providers of services if more than one provider is available to render the services. This choice must also be documented. If more than one waiver individual will reside in the home, one waiver provider shall be chosen to provide all private duty nursing services for all waiver individuals in the home. Only one nurse will be authorized to care for every two waiver individuals in a residence. In the instance when more than two waiver individuals share a residence, nursing ratios will be determined by the designated preauthorization contractor based on the needs of all the individual living together.

3. The designated preauthorization contractor or DMAS shall review and approve the assessment and plan of care prior to the individual's admission to community waiver services, and prior to Medicaid payment for any services related to the waiver plan of care.

G. Reevaluation requirements and utilization review.

1. The need for reevaluations shall be determined by the case manager, registered nurse, DMAS, or the designated preauthorization contractor. Reevaluations shall be conducted by these professionals as required by the individual's needs and situation and at any time when a change in the individual's condition indicates the need for reevaluation.

2. Utilization review shall be conducted by DMAS on all providers to ensure consumer satisfaction, the adherence to state and federal provider qualifications, and documentation requirements. DMAS will also ensure the appropriate billing practices for waiver services.

H. Registered nurse supervisory duties:

1. The registered nurse shall make, at a minimum, a visit every 30 days to the individual's home to assess the individual's/caregiver's satisfaction with the services being provided.

2. The registered nurse shall review medications and treatments rendered by the private duty nurse every 60 days and verify orders with the physician signature.

3. The registered nurse shall review all discharge orders written upon the individual's discharge from the hospital and provide a copy of such orders to the private duty nurse rendering care to the individual in his home.

a. The RN shall make an initial assessment visit prior to the start of care for any individual admitted to private duty nursing.

b. During visits to the individual's home, the registered nurse shall observe, evaluate, and document the adequacy and appropriateness of private duty nursing services with regard to the individual's current functioning status, medical, and social needs. The individual's or family's satisfaction with the type and amount of service must be discussed. The registered nurse shall document in a summary note:

(1) Whether private duty nursing services continue to be appropriate;

(2) Whether the plan of care is adequate to meet the individual's needs or if changes need to be made to the plan of care;

(3) The individual's satisfaction with the service;

(4) Any hospitalization or change in the medical condition or functioning status of the individual; and

(5) Other services received and their amount.

I. Required documentation for individuals' records. The provider agency shall maintain all records of each individual receiving private duty nursing. These records shall be separate from those of other nonhome and community based care services, such as companion or home health services. These records shall be reviewed periodically by the DMAS staff who are authorized by DMAS to review these files during utilization review. At a minimum, the record shall contain:

1. The most recently updated Long Term Care Uniform Assessment Instrument (UAI), documentation of any inpatient hospital admissions, the Medicaid Funded Long-Term Care Service Authorization Form (DMAS 96), the Screening Team Service Plan for Medicaid Funded Long-Term Care (DMAS 97), all Home Health Certification and Plans of Care (CMS 485), Skills Checklist for Private Duty Nursing (DMAS 259), all Patient Information Forms (DMAS 122) and all signed physician's orders.

2. The initial assessment by the registered nurse completed prior to or on the date services were initiated.

3. Registered nurses' notes recorded and dated during visits to the individual's home. The registered nurses' notes shall contain:

a. The specific services delivered to the individual and the individual's response;

b. Comments or observations about the individual. Comments shall include but not be limited to observation of the individual's physical and emotional condition, daily activities, and the individual's response to the services rendered;

c. The signature by the registered nurse or the licensed practical nurse and the individual at least once a week to verify that private duty nursing services have been rendered. This record must be maintained in the individual's record.

4. All correspondence to the individual, DMAS, and the designated preauthorization contractor.

5. Reassessments made during the provision of services.

6. Significant contacts made with family, physicians, DMAS, the designated preauthorization contractor, formal and informal service providers and all professionals related to the individual's Medicaid services or medical care.

Regulations

~~Copies of all nurses' records shall be subject to review by state and federal Medicaid representatives.~~

~~If an individual who is receiving private duty nursing is also receiving any other service (meals on wheels, companion, home health services, etc.), the nurse record shall indicate that these services are also being received by the individual.~~

~~There should be no duplication of nursing services with other Medicaid State Plan services or payors.~~

VA.R. Doc. No. R13-3218; Filed April 17, 2013, 10:28 a.m.



TITLE 16. LABOR AND EMPLOYMENT

SAFETY AND HEALTH CODES BOARD

Final Regulation

REGISTRAR'S NOTICE: The following regulatory action is exempt from the Administrative Process Act in accordance with § 2.2-4006 A 4 c of the Code of Virginia, which excludes regulations that are necessary to meet the requirements of federal law or regulations provided such regulations do not differ materially from those required by federal law or regulation. The Safety and Health Codes Board is also claiming an exemption from the Administrative Process Act in accordance with § 2.2-4006 A 3 of the Code of Virginia, which excludes regulations that consist only of changes in style or form or corrections of technical errors. The Safety and Health Codes Board will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Titles of Regulations: 16VAC25-90. Federal Identical General Industry Standards (amending 16VAC25-90-1910.119, Appendix C to 16VAC25-1910.119, 16VAC25-90-1910.120, Appendix E to 16VAC25-90-1910.120, Appendix J to 16VAC25-90-1910.1001, Appendix B to 16VAC25-90-1910.1044, Appendix A to 16VAC25-90-1910.1048, 16VAC25-90-1910.1051, Appendix A to 16VAC25-90-1910.1052, 16VAC25-90-1910.1200, and Appendices A, B, E, and F to 16VAC25-90-1910.1200).

16VAC25-100. Federal Identical Shipyard Employment Standards (amending Appendix K to 16VAC25-100-1915.1001).

16VAC25-175. Federal Identical Construction Industry Standards (amending Appendix C to 16VAC25-175-1926.64, Appendix E to 16VAC25-175-1926.65, 16VAC25-175-1926.1101).

Statutory Authority: § 40.1-22 of the Code of Virginia.

Effective Date: June 15, 2013.

Agency Contact: John J. Crisanti, Planning and Evaluation Manager, Department of Labor and Industry, Main Street Centre, 600 East Main Street, Richmond, VA 23219,

telephone (804) 786-4300, FAX (804) 786-8418, TTY (804) 786-2376, or email john.crisanti@doli.virginia.gov.

Summary:

Federal OSHA corrected certain minor errors in the revisions to its Hazard Communication Standard that were published at 77 FR 17574. The majority of these corrections change references in other OSHA standards made to "material safety data sheet" or "MSDS" to "safety data sheet" or "SDS," which OSHA inadvertently missed in its original publication of the final rule. Other corrections include correcting values or notations in tables and updating references to terms defined in the Hazard Communication Standard Final Rule that was published on March 26, 2012. This action incorporates these changes into the Virginia general industry, shipyard employment, and construction industry standards.

Note on Incorporation by Reference: Pursuant to § 2.2-4103 of the Code of Virginia, 29 CFR Part 1910 (Occupational Safety and Health Standards), 29 CFR 1915 (Shipyard Employment Standards), and 29 CFR Part 1926 (Construction Industry Standards) are declared documents generally available to the public and appropriate for incorporation by reference. For this reason these documents will not be printed in the Virginia Register of Regulations. A copy of each document is available for inspection at the Department of Labor and Industry, Main Street Centre, 600 East Main Street, Richmond, Virginia 23219, and in the office of the Registrar of Regulations, General Assembly Building, 9th and Broad Streets, Richmond, Virginia 23219.

Statement of Final Agency Action: On March 14, 2013, the Safety and Health Codes Board adopted federal OSHA's Corrections and Technical Amendment to the Hazard Communication Standard and Other Related Standards, as published in 78 FR 9311 through 78 FR 9315 on February 8, 2013, with an effective date of June 15, 2013.

Federal Terms and State Equivalents: When the regulations as set forth in Corrections and Technical Amendment to the Hazard Communication Standard Final Rule are applied to the Commissioner of the Department of Labor and Industry or to Virginia employers, the following federal terms shall be considered to read as follows:

<u>Federal Terms</u>	<u>VOSH Equivalent</u>
29 CFR	VOSH Standard
Assistant Secretary	Commissioner of Labor and Industry
Agency	Department
February 8, 2013	June 15, 2013

VA.R. Doc. No. R13-3641; Filed April 5, 2013, 2:57 p.m.

Final Regulation

REGISTRAR'S NOTICE: The following regulatory action is exempt from the Administrative Process Act in accordance with § 2.2-4006 A 4 c of the Code of Virginia, which excludes regulations that are necessary to meet the requirements of federal law or regulations provided such regulations do not differ materially from those required by federal law or regulation. The Safety and Health Codes Board is also claiming an exemption from the Administrative Process Act in accordance with § 2.2-4006 A 3 of the Code of Virginia, which excludes regulations that consist only of changes in style or form or corrections of technical errors. The Safety and Health Codes Board will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: 16VAC25-90. **Federal Identical General Industry Standards (amending 16VAC25-90-1910.1450 Occupational Exposure to Hazardous Chemicals in Laboratories Standard; Technical Amendment to Appendix A).**

Statutory Authority: § 40.1-22 of the Code of Virginia.

Effective Date: June 15, 2013.

Agency Contact: John J. Crisanti, Planning and Evaluation Manager, Department of Labor and Industry, Main Street Centre, 600 East Main Street, Richmond, VA 23219, telephone (804) 786-4300, FAX (804) 786-8418, TTY (804) 786-2376, or email john.crisanti@doli.virginia.gov.

Summary:

Federal OSHA updated a nonmandatory appendix in its Occupational Exposure to Hazardous Chemicals in Laboratories standard to include the contents of the latest National Academy of Sciences publication entitled "Prudent Practices in the Laboratory: Handling and Management of Chemical Hazards," 2011 edition. This revision addresses current laboratory practices, security, and emergency response, as well as promoting safe handling of highly toxic and explosive chemicals and their waste products. All revisions made were minor and nonsubstantive. This action incorporates these changes into the Virginia general industry standards.

Note on Incorporation by Reference: Pursuant to § 2.2-4103 of the Code of Virginia, 29 CFR Part 1910 (Occupational Safety and Health Standards) is declared a document generally available to the public and appropriate for incorporation by reference. For this reason this document will not be printed in the Virginia Register of Regulations. A copy of this document is available for inspection at the Department of Labor and Industry, Main Street Centre, 600 East Main Street, Richmond, Virginia 23219, and in the office of the Registrar of Regulations, General Assembly Building, 9th and Broad Streets, Richmond, Virginia 23219.

Statement of Final Agency Action: On March 14, 2013, the Safety and Health Codes Board adopted federal OSHA's

Technical Amendment to the Occupational Exposure to Hazardous Chemicals in Laboratories Standard (Nonmandatory Appendix A, National Research Council Recommendations Concerning Chemical Hygiene in Laboratories), as published in 78 FR 4324 on January 22, 2013, with an effective date of June 15, 2013.

Federal Terms and State Equivalents: When the regulations as set forth in Technical Amendment to the Occupational Exposure to Hazardous Chemicals in Laboratories Standard (Nonmandatory Appendix A, National Research Council Recommendations Concerning Chemical Hygiene in Laboratories) Final Rule are applied to the Commissioner of the Department of Labor and Industry or to Virginia employers, the following federal terms shall be considered to read as follows:

<u>Federal Terms</u>	<u>VOSH Equivalent</u>
29 CFR	VOSH Standard
Assistant Secretary	Commissioner of Labor and Industry
Agency	Department
January 22, 2013	June 15, 2013

VA.R. Doc. No. R13-3642; Filed April 5, 2013, 2:50 p.m.

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD OF AUDIOLOGY AND SPEECH-LANGUAGE PATHOLOGY

Final Regulation

REGISTRAR'S NOTICE: The Board of Audiology and Speech-Language Pathology is claiming an exemption from the Administrative Process Act in accordance with § 2.2-4006 A 6 of the Code of Virginia, which exempts regulations of the regulatory boards served by the Department of Health Professions pursuant to Title 54.1 of the Code of Virginia which are limited to reducing fees charged to regulators and applicants.

Title of Regulation: 18VAC30-20. **Regulations Governing the Practice of Audiology and Speech-Language Pathology (amending 18VAC30-20-80).**

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

Effective Date: June 5, 2013.

Agency Contact: Leslie L. Knachel, Executive Director, Board of Audiology and Speech-Language Pathology, 9960 Mayland Drive, Suite 300, Richmond, VA 23233-1463, telephone (804) 367-4630, FAX (804) 527-4413, or email leslie.knachel@dhp.virginia.gov.

Regulations

Summary:

The one-time adjustment in fees for renewal of licensure by December 31, 2013, reduces an accumulated surplus in the board's budget.

18VAC30-20-80. Fees.

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

1. Application for audiology or speech-language pathology license	\$135
2. Application for school speech-language pathology license	\$70
3. Verification of licensure requests from other states	\$20
4. Annual renewal of audiology or speech-language pathology license	\$75
5. Late renewal of audiology or speech-language pathology license	\$25
6. Annual renewal of school speech-language pathology license	\$40
7. Late renewal of school speech-language pathology license	\$15
8. Reinstatement of audiology or speech-language pathology license	\$135
9. Reinstatement of school speech-language pathology license	\$70
10. Duplicate wall certificates	\$25
11. Duplicate license	\$5
12. Returned check	\$35
13. Inactive license renewal for audiology or speech-language pathology	\$40
14. Inactive license renewal for school speech-language pathology	\$20
15. Approval of a continuing education sponsor	\$200
16. Application for provisional license in audiology	\$50
17. Renewal of provisional license in audiology	\$25

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

C. For the renewal of licenses by December 31, ~~2009~~ 2013, the fees shall be as follows:

1. Annual renewal of audiology or speech-language pathology license	\$40 <u>\$55</u>
2. Annual renewal of school speech-language pathology license	\$20 <u>\$30</u>
3. Inactive license renewal for audiology or speech-language pathology	\$20 <u>\$30</u>
4. Renewal of provisional license in audiology	\$15 <u>\$20</u>

V.A.R. Doc. No. R13-3646; Filed April 16, 2013, 10:28 a.m.

GENERAL NOTICES/ERRATA

CRIMINAL JUSTICE SERVICES BOARD

Additional Public Hearing - Regulations Relating to Private Security Services

Notice of action: The Department of Criminal Justice Services (DCJS) is proposing amendments to the Regulations Relating to Private Security Services: 6VAC20-171-460 and 6VAC20-171-470.

Public hearings: A public hearing will be held before the Criminal Justice Services Board Committee on Training on May 9, 2013, at 9 a.m. in House Room D of the General Assembly Building. DCJS solicited additional comment on the amendments described below from April 15 through May 1, 2013, through the Virginia Regulatory Town Hall. A public hearing was held on December 6, 2012, in regard to the full repropoed regulations.

Description of proposed regulations: The following amendments were not implemented into the repropoed Regulations Relating to Private Security Services but were initially discussed during the first proposed stage. DCJS plans on requesting the adoption of the following amendments shown below in brackets by an errata at the public hearing on May 9, 2013.

6VAC20-171-460. In-service training exemption.

Persons who have completed training which meets or exceeds the compulsory minimum training standards promulgated by the board for the in-service training required for the individual's particular category may be authorized credit for such training, provided the training has been completed within [~~12~~ 24] months of the expiration date of the registration period during which in-service training is required. Such training must be provided by a third party organization category. Official documentation of the following must accompany the application for in-service training credit:

1. Information regarding the sponsoring organization, including documentation regarding the instructor for each session; [~~and~~]
2. An outline of the training session material, including the dates, times and specific subject matter [~~;~~ and]
3. Proof of attendance and successful completion.

6VAC20-171-470. Prior firearms training exemption.

Persons having previous department-approved firearms training may be authorized credit for such training which meets or exceeds the compulsory minimum training standards for private security services business personnel, provided such training has been completed within the 12 months preceding the date of application. Official

documentation of the following must accompany the application for partial [~~in-service~~] training credit:

1. Completion of department-approved firearms training; and
2. Qualification at a Virginia criminal justice agency, academy or correctional department.

These amendments were requested by the industry and are supported by the department. They will allow for the approval of training exemptions for in-service training taken within the 24-month registration period and allow for partial training exemptions for entry-level firearms training or range qualification.

How to comment: DCJS accepts written comments by email, fax, and postal mail. All written comments must include the full name and address of the person commenting and be received by DCJS no later than the last day of the comment period. Please forward any comments to the attention of Lisa McGee at lisa.mcgee@dcjs.virginia.gov or via the contact information below.

Contact Information: Lisa McGee, Regulatory Manager, Department of Criminal Justice Services, 1100 Bank Street, Richmond, VA 23219, telephone (804) 371-2419, FAX (804) 225-3853, or email leon.baker@dcjs.virginia.gov, lisa.mcgee@dcjs.virginia.gov, or stephanie.morton@dcjs.virginia.gov.

DEPARTMENT OF ENVIRONMENTAL QUALITY AND THE DEPARTMENT OF CONSERVATION AND RECREATION

Total Maximum Daily Load for Tye River, including Hat Creek, Piney River, and Rucker Run

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 total maximum daily loads (TMDLs) for tributaries of the Tye River, including Hat Creek, Piney River, and Rucker Run, in Nelson and Amherst counties. The tributaries of the Tye River were listed on the 2004, 2006, and 2008 § 303(d) TMDL Priority List and Report as impaired due to violations of the state's water quality standard for bacteria. The impaired portions of Hat Creek (H09R) extend 9.58 miles, from the headwaters downstream to its confluence with the Tye River. Piney River's (H10R) impairment stretches a total of 13.3 miles from a point 13.3 miles upstream to its confluence with the Tye River. The impaired segment of Rucker Run (H13R) extends from the headwaters downstream to its confluence with the Tye River, for a total of 18.26 miles. The impaired section of the Tye River begins with its confluence with Piney River downstream to its confluence with the James River.

General Notices/Errata

Section 303(d) of the 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 final public meeting on the development of these TMDLs will be held on Wednesday, May 22, 2013, at 7 p.m. at Massies Mill Ruritan Hall, 5439 Patrick Henry Highway, Roseland, VA 22967.

The public comment period for this last public meeting will end on June 24, 2013. Written comments should include the name, address, and telephone number of the person submitting the comments and should be sent to Tara Sieber, Department of Environmental Quality, 4411 Early Road, P.O. Box 3000, Harrisonburg, VA 22801, telephone (540) 574-7870, FAX (540) 574-7878, or email tara.sieber@deq.virginia.gov.

This meeting is part of a larger "Eco-region" effort to develop a TMDL for the tributaries of the James River in Nelson, Amherst, and Appomattox counties. Due to the large area covered by this project, three meetings will be held at each stage - three public meetings, three Technical Advisory Committee meetings, etc. Questions regarding the Nelson County tributaries can be directed to Tara Sieber, the DEQ TMDL Coordinator for the Valley Region (tara.sieber@deq.virginia.gov), and questions regarding the Amherst County and Appomattox County tributaries can be directed to Paula Nash, the DEQ TMDL Coordinator for the Blue Ridge Region out of the Lynchburg office (paula.nash@deq.virginia.gov).

STATE LOTTERY DEPARTMENT

Director's Orders

The following Director's Orders of the State Lottery Department were filed with the Virginia Registrar of Regulations on April 4, 2013, and April 15, 2013. The orders may be viewed at the State Lottery Department, 900 East Main Street, Richmond, VA, or at the office of the Registrar of Regulations, 910 Capitol Street, 2nd Floor, Richmond, VA.

Director's Order Number Seventeen (13)

Certain Virginia Game Sweepstakes; End of Sweepstakes (effective nunc pro tunc to January 15, 2013, and shall remain in full force and effect unless amended or rescinded by further Director's Order)

Director's Order Number Eighteen (13)

Virginia Lottery's "Play for Keeps Sweeps" Sweepstakes Final Requirements for Operation (effective nunc pro tunc to January 16, 2013, and shall remain in full force and effect unless amended or rescinded by further Director's Order)

Director's Order Number Nineteen (13)

This order rescinds Director's Order Number Seven (13) (effective February 4, 2013)

Director's Order Number Twenty (13)

Virginia Lottery's "Pet Lovers Sweepstakes" Final Requirements for Operation (effective February 4, 2013)

Director's Order Number Twenty-One (13)

Virginia's Twenty-Seventh Online Game Lottery; "Fast Play \$15,000 Jackpot" Final Rules for Game Operation (This Director's Order becomes effective on the first sale date of the Matrix set forth in the "Fast Play \$15,000 Jackpot" Official Game Rules, as adopted, and shall remain in full force and effect unless amended or rescinded by further Director's Order. Upon the effective date, these rules shall supersede and replace any and all prior Virginia Lottery "Fast Play \$15,000 Jackpot" game rules.)

Director's Order Number Twenty-Two (13)

Virginia's Twenty-Seventh Online Game Lottery; "Fast Play Blackjack Showdown" Final Rules For Game Operation (This Director's Order becomes effective on the first sale date of the Matrix set forth in the "Fast Play Blackjack Showdown" Official Game Rules, as adopted, and shall remain in full force and effect unless amended or rescinded by further Director's Order. Upon the effective date, these rules shall supersede and replace any and all prior Virginia Lottery "Fast Play Blackjack Showdown" game rules.)

Director's Order Number Twenty-Three (13)

Virginia's Twenty-Seventh Online Game Lottery; "Fast Play Joker's Wild Bingo" Final Rules For Game Operation (This Director's Order becomes effective on the first sale date of the Matrix set forth in the "Fast Play Joker's Wild Bingo" Official Game Rules, as adopted, and shall remain in full force and effect unless amended or rescinded by further Director's Order. Upon the effective date, these rules shall supersede and replace any and all prior Virginia Lottery "Fast Play Joker's Wild Bingo" game rules.)

Director's Order Number Twenty-Four (13)

Virginia's Twenty-Seventh Online Game Lottery; "Fast Play Lucky Bucks" Final Rules For Game Operation (This Director's Order becomes effective on the first sale date of the Matrix set forth in the "Fast Play Lucky Bucks" Official Game Rules, as adopted, and shall remain in full force and effect unless amended or rescinded by further Director's Order. Upon the effective date, these rules shall supersede and replace any and all prior Virginia Lottery "Fast Play Lucky Bucks" game rules.)

Director's Order Number Twenty-Five (13)

Virginia Lottery's "Jeep® Vehicle & Cash Giveaway" Sweepstakes" Final Requirements For Operation (effective April 1, 2013)

Director's Order Number Twenty-Six (13)

"Pantry Jeep Retailer Incentive Retailer Incentive Promotion" Virginia Lottery Retailer Incentive Program Requirements (This Director's Order becomes effective on the date of its signing (March 13, 2013) and shall remain in full force and effect until ninety (90) days after the conclusion of the Incentive Program, unless otherwise extended by the Director)

Director's Order Number Twenty-Nine (13)

"Jeep® Ticket Dispenser Retailer Incentive Promotion" Virginia Lottery Retailer Incentive Program Requirements (This Director's Order becomes effective on the date of its signing (March 13, 2013) and shall remain in full force and effect until ninety (90) days after the conclusion of the Incentive Program, unless otherwise extended by the Director)

Director's Order Number Thirty-One (13)

"Coastal Investments Jeep® Retailer Incentive Promotion" Virginia Lottery Retailer Incentive Program Requirements (This Director's Order becomes effective on the date of its signing (March 13, 2013) and shall remain in full force and effect until ninety (90) days after the conclusion of the Incentive Program, unless otherwise extended by the Director)

Director's Order Number Thirty-Two (13)

Virginia Lottery's "Virginia Jeep® Seeker Promotion" Final Requirements For Operation (effective April 10, 2013)

Director's Order Number Thirty-Three (13)

Virginia Lottery's "2nd Chance Jeep® Vehicle Scratcher Sweepstakes" Final Requirements For Operation (effective March 29, 2013)

Director's Order Number Thirty-Four (13)

This order rescinds Director's Order Number Nine (13) (effective March 29, 2013)

STATE BOARD OF SOCIAL SERVICES

Additional Public Comment Period for 22VAC40-740-80

The Department of Social Services announces a 30-day public comment period on proposed regulation 22VAC40-740-80, Imposition of civil penalty, of its Adult Protective Services chapter (22VAC40-740). The entire proposed chapter was published in the Virginia Register of Regulations ([29:2 V.A.R. 312-322 September 24, 2012](#)), and public

comment ended November 23, 2012. As published, 22VAC40-740-80 B included a new provision that was not underlined, but should have been, to indicate it was a new provision. The provision is shown below in brackets.

In order to provide the public with notice of the new provision in 22VAC40-740-80 and opportunity to comment, the Department of Social Services will receive comment on 22VAC40-740-80 beginning May 6, 2013, through June 5, 2013.

Comment should be submitted to the following agency contact: Paige McCleary, Program Consultant, Department of Social Services, 801 E. Main Street, Richmond, VA 23219, telephone (804) 726-7536, FAX (804) 726-7895, TTY (800) 828-1120, or email paige.mccleary@dss.virginia.gov.

22VAC40-740-80. Imposition of civil penalty.

A. Local department review and recommendation.

1. ~~Based on a decision by the local department~~ When a director or his designee determines that a mandated reporter failed to report as required by § 63.2-1606 of the Code of Virginia, the local director shall prepare a written statement of fact in a format prescribed by the commissioner concerning the mandated reporter's failure to report and submit the statement of fact to the commissioner. The director or his designee also shall prepare a letter notifying the mandated reporter of the intent to request that a civil penalty be imposed. The letter shall state the mandated reporter's right to submit a written statement to the commissioner concerning the mandated reporter's failure to report. The date of the director's notification shall be the date of the letter to the mandated reporter. Any supporting documentation that the director considered in requesting the imposition of a civil penalty shall be provided to the mandated reporter. The letter, statement of fact, and any supporting documentation shall be sent to the mandated reporter by registered or certified mail, return receipt requested.

2. ~~The local director or his designee shall notify the mandated reporter in writing within 15 calendar days from the date of the determination of the intent to recommend that a civil penalty be imposed. The notification will include a copy of the local director's statement of fact concerning the mandated reporter's failure to report. The notification shall state the mandated reporter's right to submit a written statement to the commissioner concerning the mandated reporter's failure to report. The date of the notification is the postage date. The director or his designee shall send a letter to the commissioner requesting that a civil penalty be imposed on the mandated reporter for failure to report. The statement of fact and the letter to the mandated reporter shall accompany the letter to the commissioner. Any supporting documentation that the~~

General Notices/Errata

~~director considered in requesting the imposition of a civil penalty shall be provided to the commissioner.~~

~~3. The mandated reporter's statement concerning his failure to report must be received by the commissioner within 45 days from the date of the local director's notification of intent to recommend the imposition of a civil penalty. A mandated reporter's statement received after the 45 days shall not be considered by the commissioner.~~

~~B. Review by the commissioner or his designee~~ Statement from mandated reporter.

~~1. The commissioner or his designee shall review the local director's written statement of fact concerning the mandated reporter's failure to report and the mandated reporter's written statement in determining whether to impose a civil penalty.~~

~~2. In the case of law enforcement officers who are alleged to have not reported as required, the commissioner or his designee shall forward the recommendation to a court of competent jurisdiction.~~

~~3. The commissioner or his designee shall impose a civil penalty upon a mandated reporter who is determined to have not reported as required pursuant to § 63.2-1606 of the Code of Virginia. Penalties shall be imposed as follows:~~

~~a. For first offenses of nonreporting pursuant to § 63.2-1606 H of the Code of Virginia, the penalty shall be not more than \$500.~~

~~b. For second and subsequent offenses pursuant to § 63.2-1606 H of the Code of Virginia, the penalty shall be not less than \$100 and not more than \$1,000.~~

~~4. The commissioner or his designee shall notify the mandated reporter whether a civil penalty will be imposed and, if so, the amount of the penalty. This written notice shall describe the reasons for the imposition of the civil penalty. The date of notification shall be deemed to be the date the mandated reporter received written notice of the alleged violation. This notice shall include specifics of the violation charged and shall be sent by overnight express mail or by registered or certified mail, return receipt requested.~~

~~[The mandated reporter may prepare a written statement concerning his failure to report and provide the statement to the commissioner. The commissioner must receive the mandated reporter's written statement within 45 calendar days from the date of the director's letter to the mandated reporter.]~~

~~C. Review by the commissioner's designee.~~

~~1. The commissioner's designee shall review the director's statement of fact, the mandated reporter's written statement, and any supporting documentation provided by the director~~

in determining whether to impose a civil penalty. A statement received after the time required by 22VAC40-740-80 B shall not be considered by the commissioner.

2. In the case of law-enforcement officers who are alleged not to have reported as required, the commissioner or his designee shall forward a recommendation to the court of competent jurisdiction.

3. The commissioner's designee shall notify the mandated reporter in writing whether a civil penalty will be recommended. The written notification shall include specifics of the violation charged, the reasons for the imposition of the civil penalty and the amount of the penalty. The letter shall be sent to the mandated reporter by registered or certified mail, return receipt requested, no later than 30 calendar days after the commissioner receives the mandated reporter's written statement. The date of the notification shall be the date of the commissioner's designee's letter to the mandated reporter. The designee also shall send a copy of the letter to the director who recommended the imposition of the civil penalty. If the commissioner's designee recommends imposition of a civil penalty, the mandated reporter shall have 30 calendar days from the date of the letter to submit a written statement requesting that the commissioner reconsider the designee's decision. A statement received after the time required by this subsection shall not be considered by the commissioner.

D. Review by the commissioner. If the mandated reporter submits a written request for review, the commissioner shall review his designee's recommendation and the mandated reporter's request for review and decide whether a civil penalty shall be imposed. The commissioner shall notify the mandated reporter in writing whether a civil penalty will be imposed and the amount of the penalty. The letter shall include specifics of the violation charged and describe the reason for the imposition of the civil penalty. The letter shall be sent to the mandated reporter by registered or certified mail, return receipt requested, no later than 30 calendar days after the commissioner receives the mandated reporter's written request to reconsider the designee's decision. The date of the notification shall be the date of the commissioner's letter.

E. If the mandated reporter does not request a review by the commissioner within the time required by subdivision C 3 of this section, the commissioner shall notify the mandated reporter in writing that a civil penalty will be imposed. The written notification shall include specifics of the violation charged, the reasons for the imposition of the civil penalty, and the amount of the penalty. The letter shall be sent to the mandated reporter by registered or certified mail, return receipt requested.

~~5-~~ F. If a civil penalty is imposed, a copy of the notice commissioner's letter to the mandated reporter shall be sent to

the appropriate licensing, regulatory, or administrative ~~agency~~ agencies and to the ~~local~~ director who recommended the imposition of the penalty.

6. G. Any mandated reporter has the right to appeal the commissioner's decision to impose a civil penalty in accordance with § 2.2-4026 of the Code of Virginia and pursuant to Part 2 A of the Rules of the Supreme Court of Virginia.

STATE WATER CONTROL BOARD

Proposed Enforcement Action for Master Fleet Services, Inc.

An enforcement action has been proposed for Master Fleet Services, Inc., for alleged violations of the State Water Control Law concerning the unauthorized discharge of oil to state lands and waters in the City of Hampton. A description of the proposed action is available at the Department of Environmental Quality office named below or online at www.deq.virginia.gov. Paul R. Smith will accept comments by email at paul.smith@deq.virginia.gov, FAX (757) 518-2009, or postal mail at Department of Environmental Quality, Tidewater Regional Office, 5636 Southern Blvd., Virginia Beach, VA 23462, from May 6, 2013, to June 5, 2013.

Proposed Consent Order for Midget Mart No. 2, Inc.

An enforcement action has been proposed for Midget Mart No. 2, Inc. for alleged violations at the underground storage tank facility located at 1420 Washington Street, Petersburg, VA. The consent order requires corrective action and a civil charge. A description of the proposed action is available at the Department of Environmental Quality office named below or online at www.deq.virginia.gov. Frank Lupini will accept comments by email at frank.lupini@deq.virginia.gov, FAX at (804) 527-5106, or postal mail at Department of Environmental Quality, Piedmont Regional Office, 4949-A Cox Road, Glen Allen, VA, 23060, from May 6, 2013, to June 5, 2013.

Proposed Consent Order for R. Income Properties, L.L.C.

An enforcement action has been proposed for R. Income Properties, L.L.C., for violations of State Water Control Law and the applicable regulations in Stafford County. The consent order describes a settlement to resolve unpermitted impacts taken to surface waters associated with the development of the I-95 Industrial Park Project. A description of the proposed action is available at the Department of Environmental Quality office named below or online at www.deq.virginia.gov. Daniel Burstein will accept comments by email at daniel.burstein@deq.virginia.gov, FAX at (703) 583-3821, or postal mail at Department of Environmental Quality, Northern Regional Office, 13901 Crown Court, Woodbridge, VA 22193, from May 7, 2013, through June 6, 2013.

Proposed Enforcement Action for Washington Street, Inc.

An enforcement action has been proposed for Washington Street, Inc. for alleged violations of the State Water Control Law at Happy Shopper #5 located at 600 E. Washington Street in Suffolk, VA. A description of the proposed action is available at the Department of Environmental Quality office named below or online at www.deq.virginia.gov. Mr. Robin Schuhmann will accept comments by email at robin.schuhmann@deq.virginia.gov, FAX at (757) 518-2009, or postal mail at Department of Environmental Quality, Tidewater Regional Office, 5636 Southern Blvd., Virginia Beach, VA 23462, from May 6, 2013, to June 5, 2013.

Proposed Consent Order for Willow Pond II, L.L.C.

An enforcement action has been proposed for Willow Pond II, L.L.C., for violations of the State Water Control Law and Regulations in Loudoun County associated with the Willow Pond project. The consent order describes a settlement to resolve violations of the State Water Control Law and Regulations. A description of the proposed action is available at the Department of Environmental Quality office named below or online at www.deq.virginia.gov. Stephanie Bellotti will accept comments by email at stephanie.bellotti@deq.virginia.gov, FAX at (703) 583-3821 or postal mail Department of Environmental Quality, Northern Regional Office, 13901 Crown Court, Woodbridge, VA 22193, from May 7, 2013, through June 6, 2013.

VIRGINIA CODE COMMISSION

Notice to State Agencies

Contact Information: *Mailing Address:* Virginia Code Commission, General Assembly Building, 201 North 9th Street, 2nd Floor, Richmond, VA 23219; *Telephone:* Voice (804) 786-3591; FAX (804) 692-0625; *Email:* varegs@dls.virginia.gov.

Meeting Notices: Section 2.2-3707 C of the Code of Virginia requires state agencies to post meeting notices on their websites and on the Commonwealth Calendar at <http://www.virginia.gov/>.

Cumulative Table of Virginia Administrative Code Sections Adopted, Amended, or Repealed: A table listing regulation sections that have been amended, added, or repealed in the *Virginia Register of Regulations* since the regulations were originally published or last supplemented in the print version of the Virginia Administrative Code is available at <http://register.dls.virginia.gov/cumultab.htm>.

Filing Material for Publication in the Virginia Register of Regulations: Agencies use the Regulation Information System (RIS) to file regulations and related items for publication in the *Virginia Register of Regulations*. The Registrar's office works closely with the Department of Planning and Budget (DPB) to coordinate the system with the

General Notices/Errata

Virginia Regulatory Town Hall. RIS and Town Hall complement and enhance one another by sharing pertinent regulatory information.

ERRATA

VIRGINIA SOIL AND WATER CONSERVATION BOARD

Title of Regulation: **4VAC50-60. Virginia Stormwater Management Program (VSMP) Permit Regulations. (amending 4VAC50-60-10, 4VAC50-60-1200 through 4VAC50-60-1240).**

Publication: 29:17 VA.R. 2105-2149 April 22, 2013.

Correction to Final Regulation:

Page 2117, 4VAC50-60-1220 D, line 5, strike "shall be submitted"

Page 2118, 4VAC50-60-1230 A 1, line 2, strike "4VAC50-60-1210 A 1 b" and insert "**4VAC50-60-400 B**"

VA.R. Doc. No. R12-3136; Filed April 25, 2013, 10:45 a.m.