



# VIRGINIA

## REGISTER OF REGULATIONS

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April 21, 2025

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# THE VIRGINIA REGISTER INFORMATION PAGE

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

## ADOPTION, AMENDMENT, AND REPEAL OF REGULATIONS

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

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

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

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

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

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

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

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

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

## FAST-TRACK RULEMAKING PROCESS

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

## EMERGENCY REGULATIONS

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

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

## STATEMENT

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

## CITATION TO THE VIRGINIA REGISTER

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

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

Members of the Virginia Code Commission: **Marcus B. Simon, Chair; Russet W. Perry, Vice Chair; Katrina E. Callsen; Nicole Cheuk; Richard E. Gardiner; Ryan T. McDougle; Michael Mullin; Christopher R. Nolen; Steven Popp; Charles S. Sharp; Malfourd W. Trumbo; Amigo R. Wade.**

Staff of the Virginia Register: **Holly Trice, Registrar of Regulations; Anne Bloomsburg, Assistant Registrar; Nikki Clemons, Managing Editor; Erin Comerford, Regulations Analyst**

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# PUBLICATION SCHEDULE AND DEADLINES

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

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## May 2025 through May 2026

<u>Volume: Issue</u>	<u>Material Submitted By Noon*</u>	<u>Will Be Published On</u>
41:19	April 16, 2025	May 5, 2025
41:20	April 30, 2025	May 19, 2025
41:21	May 14, 2025	June 2, 2025
41:22	May 28, 2025	June 16, 2025
41:23	June 11, 2025	June 30, 2025
41:24	June 25, 2025	July 14, 2025
41:25	July 9, 2025	July 28, 2025
41:26	July 23, 2025	August 11, 2025
42:1	August 6, 2025	August 25, 2025
42:2	August 20, 2025	September 8, 2025
42:3	September 3, 2025	September 22, 2025
42:4	September 17, 2025	October 6, 2025
42:5	October 1, 2025	October 20, 2025
42:6	October 15, 2025	November 3, 2025
42:7	October 29, 2025	November 17, 2025
42:8	November 10, 2025 ( <b>Monday</b> )	December 1, 2025
42:9	November 24, 2025 ( <b>Monday</b> )	December 15, 2025
42:10	December 9, 2025	December 29, 2025
42:11	December 22, 2025 ( <b>Monday</b> )	January 12, 2026
42:12	January 6, 2026 ( <b>Tuesday</b> )	January 26, 2026
42:13	January 21, 2026	February 9, 2026
42:14	February 4, 2026	February 23, 2026
42:15	February 18, 2026	March 9, 2026
42:16	March 4, 2026	March 23, 2026
42:17	March 18, 2026	April 6, 2026
42:18	April 1, 2026	April 20, 2026
42:19	April 15, 2026	May 4, 2026
42:20	April 29, 2026	May 18, 2026

\*Filing deadlines are Wednesdays unless otherwise specified.

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# PERIODIC REVIEWS AND SMALL BUSINESS IMPACT REVIEWS

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## TITLE 6. CRIMINAL JUSTICE AND CORRECTIONS

### BOARD OF JUVENILE JUSTICE

#### Agency Notice

Pursuant to Executive Order 19 (2022) and §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the following regulation is undergoing a periodic review and a small business impact review: **6VAC35-20, Regulation Governing the Monitoring, Approval, and Certification of Juvenile Justice Programs and Facilities**. The Notice of Intended Regulatory Action to amend 6VAC35-20, which is published in this issue of the Virginia Register, serves as the agency notice of announcement.

Agency Contact: Ken Davis, Regulatory Affairs Coordinator, Department of Juvenile Justice, 600 East Main Street, 20th Floor, Richmond, VA 23219, telephone (804) 807-0486, FAX (804) 371-6497, or email [kenneth.davis@djj.virginia.gov](mailto:kenneth.davis@djj.virginia.gov).



## TITLE 9. ENVIRONMENT

### STATE WATER CONTROL BOARD

#### Agency Notice

Pursuant to Executive Order 19 (2022) and §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the following regulation is undergoing a periodic review and a small business impact review: **9VAC25-260, Water Quality Standards**. The Notice of Intended Regulatory Action to amend 9VAC25-260, which is published in this issue of the Virginia Register, serves as the agency notice of announcement.

Agency Contact: David Whitehurst, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 774-9180, or email [david.whitehurst@deq.virginia.gov](mailto:david.whitehurst@deq.virginia.gov).



## TITLE 11. GAMING

### VIRGINIA LOTTERY BOARD

#### Report of Findings

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Virginia Lottery Board conducted a periodic review and a small business impact review of **11VAC5-11,**

**Public Participation Guidelines**, and determined that this regulation should be amended. The board is publishing its report of findings dated March 25, 2025, to support this decision.

This regulation is necessary for the protection of public health, safety, and welfare because the regulation ensures the efficient, honest, and economical operation and administration of the lottery and all matters necessary or desirable for the convenience of the purchasers of tickets or shares and the holders of winning tickets or shares.

The agency will amend this regulation to clarify definitions and terminology, correct capitalization and citations, and amend 11VAC5-11-50 to include language pertaining to an interested party's right to counsel in rulemaking proceedings in accordance with § 2.2-4007.02 B of the Code of Virginia.

There is a continued need for this regulation as it is essential to provide clear guidance related to the operation and administration of the Virginia Lottery. No complaints or comments were received during the public comment period. The edits will clarify the existing language, which does not appear to cause adverse economic impact on small businesses.

Contact Information: Amy Roper, Regulatory Coordinator, Virginia Lottery, 600 East Main Street, First Floor, Richmond, VA 23219, telephone (804) 692-7133, FAX (804) 692-7325, or email [aroper@valottery.com](mailto:aroper@valottery.com).

#### Report of Findings

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Virginia Lottery Board conducted a periodic review and a small business impact review of **11VAC5-20, Administration Regulations**, and determined that this regulation should be amended. The board is publishing its report of findings dated March 25, 2025, to support this decision.

This regulation is necessary for the protection of public health, safety, and welfare because the regulation ensures the efficient, honest, and economical operation and administration of the lottery and all matters necessary or desirable for the convenience of the purchasers of tickets or shares and the holders of winning tickets or shares.

The agency will amend this regulation to clarify definitions and terminology and to update language to reflect the transition to document-signing software, acceptable signature-required mailing options, and the addition of a video conferencing platform option.

There is a continued need for this regulation as it is essential to provide clear guidance related to the operation and administration of the Virginia Lottery. No complaints or comments were received during the public comment period. The edits will clarify the existing language, which does not appear to cause adverse economic impact on small businesses.

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# Periodic Reviews and Small Business Impact Reviews

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Contact Information: Amy Roper, Regulatory Coordinator, Virginia Lottery, 600 East Main Street, First Floor, Richmond, VA 23219, telephone (804) 692-7133, FAX (804) 692-7325, or email [aroper@valottery.com](mailto:aroper@valottery.com).

## Report of Findings

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Virginia Lottery Board conducted a periodic review and a small business impact review of **11VAC5-31, Licensing Regulations**, and determined that this regulation should be amended. The board is publishing its report of findings dated March 25, 2025, to support this decision.

This regulation is necessary for the protection of public health, safety, and welfare because the regulation ensures the efficient, honest, and economical operation and administration of the lottery and all matters necessary or desirable for the convenience of the purchasers of tickets or shares and the holders of winning tickets or shares.

The agency will amend this regulation to remove and correct outdated terminology and related definitions and to update the fee amount and related forms.

There is a continued need for this regulation as it is essential to provide clear guidance related to the operation and administration of the Virginia Lottery. No complaints or comments were received during the public comment period. The edits will clarify the existing language, which does not appear to cause adverse economic impact on small businesses.

Contact Information: Amy Roper, Regulatory Coordinator, Virginia Lottery, 600 East Main Street, First Floor, Richmond, VA 23219, telephone (804) 692-7133, FAX (804) 692-7325, or email [aroper@valottery.com](mailto:aroper@valottery.com).

## Report of Findings

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Virginia Lottery Board conducted a periodic review and a small business impact review of **11VAC5-41, Lottery Game Regulations**, and determined that this regulation should be amended. The board is publishing its report of findings dated March 25, 2025, to support this decision.

This regulation is necessary for the protection of public health, safety, and welfare because the regulation ensures the efficient, honest, and economical operation and administration of the lottery and all matters necessary or desirable for the convenience of the purchasers of tickets or shares and the holders of winning tickets or shares.

The agency will amend this regulation to reflect current practice by adding, removing, and updating terminology and related definitions, adding additional prize claim options, correcting references, and updating related forms.

There is a continued need for this regulation as it is essential to provide clear guidance related to the operation and administration of the Virginia Lottery. No complaints or comments were received during the public comment period. The edits will clarify the existing language, which does not appear to cause adverse economic impact on small businesses.

Contact Information: Amy Roper, Regulatory Coordinator, Virginia Lottery, 600 East Main Street, First Floor, Richmond, VA 23219, telephone (804) 692-7133, FAX (804) 692-7325, or email [aroper@valottery.com](mailto:aroper@valottery.com).

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# NOTICES OF INTENDED REGULATORY ACTION

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## TITLE 6. CRIMINAL JUSTICE AND CORRECTIONS

### CRIMINAL JUSTICE SERVICES BOARD

#### Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Criminal Justice Services Board intends to consider amending **6VAC20-120, Regulations Relating to Criminal History Record Information Use and Security**. The purpose of the proposed action is to (i) make technical amendments; (ii) eliminate unnecessary requirements; and (iii) update and clarify language to conform to Chapters 524 and 542 of the 2021 Acts of Assembly, Special Session I, which require the establishment of a process for the automatic sealing of police and court records for certain convictions, deferred dispositions, and acquittals and for offenses that have been nolle prossed or otherwise dismissed and allows a person to petition for the sealing of police and court records relating to certain convictions.

The agency does not intend to hold a public hearing on the proposed action after publication in the Virginia Register.

Statutory Authority: §§ 9.1-102 and 9.1-131 of the Code of Virginia.

Public Comment Deadline: May 21, 2025.

Agency Contact: Kristi Shalton, Regulatory Coordinator, Department of Criminal Justice Services, 1100 Bank Street, Richmond, VA 23219, telephone (804) 786-7801, or email [kristi.shalton@dcjs.virginia.gov](mailto:kristi.shalton@dcjs.virginia.gov).

VA.R. Doc. No. R25-8274; Filed April 1, 2025, 3:15 p.m.

### BOARD OF JUVENILE JUSTICE

#### Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Board of Juvenile Justice intends to consider amending **6VAC35-20, Regulations Governing the Certification Process**. The purpose of the proposed action, which follows a 2019 periodic review, is to bring the chapter into compliance with form and style guidelines and address provisions that are vague and require clarification. The regulation establishes the Department of Juvenile Justice's responsibility to monitor and audit juvenile residential facilities and programs, Virginia Juvenile Community Crime Control Act programs, and offices on youth and to certify residential facilities and state-operated and local court service units that are part of Virginia's juvenile justice system. It also describes the various methods by which the department measures and enforces compliance with regulations governing those facilities and programs.

In addition, pursuant to § 2.2-4007.1 of the Code of Virginia, the agency is conducting a periodic review and small business

impact review of this regulation to determine whether this regulation should be repealed, amended, or retained in its current form. Public comment is sought on the review of any issue relating to this regulation, including whether the regulation (i) is necessary for the protection of public health, safety, and welfare; (ii) minimizes the economic impact on small businesses consistent with the stated objectives of applicable law; and (iii) is clearly written and easily understandable.

The agency does not intend to hold a public hearing on the proposed action after publication in the Virginia Register.

Statutory Authority: §§ 16.1-233 and 66-10 of the Code of Virginia.

Public Comment Deadline: May 21, 2025.

Agency Contact: Ken Davis, Regulatory Affairs Coordinator, Department of Juvenile Justice, 600 East Main Street, 20th Floor, Richmond, VA 23219, telephone (804) 807-0486, FAX (804) 371-6497, or email [kenneth.davis@djj.virginia.gov](mailto:kenneth.davis@djj.virginia.gov).

VA.R. Doc. No. R25-8196; Filed April 2, 2025, 9:58 a.m.

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## TITLE 9. ENVIRONMENT

### STATE WATER CONTROL BOARD

#### Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the State Water Control Board intends to consider amending **9VAC25-260, Water Quality Standards**. The purpose of the proposed action is to fulfill the triennial review requirement of this chapter by updating numerical and narrative criteria, use designations, and other policies to improve permitting, monitoring, and assessment programs. This action is necessary because the last triennial review was initiated in March 2021 and new scientific information is available to update the water quality standards. Additionally, federal and state mandates require that water quality standards be adopted, modified, or canceled every three years. The intent of this rulemaking is to protect designated and beneficial uses of state waters by adopting standards that are technically correct, necessary, and reasonable. These standards are used in setting Virginia Pollutant Discharge Elimination System permit limits and for evaluating the waters of the Commonwealth for inclusion in the federal Clean Water Act § 305(b) report and § 303(d) list.

In addition, pursuant to § 2.2-4007.1 of the Code of Virginia, the agency is conducting a periodic review and small business impact review of this regulation to determine whether this regulation should be repealed, amended, or retained in its current form. Public comment is sought on the review of any issue relating to this regulation, including whether the regulation (i) is necessary for the protection of public health,

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# Notices of Intended Regulatory Action

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safety, and welfare; (ii) minimizes the economic impact on small businesses consistent with the stated objectives of applicable law; and (iii) is clearly written and easily understandable.

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

Statutory Authority: § 62.1-44.15 of the Code of Virginia; Clean Water Act (33 USC § 1251 et seq.); 40 CFR Part 131.

Public Comment Deadline: May 21, 2025.

Agency Contact: David Whitehurst, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 774-9180, or email [david.whitehurst@deq.virginia.gov](mailto:david.whitehurst@deq.virginia.gov).

VA.R. Doc. No. R25-8198; Filed April 2, 2025, 10:15 a.m.

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## TITLE 12. HEALTH

### STATE BOARD OF HEALTH

#### 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 Health intends to consider amending **12VAC5-610, Sewage Handling and Disposal Regulations**. The purpose of the proposed action, which follows a 2023 periodic review, is to amend the regulation based on current industry standards and comments received from stakeholder working groups to (i) protect public health and the environment, (ii) address changes in current industry standards and practice, (iii) clarify regulatory language, and (iv) improve consistency with other regulations related to onsite sewage systems and sewage handling. Additionally, possible regulatory reductions will be considered as part of this action.

The agency does not intend to hold a public hearing on the proposed action after publication in the Virginia Register.

Statutory Authority: §§ 32.1-12 and 32.1-164 of the Code of Virginia.

Public Comment Deadline: May 21, 2025.

Agency Contact: Anne Powell, Environmental Health Coordinator, Virginia Department of Health, 109 Governor Street, Richmond, VA 23219, telephone (804) 864-8107, or email [anne.powell@vdh.virginia.gov](mailto:anne.powell@vdh.virginia.gov).

VA.R. Doc. No. R25-8275; Filed April 1, 2025, 3:27 p.m.

## DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

#### Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Department of Medical Assistance Services intends to consider amending **12VAC30-50, Amount, Duration, and Scope of Medical and Remedial Care Services** and **12VAC30-80, Methods and Standards for Establishing Payment Rate; Other Types of Care**. The purpose of the proposed action is to add coverage for targeted case management for individuals with severe brain injuries pursuant to Chapter 11 of the 2022 Acts of Assembly, Special Session I. The Department of Medical Assistance Services submitted state plan amendments to the Centers for Medicare and Medicaid Services that were approved November 22, 2023, and May 17, 2024, and the proposed action will incorporate those changes in the regulation.

The agency does not intend to hold a public hearing on the proposed action after publication in the Virginia Register.

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

Public Comment Deadline: May 21, 2025.

Agency Contact: Meredith Lee, Policy, Regulations, and Manuals Supervisor, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 371-0552, FAX (804) 786-1680, TDD (800) 343-0634, or email [meredith.lee@dmas.virginia.gov](mailto:meredith.lee@dmas.virginia.gov).

VA.R. Doc. No. R25-7965; Filed March 25, 2025, 10:32 a.m.



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# REGULATIONS

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

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## Symbol Key

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

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## TITLE 4. CONSERVATION AND NATURAL RESOURCES

### BOARD OF WILDLIFE RESOURCES

#### Forms

**REGISTRAR'S NOTICE:** Forms used in administering the regulation have been filed by the agency. The forms are not being published; however, online users of this issue of the Virginia Register of Regulations may click on the name of a form with a hyperlink to access it. The forms are also available from the agency contact or may be viewed at the Office of the Registrar of Regulations, General Assembly Building, 201 North Ninth Street, Fourth Floor, Richmond, Virginia 23219.

**Title of Regulation:** 4VAC15-400. Watercraft: Accident and Casualty Reporting.

**Statutory Authority:** §§ 29.1-701 and 29.1-802 of the Code of Virginia.

**Agency Contact:** Aaron Proctor, Regulations Coordinator, Department of Wildlife Resources, 7870 Villa Park Drive, Suite 400, Henrico, VA 23228, telephone (804) 801-8199, or email [aaron.proctor@dwr.virginia.gov](mailto:aaron.proctor@dwr.virginia.gov).

FORMS (4VAC15-400)

~~Crossbow Application (rev. 7/22/96).~~

~~Virginia state resident hunting license.~~

~~Special application for domicile resident licenses and permits to hunt, fish or trap in Virginia.~~

~~Resident bear deer turkey hunting license.~~

~~Resident bonus deer permit.~~

~~Virginia nonresident bear deer turkey hunting license.~~

~~Nonresident bonus deer permit.~~

~~Nonresident 3 day trip hunting license.~~

~~Virginia national forest hunting permit.~~

~~Nonresident hunting license.~~

~~Resident junior hunting license.~~

~~Virginia county or city resident hunting license.~~

~~State resident muzzleloading hunting license.~~

~~Resident junior bear deer turkey license.~~

~~Resident 65 and older hunting license.~~

~~Resident archery hunting license.~~

~~Nonresident archery hunting license.~~

~~Stationary blind hunting permit.~~

~~Floating blind hunting permit.~~

~~Nonresident shooting preserve license.~~

~~Nonresident muzzleloading hunting license.~~

~~DGIF license sales agent hunting certificates sales report.~~

~~Application for state resident disabled veteran's lifetime state license to hunt and fish in inland waters (eff. 5/01).~~

~~Resident disabled veteran's permanent state license to hunt and fish.~~

~~Permit for persons permanently unable to walk to shoot from a stationary vehicle, LAW 28A (eff. 8/94).~~

~~Physician's affirmation as to one's permanent inability to walk.~~

~~State resident license to trap.~~

~~Virginia county or city residence license to trap.~~

~~State resident age 65 and older license to trap.~~

~~Nonresident trapping license.~~

~~Resident fresh water fishing license.~~

~~Resident fishing license renewal application.~~

~~State non resident fresh water fishing license.~~

~~County or city resident fresh water fishing license.~~

~~State resident trout fresh water fishing license.~~

~~State non resident trout fresh water fishing license.~~

~~National forest certificate.~~

~~State non resident fresh water 5 day fishing license.~~

~~65 and over state resident fresh water fishing license.~~

~~State resident fresh water 5 day fishing license.~~

~~Individual saltwater sport fishing license.~~

~~Temporary 10 day saltwater sport fishing license.~~

~~Saltwater boat sport fishing license.~~

~~Fishing certificates sales report, #79 F1 (eff. 1/95).~~

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# Regulations

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~~Application for disabled resident special lifetime hunting, fresh water, or saltwater fishing license. (eff. 6/93).~~

~~Disabled resident hunting and fresh water fishing license physicians' affidavit.~~

~~Disabled resident special lifetime fishing license.~~

~~Disabled resident special lifetime fishing and hunting license.~~

~~Application for lifetime hunting and/or lifetime fresh water fishing licenses. (eff. 10/94).~~

~~Resident special lifetime hunting and fishing license.~~

~~Resident special lifetime hunting license.~~

~~Resident special lifetime fishing license.~~

~~Non resident lifetime fishing license.~~

~~Non resident lifetime hunting license.~~

~~Non resident hunting, fresh water, saltwater recreational fishing license order form. (eff. 10/94).~~

~~Nonresident application for permit to deal in furs.~~

~~Annual raw fur dealer's report. (eff. 6/94).~~

~~Nonresident permit to deal in furs.~~

~~Resident application for permit to deal in furs. (eff. 6/94).~~

~~Resident application to deal in furs.~~

~~Application for field trial permit. (eff. 8/94).~~

~~Raccoon hound field trial permit conditions.~~

~~Application for establishing a licensed shooting preserve. (eff. 7/94)~~

~~Shooting preserve annual report.~~

~~Striped bass fishing tournament data sheet.~~

~~Competitive freshwater fishing tournament notice. (eff. 7/1/93).~~

~~Competitive freshwater fishing tournament data summary.~~

~~Special guest fishing license application.~~

~~Nonresident complimentary fishing license.~~

~~Special guest fishing license.~~

~~Application for Virginia freshwater fish citation. (eff. 8/1/93).~~

~~Fish stocking permit (to stock fish in Virginia inland waters).~~

~~Application for authorization to establish a regulated trout fishing preserve. (eff. 2/7/94).~~

~~Trout fishing preserve annual report.~~

~~Application for enrollment in the community fishing clinics program.~~

~~Application for fallow deer farming permit. (eff. 6/94).~~

~~Deer management assistance program application.~~

~~Official kill permit, to kill wild animals during closed season. (eff. 5/93).~~

~~Request for certification in the Virginia DGIF wildlife habitat program. (eff. 6/94).~~

~~Application for permit to stuff and mount birds, animals or fish and parts thereof for sale or compensation.~~

~~Permit to stuff or mount birds, animals, or fish.~~

~~Application for scientific collection or salvage permit (to collect fish or wildlife for scientific purposes or salvage fish or wildlife for scientific or educational purposes).~~

~~Scientific collection/salvage permit supplemental amendment form.~~

~~Application for Virginia endangered species permit.~~

~~Non native (exotic) animal permit.~~

~~Application for wolf hybrid permit. (eff. 6/94).~~

~~Application/permit wildlife rehabilitator.~~

~~Application/permit to propagate for private use certain game and migratory game birds.~~

~~Brood stock reports (species, number, and origin of brood stock for certain game and migratory game birds).~~

~~Application/permit to propagate and sell certain wildlife.~~

~~Brood stock report (species, number, and origin of brood stock for certain amphibians and reptiles).~~

~~Annual reporting form for propagating and selling certain wildlife (permitted tilapia, frogs, snakes, game birds, game animals, and furbearers).~~

~~Application/permit to exhibit wild animals.~~

~~Application/permit to import certain non native (exotic) wildlife into Virginia.~~

~~Application/permit to hold and sell certain fish, snakes, snapping turtles, crayfish, and hellgrammites for sale.~~

~~Annual reporting form for propagating certain wildlife for private use.~~

~~Exotic species application/permit to import certified triploid grass carp for aquatic vegetation control in private ponds.~~

~~Application for motorboat certificate of number/certificate of title, #BRT10/94-100M.~~

~~Affidavit covering repossession of vessel title number.~~

~~Application for marine event.~~

~~Application to transfer saltwater recreational boat license.~~

~~Application for duplicate certificate of (watercraft) title, #BC/DCT9/93-2M.~~

~~Boating education notice/course application.~~

~~Statement of authorization to add or delete a (boat) purchaser(s).~~

~~Affidavit of compliance for enforcement of liens on vessels under a judicial order (appraised value of \$3001 and over).~~

~~Affidavit of compliance for enforcement of liens on vessels under a judicial order (appraised value of \$3000 or less).~~

~~(Boat) length certificate affidavit.~~

~~Affidavit of authority to transfer registration/title of a watercraft; procedure to transfer a Virginia certificate of title/registration when watercraft owner is deceased.~~

~~Procedure to acquire title/registration on an abandoned vessel; affidavit; sample letter; sample notice.~~

~~Statement of missing title and assignment of title to a vessel, SMT-3/94-2M.~~

~~Stolen boat, motor, and trailer report.~~

~~Application for supplemental lien or transfer of lien.~~

~~Affidavit for transfer when watercraft certificate of title is lost, etc. (eff. 4/89).~~

~~Affidavit for transfer of certificate of number (registration) when bill of sale is not available from last registered owner. (eff. 4/89).~~

~~Application for establishment of regulatory markers on public waters of Virginia.~~

~~(Public boating landing) Special use permit.~~

[Boating Accident Form \(eff. 7/2020\)](#)

VA.R. Doc. No. R25-8261; Filed March 25, 2025, 2:20 p.m.

**MARINE RESOURCES COMMISSION**

**Final Regulation**

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

Title of Regulation: **4VAC20-510. Pertaining to Amberjack and Cobia (amending 4VAC20-510-20, 4VAC20-510-30).**

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

Effective Date: April 1, 2025.

Agency Contact: Pat Geer, Chief of Fisheries Management Division, Marine Resources Commission, 380 Fenwick Road, Building 96, Fort Monroe, VA 23651, telephone (757) 247-2236, or email [pat.geer@mrc.virginia.gov](mailto:pat.geer@mrc.virginia.gov).

Summary:

*The amendments revise the recreational season and size limit for cobia to comply with reductions required by Addendum II to Amendment 1 of the Interstate Fisheries Management Plan for Atlantic Migratory Group Cobia.*

**4VAC20-510-20. Recreational fishery possession limits, season, and vessel allowance.**

A. It shall be unlawful for any person fishing recreationally to possess more than one cobia at any time. When fishing from any recreational vessel where the entire catch is held in a common hold or container, the possession limit for the recreational vessel shall be equal to the number of persons on board legally eligible to fish multiplied by one, except there is a maximum recreational vessel limit of two cobia per recreational vessel per day. The captain or operator of the recreational vessel shall be responsible for any recreational vessel possession limit. Any cobia caught after the possession limit has been reached shall be returned to the water immediately.

B. It shall be unlawful for any person fishing recreationally to harvest or possess any cobia before June 15 or after September 15 20 of the current calendar year.

C. It shall be unlawful for any person fishing recreationally to possess more than two amberjack at any time. When fishing from any recreational vessel where the entire catch is held in a common hold or container, the possession limit for the recreational vessel shall be equal to the number of persons on board legally eligible to fish multiplied by two. The captain or operator of the recreational vessel shall be responsible for any recreational vessel possession limit. Any amberjack caught after the possession limit has been reached shall be returned to the water immediately.

D. It shall be unlawful for any person fishing recreationally to gaff or attempt to gaff any cobia.

**4VAC20-510-30. Size limits.**

A. It shall be unlawful for any person to take, catch, or have in possession any amberjack less than 32 inches in total length.

B. It shall be unlawful for any person fishing commercially to take, harvest, or possess any cobia less than 37 inches in total length.

C. It shall be unlawful for any person to take, catch, or have in possession any recreationally harvested cobia less than ~~40~~ 43 inches in total length.

~~D. When fishing from any recreational vessel, it shall be unlawful to take, catch, or have in possession more than one recreationally harvested cobia greater than 50 inches in total length per vessel.~~

VA.R. Doc. No. R25-8214; Filed March 26, 2025, 9:23 a.m.



## TITLE 6. CRIMINAL JUSTICE AND CORRECTIONS

### FORENSIC SCIENCE BOARD

#### Fast-Track Regulation

**Title of Regulation:** 6VAC40-40. Regulations for the Implementation of the Law Permitting DNA Analysis Upon Arrest for All Violent Felonies and Certain Burglaries (amending 6VAC40-40-80, 6VAC40-40-90).

**Public Hearing Information:** No public hearing is currently scheduled.

**Public Comment Deadline:** May 21, 2025.

**Effective Date:** June 5, 2025.

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

**Basis:** The Forensic Science Board has the authority to promulgate DNA data bank regulations under §§ 9.1-1110 and 19.2-310.5 of the Code of Virginia.

**Purpose:** This regulatory action reduces the burden on requesting law-enforcement agencies and DNA data bank staff members. The use of the DNA data bank sample tracking system streamlines the process for submitting and receiving DNA samples from arrestees of violent offenses, enhancing public safety by facilitating the search of these samples to potentially connect a violent offender to other crimes that the offender may have committed.

**Rationale for Using Fast-Track Rulemaking Process:** The amendments reduce the burden on law-enforcement agencies and utilize the department's already existing DNA data bank sample tracking system; therefore, the amendments should not be controversial and are appropriate for the fast-track rulemaking process.

**Substance:** The amendments (i) eliminate the labeling requirements now replaced by prelog in the DNA data bank sample tracking system and (ii) indicate that the prelog function should be utilized by law-enforcement agencies if available. If unavailable, the original submission form may be utilized.

**Issues:** The public is not given access to the Department of Forensic Science data bank information. The advantage to the department and law-enforcement agencies is that the amendments allow law-enforcement agencies to prelog samples, reducing the time to hand write the personal identifying information on a submission form. There are no disadvantages to the public or the Commonwealth.

**Department of Planning and Budget Economic Impact Analysis:**

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 Code of Virginia and Executive Order 19. The analysis presented represents DPB's best estimate of the potential economic impacts as of the date of this analysis.<sup>1</sup>

Summary of the Proposed Amendments to Regulation. The Forensic Science Board (board) proposes to state that the Department of Forensic Sciences (DFS) DNA data bank sample tracking system should be utilized when available for the submission of DNA buccal samples rather than having law-enforcement officers fill out a preprinted form as part of the buccal sample<sup>2</sup> kit.

Background. DNA buccal samples are collected during booking by the sheriff's office, police department or regional jail responsible for booking upon arrest.<sup>3</sup> The current regulation states that "samples shall be submitted with the following identifying information: the arrestee's name, social security number, date of birth, race and gender; the name of the person collecting the samples; the date and place of collection; information identifying the arresting or accompanying officer; the qualifying offense; and the document control number (DCN)." Traditionally, this has been done by a staff member at the local law-enforcement agency handwriting this information on a form. DFS now has an electronic DNA data bank sample tracking system (DBSATS) that can be used to enter the information. DFS reports that approximately 40% of the submissions it receives are already being made through DBSATS. To improve efficiency, the proposed text is intended to encourage the use of the electronic system with the hope that ultimately 100% of submissions are via DBSATS. According to DFS, in order for local law-enforcement agencies to sign up and get access to DBSATS, a site administrator must execute an access agreement with the DFS data bank staff and maintain a list of authorized users. There is no charge and DFS states that it takes minimal time. DFS also notes that the local law-enforcement agencies should have already signed up to access this system to comply with 6VAC 40-40-50, which states that, "[p]rior to taking the saliva or tissue sample, the DNA data bank sample tracking system shall be queried to determine if there is a DNA sample already in the data bank for the arrestee."

Estimated Benefits and Costs. DFS reports that it receives approximately 2,000 arrestee buccal samples each fiscal year, that DFS data bank analysts earn on average \$28.25 per hour, and that receiving the information via DBSATS rather than on a handwritten form saves about 0.03 hours per submission for the DFS data bank analysts. Valuing saved time by the amount earned by analysts for that time, if the proposed text results in all submissions being done by DBSATS (versus the current 40%), then \$1,017 in costs would be avoided annually for DFS.<sup>4</sup> Additionally, handwriting would not need to be interpreted by DFS staff, which may save additional time. The U.S. Bureau of Labor Statistics May 2023<sup>5</sup> State Occupational Employment and Wage Estimates indicates an hourly mean wage of \$23.99 for correctional officers and jailers in Virginia.<sup>6</sup> DFS estimates that recording the information via

DBSATS rather than writing it on the form saves about 0.08 hours per submission for the local law enforcement agency staff. Valuing saved time by the amount earned for that time, if the proposed text results in all submissions being done by DBSATS (versus the current 40%), then \$2,303 in costs would be cumulatively avoided annually, which would be distributed across the Commonwealth's local law-enforcement agencies that are not already using the DBSATS system.<sup>7</sup>

**Businesses and Other Entities Affected.** The proposed amendments affect the 122 sheriff's offices,<sup>8</sup> 166 police departments,<sup>9</sup> and 28 regional jails<sup>10</sup> in the Commonwealth, as well as DFS. The Code of Virginia requires DPB to assess whether an adverse impact may result from the proposed regulation.<sup>11</sup> An adverse impact is indicated if there is any increase in net cost or reduction in net benefit for any entity, even if the benefits exceed the costs for all entities combined.<sup>12</sup> As the proposed amendment neither increases net costs nor reduces net benefits, no adverse impact is indicated.

**Small Businesses<sup>13</sup> Affected.**<sup>14</sup> The proposed amendments do not adversely affect small businesses.

**Localities<sup>15</sup> Affected.**<sup>16</sup> The proposed amendments neither disproportionately affect particular localities nor introduce costs for local governments.

**Projected Impact on Employment.** The proposed amendments are not likely to affect total employment.

**Effects on the Use and Value of Private Property.** The proposed amendments neither effect the use and value of private property nor real estate development costs.

<sup>1</sup> Section 2.2-4007.04 of the Code of Virginia requires that such economic impact analyses determine the public benefits and costs of the proposed amendments. Further the analysis should include but not be limited to: (1) the projected number of businesses or other entities to whom the proposed regulatory action would apply, (2) the identity of any localities and types of businesses or other entities particularly affected, (3) the projected number of persons and employment positions to be affected, (4) the projected costs to affected businesses or entities to implement or comply with the regulation, and (5) the impact on the use and value of private property.

<sup>2</sup> The regulation defines buccal sample as a sample taken by swabbing the cheek inside an arrestee's mouth.

<sup>3</sup> See <https://law.lis.virginia.gov/admincode/title6/agency40/chapter40/section60/>.

<sup>4</sup>  $2,000 \times 0.6 \times \$28.25 \times 0.03 = \$1,017$ .

<sup>5</sup> This is the most recent version published.

<sup>6</sup> See [https://www.bls.gov/oes/current/oes\\_va.htm](https://www.bls.gov/oes/current/oes_va.htm).

<sup>7</sup>  $2,000 \times 0.6 \times \$23.99 \times 0.08 = \$2,303$ .

<sup>8</sup> Data source: <https://bjs.ojp.gov/sites/g/files/xyckuh236/files/media/document/csllea18st.pdf>.

<sup>9</sup> Ibid.

<sup>10</sup> Data source: <https://www.dcsj.virginia.gov/sites/dcsj.virginia.gov/files/publications/research/virginias-peculiar-system-localand-regional-jails.pdf>.

<sup>11</sup> Pursuant to § 2.2-4007.04 D: In the event this economic impact analysis reveals that the proposed regulation would have an adverse economic impact on businesses or would impose a significant adverse economic impact on a locality, business, or entity particularly affected, the Department of Planning and Budget shall advise the Joint Commission on Administrative Rules, the House Committee on Appropriations, and the Senate Committee on Finance.

Statute does not define "adverse impact," state whether only Virginia entities should be considered, nor indicate whether an adverse impact results from regulatory requirements mandated by legislation.

<sup>12</sup> Statute does not define "adverse impact," state whether only Virginia entities should be considered, nor indicate whether an adverse impact results from regulatory requirements mandated by legislation. As a result, DPB has adopted a definition of adverse impact that assesses changes in net costs and benefits for each affected Virginia entity that directly results from discretionary changes to the regulation.

<sup>13</sup> Pursuant to § 2.2-4007.04, small business is defined as "a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million."

<sup>14</sup> If the proposed regulatory action may have an adverse effect on small businesses, § 2.2-4007.04 requires that such economic impact analyses include: (1) an identification and estimate of the number of small businesses subject to the proposed regulation, (2) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the proposed regulation, including the type of professional skills necessary for preparing required reports and other documents, (3) a statement of the probable effect of the proposed regulation on affected small businesses, and (4) a description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation. Additionally, pursuant to § 2.2-4007.1 of the Code of Virginia, if there is a finding that a proposed regulation may have an adverse impact on small business, the Joint Commission on Administrative Rules shall be notified.

<sup>15</sup> "Locality" can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulatory change are most likely to occur.

<sup>16</sup> Section 2.2-4007.04 defines "particularly affected" as bearing disproportionate material impact.

**Agency Response to Economic Impact Analysis:** The Forensic Science Board concurs with the economic impact analysis prepared by the Department of Planning and Budget.

#### Summary:

*In response to Executive Order 19 (2022), the amendments require law-enforcement officers to utilize the Department of Forensic Science DNA data bank sample tracking system for the submission of DNA buccal samples when available rather than a paper form.*

#### 6VAC40-40-80. When buccal sample kits are unavailable.

In circumstances where a buccal sample kit is unavailable, the department may accept samples collected without using the buccal sample collection devices contained in the buccal sample kits. These samples shall be collected through the use of sterile swabs and satisfy the sealing and labeling submitted in compliance with the requirements of 6VAC40-40-90.

#### 6VAC40-40-90. Sealing and labeling samples.

All saliva and tissue samples collected shall be placed in sealed, tamper-resistant containers. Samples ~~shall~~ should be submitted ~~with the following identifying information: the arrestee's name, social security number, date of birth, race and gender; the name of the person collecting the samples; the date and place of collection; information identifying the arresting or accompanying officer; the qualifying offense; and the document control number (DCN) using the prelog function of the DNA data bank sample tracking system. If unavailable, a completed submission form shall be submitted with the sample.~~

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

## FORMS (6VAC40-40)

[DNA Sample Submission Form \(eff. 7/2018\)](#)

[DNA Data Bank Sample Tracking System \(eff. 7/2022\)](#)

VA.R. Doc. No. R25-7858; Filed April 1, 2025, 5:40 p.m.



## TITLE 12. HEALTH

### STATE BOARD OF BEHAVIORAL HEALTH AND DEVELOPMENTAL SERVICES

#### Fast-Track Regulation

**Title of Regulation:** 12VAC35-46. **Regulations for Children's Residential Facilities (amending 12VAC35-46-20, 12VAC35-46-80, 12VAC35-46-110, 12VAC35-46-180, 12VAC35-46-190, 12VAC35-46-200, 12VAC35-46-220, 12VAC35-46-230, 12VAC35-46-250, 12VAC35-46-270, 12VAC35-46-280, 12VAC35-46-300, 12VAC35-46-310, 12VAC35-46-330, 12VAC35-46-380, 12VAC35-46-400, 12VAC35-46-420, 12VAC35-46-470, 12VAC35-46-480, 12VAC35-46-660, 12VAC35-46-710 through 12VAC35-46-760, 12VAC35-46-800, 12VAC35-46-810, 12VAC35-46-830, 12VAC35-46-850, 12VAC35-46-860, 12VAC35-46-880, 12VAC35-46-890, 12VAC35-46-900, 12VAC35-46-940, 12VAC35-46-950, 12VAC35-46-990, 12VAC35-46-1010, 12VAC35-46-1020, 12VAC35-46-1060, 12VAC35-46-1090; repealing 12VAC35-46-170, 12VAC35-46-340, 12VAC35-46-560, 12VAC35-46-690, 12VAC35-46-820, 12VAC35-46-1040, 12VAC35-46-1100, 12VAC35-46-1120, 12VAC35-46-1130, 12VAC35-46-1140).**

**Statutory Authority:** §§ 37.2-203 and 37.2-408 of the Code of Virginia.

**Public Hearing Information:** No public hearing is currently scheduled.

**Public Comment Deadline:** June 5, 2025.

**Effective Date:** June 19, 2025.

**Agency Contact:** Susan Puglisi, Regulatory Research Specialist, Department of Behavioral Health and Developmental Services, Jefferson Building, 1220 Bank Street, Fourth Floor, Richmond, VA 23219, telephone (804) 371-8043, FAX (804) 385-6549, TDD (804) 371-8977, or email [susan.puglisi@dbhds.virginia.gov](mailto:susan.puglisi@dbhds.virginia.gov).

**Basis:** Section 37.2-203 of the Code of Virginia authorizes the State Board of Behavioral Health and Developmental Services to promulgate regulations that may be necessary to carry out the provisions of Title 37.2 and other laws of the Commonwealth administered by the Department of Behavioral Health and Developmental Services (DBHDS) or its commissioner. The board has the authority to adopt regulations for licensing under § 37.2-404 of the Code of Virginia.

**Purpose:** The amendments implement Executive Directive One (2022) and establish parameters of health, safety, and welfare for services licensed and funded by DBHDS.

**Rationale for Using Fast-Track Rulemaking Process:** DBHDS focused this regulatory action on noncontroversial amendments that reduce the regulatory burden on licensed providers, making it appropriate for the fast-track rulemaking process.

**Substance:** The amendments include clarifying and technical changes that (i) reduce the intensity of compliance mandates, (ii) simplify requirements and eliminate duplication, (iii) streamline processing and modernize operations, and (iv) reflect current best practices.

**Issues:** The primary advantage of this action is that the amendments reduce and clarify regulatory requirements, improving ease of use and understanding by licensed providers, residents receiving services, and other stakeholders. The action does not add regulatory burden or remove protections for individuals; therefore, there are no disadvantages to the public. The primary advantages to DBHDS and the Commonwealth are that the regulatory language is reflective of current practice and simplified to promote increased compliance. There is no disadvantage to the Commonwealth.

#### Department of Planning and Budget Economic Impact Analysis:

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 Code of Virginia and Executive Order 19. The analysis presented represents DPB's best estimate of the potential economic impacts as of the date of this analysis.<sup>1</sup>

Summary of the Proposed Amendments to Regulation. Pursuant to Executive Directive Number One (2022) (ED 1),<sup>2</sup> the State Board of Behavioral Health and Developmental Services (board) proposes numerous changes primarily to remove and modify discretionary administrative requirements for children's residential facilities to reduce compliance costs and to clarify and simplify language.

Background. ED 1 requires executive branch agencies to remove regulations not mandated by federal or state statute, in consultation with the Office of the Attorney General, and in a manner consistent with the laws of the Commonwealth. In response, the board proposes numerous changes primarily to the administrative requirements for children's residential

facilities. These facilities include group homes<sup>3</sup> and residential treatment programs.<sup>4</sup> Currently, there are 68 licensed providers with 1,953 beds offering 122 types of services. The specific changes that are substantive are discussed.

**Estimated Benefits and Costs. Fiscal accountability:** The proposal would eliminate the obligation for providers to prepare annual financial information (i.e., an operating statement showing revenue and expenses for the fiscal year just ended, a working budget showing projected revenue and expenses for the next fiscal year that gives evidence that there are sufficient funds to operate, and a balance sheet showing assets and liabilities for the fiscal year just ended); replace the requirement for written policy on handling funds with a mandate to keep individual accounts separate; and add a requirement for children's residential providers to notify the Department of Behavioral Health and Developmental Services (DBHDS) if minimum working capital is reduced or canceled. These changes are proposed in part because DBHDS does not have the staff resources to analyze financial information in a meaningful way. The main expected economic impact is a reduction (of unknown magnitude) in the administrative costs on licensed providers as well as on DBHDS.

**Bond or insurance:** The board proposes to replace the requirement for a blanket fidelity bond or employee dishonesty insurance policy (covering members of the governing body and staff who have been authorized to handle the facility's or residents' funds) with a mandate that only financial managers be bonded. As a result, a reduction in bond or insurance costs is expected because fewer individuals would be required to be bonded or insured. However, DBHDS does not have an estimate on the number of employees that would no longer be required to be bonded or insured nor on the cost of such coverage per individual.

**Staff development:** The proposal would require targeted staff training in any area of quality improvement as identified from the results of the quality improvement plan rather than requiring training for all staff and eliminate the 15-hour additional annual continuing education (CE) that is required above and beyond other required training for full-time staff. DBHDS states that staff training, including CE, is provided by the licensed providers rather than independent CE providers. This change is expected to reduce training costs in terms of the time and resources devoted to such training.

**The chief administrative officer and records management designee:** The board proposes to strike the requirement for providers to appoint a chief administrative officer (CAO). A CAO is currently responsible for: compliance with these regulations and other applicable regulations; all personnel; oversight of facility operations in its entirety, including approving the design of the structured program of care and its implementation; and facility financial integrity. Under the current language a CAO must have at a minimum of two to four years of experience depending on the education level (a bachelor's degree or a master's degree). According to DBHDS,

this change reflects the current practice and gives providers discretion to devise organizational structures that work for their service model. Similarly, the board proposes to remove the requirement for providers to name a records management designee, which would also allow providers to devise organizational structures that work for their service model.

**Child care staff:** The proposal would lower the minimum age for private sector child care workers from 21 to 19 years of age. This change is expected to expand the pool of child care workers for providers and assist with the workforce challenges they face.

**Recordkeeping:** The proposal would also strike requirements that the board has deemed unnecessary, including permanent retention of face sheets;<sup>5</sup> requirements for face sheets to include transfer or discharge information; the requirement for providers to retain copies of menus for six months; and requirements related to assessing individual suitability for recreational activities and activity preparation. According to DBHDS, the proposed changes would decrease compliance costs by removing unnecessary recordkeeping and administrative burdens. In summary, the proposed changes are expected to reduce administrative costs for DBHDS and providers, including the compliance costs (e.g., administrative costs, staffing costs, bond and insurance costs, training costs, and recordkeeping costs) for licensed providers. The changes would also provide more discretion over standard business operations and allow providers to find organizational structures that work for their service model. However, there is no available data to quantify such cost savings and benefits.

**Businesses and Other Entities Affected.** Currently, there are 68 licensed providers with 1,953 beds offering 122 types of services. The Code of Virginia requires DPB to assess whether an adverse impact may result from the proposed regulation.<sup>6</sup> An adverse impact is indicated if there is any increase in net cost or reduction in net benefit for any entity, even if the benefits exceed the costs for all entities combined.<sup>7</sup> The proposed changes are expected to reduce administrative costs or provide operational flexibility to the regulated providers. Thus, an adverse impact is not indicated.

**Small Businesses<sup>8</sup> Affected.**<sup>9</sup> It is likely most of the privately owned providers would meet the definition of a small business, but the proposed amendments do not appear to adversely affect them.

**Localities<sup>10</sup> Affected.**<sup>11</sup> According to DBHDS, some of the regulated entities are community service boards (CSB), which are a part of local governments. However, the proposed changes do not introduce costs for CSBs nor do they particularly affect any locality more than others.

**Projected Impact on Employment.** Several of the changes could potentially affect employment; however, the net impact of these changes on total employment is not known. One of the proposed changes would reduce the eligibility age from 21 to 19 years of age for child care staff, which would increase the supply of potential child care employees. It is reasonable to

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expect that some of the new staff hired from this expanded pool would be younger than 21 years of age, which may potentially reduce employment of staff who are 21 years of age or older. Another change would remove the requirement to appoint a CAO who must currently have a bachelor's degree or master's degree with two to four years of experience, potentially affecting the existence of this position or the eligible pool of employees for this position. Similarly, providers would no longer be required to designate an individual responsible for records management, which may or may not eliminate an existing employment opportunity. Finally, the changes expected to reduce administrative and recordkeeping requirements may affect employment positions related to such requirements.

**Effects on the Use and Value of Private Property.** Generally, a reduction in compliance costs should improve profits and consequently add to the asset values of regulated children's residential facilities that are owned by private businesses. No direct impact on real estate development costs is expected.

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<sup>1</sup> Section 2.2-4007.04 of the Code of Virginia requires that such economic impact analyses determine the public benefits and costs of the proposed amendments. Further the analysis should include but not be limited to: (1) the projected number of businesses or other entities to whom the proposed regulatory action would apply, (2) the identity of any localities and types of businesses or other entities particularly affected, (3) the projected number of persons and employment positions to be affected, (4) the projected costs to affected businesses or entities to implement or comply with the regulation, and (5) the impact on the use and value of private property.

<sup>2</sup> <https://www.governor.virginia.gov/media/governorvirginiagov/governor-of-virginia/pdf/ed/ED-1-Regulatory-Reduction.pdf>.

<sup>3</sup> "A group home is a children's residential facility that is a community-based, homelike single dwelling, or its acceptable equivalent, other than the private home of the operator, and serves up to 12.

<sup>4</sup> A residential treatment program means 24-hour, supervised, medically necessary, out-of-home programs designed to provide necessary support and address mental health, behavioral, substance abuse, cognitive, or training needs of a child or adolescent in order to prevent or minimize the need for more intensive inpatient treatment. Services include, but not limited to, assessment and evaluation, medical treatment (including medication), individual and group counseling, neurobehavioral services, and family therapy necessary to treat the child. The service provides active treatment or training beginning at admission related to the resident's principal diagnosis and admitting symptoms. These services do not include interventions and activities designed only to meet the supportive nonmental health special needs including personal care, habilitation, or academic educational needs of the resident.

<sup>5</sup> A face sheet contains (i) the resident's full name, last known residence, birth date, birthplace, gender, race, social security number or other unique identifier, religious preference, and admission date; and (ii) names, addresses, and telephone numbers of the resident's legal guardians, placing agency, emergency contacts, and parents, if appropriate.

<sup>6</sup> Pursuant to § 2.2-4007.04 D: In the event this economic impact analysis reveals that the proposed regulation would have an adverse economic impact on businesses or would impose a significant adverse economic impact on a locality, business, or entity particularly affected, the Department of Planning and Budget shall advise the Joint Commission on Administrative Rules, the House Committee on Appropriations, and the Senate Committee on Finance. Statute does not define "adverse impact," state whether only Virginia entities should be considered, nor indicate whether an adverse impact results from regulatory requirements mandated by legislation.

<sup>7</sup> Statute does not define "adverse impact," state whether only Virginia entities should be considered, nor indicate whether an adverse impact results from

regulatory requirements mandated by legislation. As a result, DPB has adopted a definition of adverse impact that assesses changes in net costs and benefits for each affected Virginia entity that directly results from discretionary changes to the regulation.

<sup>8</sup> Pursuant to § 2.2-4007.04, small business is defined as "a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million."

<sup>9</sup> If the proposed regulatory action may have an adverse effect on small businesses, § 2.2-4007.04 requires that such economic impact analyses include: (1) an identification and estimate of the number of small businesses subject to the proposed regulation, (2) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the proposed regulation, including the type of professional skills necessary for preparing required reports and other documents, (3) a statement of the probable effect of the proposed regulation on affected small businesses, and (4) a description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation. Additionally, pursuant to § 2.2-4007.1 of the Code of Virginia, if there is a finding that a proposed regulation may have an adverse impact on small business, the Joint Commission on Administrative Rules shall be notified.

<sup>10</sup> "Locality" can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulatory change are most likely to occur.

<sup>11</sup> Section 2.2-4007.04 defines "particularly affected" as bearing disproportionate material impact.

**Agency Response to Economic Impact Analysis:** The State Board of Behavioral Health and Developmental Services concurs with the economic impact analysis prepared by the Department of Planning and Budget.

**Summary:**

*In response to Executive Directive One (2022), the amendments (i) eliminate the obligation for providers to prepare annual financial information; (ii) replace the requirement for a written policy on handling funds with a mandate to keep individual accounts separate; (iii) add a requirement for children's residential providers to notify the Department of Behavioral Health and Developmental Services (DBHDS) if minimum working capital is reduced or canceled; (iv) replace the requirement for a blanket fidelity bond or employee dishonesty insurance policy with a mandate that only financial managers be bonded; (v) require targeted staff training in any area of quality improvement as identified from the results of the quality improvement plan; (vi) eliminate the 15-hour additional annual continuing education that is required in addition to other required training for full-time staff; (vii) remove the requirement for providers to appoint a chief administrative officer; (viii) lower the minimum age for private sector child care workers to 19 years of age; and (ix) eliminate permanent retention of face sheets, requirements for face sheets to include transfer or discharge information, requirements for providers to retain copies of menus for six months, and requirements related to assessing individual suitability for recreational activities and activity preparation.*



**12VAC35-46-20. Service description and applications; required elements.**

A. In order to determine whether an applicant is subject to ~~these regulations~~ this chapter, the applicant must submit a service description initially.

B. Each provider shall have a written service description that accurately describes its structured program of care and treatment consistent with the treatment, habilitation, or training needs of the residential population it serves. Service description elements shall include:

1. The mental health, substance abuse, ~~mental retardation~~ developmental disability, or brain injury population ~~the~~ provider intends to serve;
2. The mental health, substance abuse, ~~mental retardation~~ developmental disability, or brain injury interventions ~~the~~ provider will provide;
3. Provider goals;
4. Services provided; and
5. Contract services, if any.

C. The provider shall develop, implement, review, and revise its services according to the provider's mission and shall have that information available for public review.

D. Initial applications.

1. A completed application includes, ~~but is not limited to~~, an initial application form; proposed working budget for the year showing projected revenue and expenses for the first year of operation and a balance sheet showing assets and liabilities; evidence of financial resources or a line of credit sufficient to cover estimated operating expenses for 90 days unless the facility is operated by a state or local government agency, board, or commission; a service description; a proposed ~~staffing/supervision~~ staffing and supervision plan, including the staff information sheet; copies of all job descriptions; evidence of the applicant's authority to conduct business in Virginia; a copy of the floor plan with dimensions of rooms; a certificate of occupancy; current health inspection; evidence of consultation with state or local fire prevention authorities; and a list of board members, if applicable; ~~three references for the applicant; and, if required by the department, references for three officers of the board if applicable.~~ This information shall be submitted to and approved by the department in order for the application to be considered complete.
2. All initial applications that are not complete within 12 months shall be closed.
3. Facilities operated by state or local government agencies, boards, and commissions shall submit ~~evidence of sufficient funds to operate including~~ a working budget showing appropriated revenue and projected expenses for the coming year.

4. Currently licensed providers shall demonstrate that they are operating in substantial compliance with applicable regulations before new facilities operated by the same provider will be licensed.

E. Renewal applications. A completed application for renewal of a facility's license shall be submitted within 30 days after being notified to submit a renewal application.

**12VAC35-46-80. Written corrective action plans.**

A. If there is noncompliance with applicable regulations during an initial or ongoing review or investigation, the department shall issue a licensing report describing the noncompliance and requesting the provider to submit a corrective action plan.

B. The provider shall submit to the department and implement a written corrective action plan for each regulation for which the provider is found to be in noncompliance.

C. The corrective action plan shall include a:

1. Description of each corrective action to be taken to correct the noncompliance and to prevent reoccurrence in the future and the person responsible for implementation; and
2. Date of completion for each action; ~~and 3. Signature of the person responsible for oversight of the implementation of the pledged corrective action.~~

D. The provider shall submit the corrective action plan to the department within 15 business days of the issuance of the licensing report. Extensions may be granted by the department when requested prior to the due date, but extensions shall not exceed an additional 10 business days. An immediate corrective action plan shall be required if the department determines that the violations pose a threat to the health, safety, or welfare of residents.

E. ~~A~~ Upon receipt of the corrective action plan ~~shall be approved by~~, the department shall review the plan and determine whether the plan is approved or not approved. The provider shall have an additional 10 business days to submit a revised corrective action plan after receiving a notice that the plan submitted has not been approved.

**12VAC35-46-110. Modification.**

A. The conditions of a license may be modified during the term of the license with respect to the capacity, ~~residents'~~ resident age range, facility location, ~~residents'~~ resident gender, or changes in the services. Limited modifications may be approved during the conditional licensure period.

~~B. The provider shall submit a written report of any contemplated changes in operation that would affect the terms of the license or the continuing eligibility for licensure to the department.~~

~~C. A B.~~ No change shall ~~not~~ be implemented prior to approval by the department. The provider shall be notified in writing within 60 days following receipt of the request as to whether the modification is approved or a new license is required.

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## 12VAC35-46-170. Governing body. ~~(Repealed.)~~

~~A. The provider shall clearly identify the corporation, association, partnership, individual, or public agency that is the licensee.~~

~~B. The provider shall clearly identify any governing board, body, entity, or person to whom it delegates the legal responsibilities and duties of the provider.~~

## 12VAC35-46-180. Responsibilities of the provider.

~~A. The provider shall appoint a qualified chief administrative officer to whom it delegates, in writing, the authority and responsibility for administrative direction of the facility.~~

~~B. The provider shall develop and implement a written decision making plan that shall provide for a staff person with the qualifications of the chief administrative officer or program director to be designated to assume the temporary responsibility for the operation of the facility. Each plan shall include an organizational chart.~~

~~C. The provider shall develop a written statement of the objectives of the facility including a description of the target population and the programs to be offered.~~

~~D. The provider shall develop and implement written policies and procedures to monitor and evaluate service quality and effectiveness on a systematic and ~~on-going~~ ongoing basis. The provider shall implement improvements when indicated.~~

## 12VAC35-46-190. Fiscal accountability.

~~A. Facilities operated by corporations, unincorporated organizations or associations, individuals, or partnerships shall prepare at the end of each fiscal year:~~

- ~~1. An operating statement showing revenue and expenses for the fiscal year just ended;~~
- ~~2. A working budget showing projected revenue and expenses for the next fiscal year that gives evidence that there are sufficient funds to operate; and~~
- ~~3. A balance sheet showing assets and liabilities for the fiscal year just ended.~~

~~B. There shall be~~ A. The provider shall maintain a system of financial recordkeeping that shows a separation of the facility's provider's accounts from all other records accounts.

~~C. B.~~ The provider shall develop and implement written policies and procedures that address the day to day handling of facility funds to include: 1. Handling of deposits; 2. Writing of checks; and 3. Handling of petty cash keep individual accounts separate. Providers shall not commingle funds of multiple individuals receiving services.

C. The provider shall identify in writing the title and qualifications of the person with designated authority and responsibility for the fiscal management of the provider's services.

## 12VAC35-46-200. Insurance.

A. The provider shall maintain liability insurance covering the premises and the facility's operations.

B. The provider shall provide documentation that all vehicles used to transport residents are insured, including vehicles owned by staff.

~~C. The members of the governing body and staff who have been authorized to handle the facility's or residents' funds~~ At a minimum, the person who has the authority and responsibility for fiscal management shall be bonded or otherwise indemnified against employee dishonesty.

## 12VAC35-46-220. Weapons.

~~The provider shall develop and implement a written policies and procedures governing the possession and use of firearms, pellet guns, air guns, and other weapons on the facility's premises and during facility related activities. The policy shall provide that no prohibiting~~ firearms, pellet guns, air guns, or other weapons shall be permitted on the premises or at facility-sponsored activities unless the weapons are weapon is:

1. In the possession of licensed security personnel or a law-enforcement ~~officers~~ officer;
2. Kept securely under lock and key; or
3. Used by a resident with the legal guardian's permission under the supervision of a responsible adult in ~~accord~~ accordance with policies and procedures developed by the facility for the ~~weapons'~~ weapon's lawful and safe use.

## 12VAC35-46-230. Relationship to the department.

~~A. The provider shall submit or make available to the department such reports and information as the department may require to establish compliance with these regulations~~ this chapter and other applicable regulations and statutes.

~~B. The governing body or its official representative shall notify the department within five working days of any change in administrative structure or newly hired chief administrative officer or program director.~~

## 12VAC35-46-250. Health information.

A. Health information required by this section shall be maintained for each staff member and for each individual who resides in a building occupied by residents, including each person who is not a staff member or resident of the facility. Health information shall be handled, maintained, and stored in a fashion that maintains confidentiality of the information at all times.

~~B. Tuberculosis evaluation.~~ 1. At the time of hire or residency at the facility, each individual shall submit the results of a tuberculosis screening assessment documenting the absence of tuberculosis in a communicable form as evidenced by the completion of a form containing, at a minimum, the elements

of a current screening form published by the Virginia Department of Health. The screening assessment shall be no older than 30 days.

~~2. Each individual shall annually submit the results of a screening assessment, documenting that the individual is free of tuberculosis in a communicable form as evidenced by the completion of a form containing, at a minimum, the elements of a current screening form published by the Virginia Department of Health.~~

**12VAC35-46-270. Qualifications.**

A. Regulations establishing minimum position qualifications shall be applicable to all providers. In lieu of the minimum position qualifications contained in this chapter, providers subject to (i) the rules and regulations of the Virginia Department of Human Resource Management or (ii) the rules and regulations of a local government personnel office may develop written minimum entry-level qualifications in ~~accordance~~ accordance with the rules and regulations of the supervising personnel authority.

B. A person who assumes or is designated to assume the responsibilities of a position or any combination of positions described in ~~these regulations after December 28, 2007, this chapter~~ shall:

1. Meet the qualifications of the position ~~or positions~~;
2. Fully comply with all applicable regulations for each function; and
3. Demonstrate a working knowledge of the policies and procedures that are applicable to ~~his~~ the person's specific position ~~or positions~~.

~~C. When services or consultations are obtained on a contractual basis they shall be provided by professionally qualified personnel.~~

**12VAC35-46-280. Job descriptions.**

~~A.~~ There shall be a written job description for each position that, at a minimum, includes the:

1. Job title;
2. Duties and responsibilities ~~of the incumbent; and~~ and
3. ~~Job title of the immediate supervisor; and~~ 4. Minimum education, experience, knowledge, skills, and abilities required for ~~entry level performance of the job~~ entry.

~~B. A copy of the job description shall be given to each person assigned to a position at the time of employment or assignment.~~

**12VAC35-46-300. Personnel records.**

A. Separate up-to-date ~~written or automated~~ personnel records shall be maintained for each employee, ~~student/intern~~ student or intern, volunteer, and contractual service provider for whom background investigations are required by Virginia

statute. Content of personnel records of volunteers, ~~students/interns~~ students or interns, and contractual service providers may be limited to documentation of compliance with requirements of Virginia laws regarding child protective services and criminal history background investigations.

B. The records of each employee shall include:

1. A completed employment application form ~~or other written material~~ providing the individual's name, address, ~~phone~~ telephone number, and social security number or other unique identifier;
2. Educational background and employment history, including dates of employment for each position held and separation;
3. ~~Written references or notations of oral~~ Professional references;
4. Reports of required health examinations;
5. Annual performance evaluations;
- ~~6. Date of employment for each position held and separation;~~
- ~~7. 6.~~ Documentation of compliance with requirements of Virginia laws regarding child protective services and criminal history background investigations;
- ~~8. 7.~~ Documentation of educational degrees ~~and of or~~ professional certification or licensure credentials, as applicable;
- ~~9. 8.~~ Documentation of all training required by ~~these regulations this chapter~~ and any other training employee development received by individual staff; and
- ~~10. 9.~~ A current job description.

~~C. Personnel records, including separate health records, shall be retained in their entirety for at least three years after separation from employment, contractual service, student/intern, or volunteer service.~~

**12VAC35-46-310. Staff development.**

A. Required initial training.

1. Within seven days following their begin date, each staff member responsible for supervision of children shall receive basic orientation to the facility's behavior intervention policies, procedures, and techniques regarding less restrictive interventions, timeout, and physical restraint.
2. Within 14 days following an individual's begin date, and before an individual is alone supervising children, the provider shall conduct emergency preparedness and response training that shall include:

- a. Alerting emergency personnel and sounding alarms;
- b. Implementing evacuation procedures, including evacuation of residents with special needs (~~i.e.~~ e.g., deaf, blind, nonambulatory);

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- c. Using, maintaining, and operating emergency equipment;
  - d. Accessing emergency information for residents, including medical information; and
  - e. Utilizing community support services.
3. Within 14 days following their begin date, new employees, employees transferring from other facilities operated by the same provider, relief staff, volunteers, and ~~students/interns~~ students and interns shall be given orientation and training regarding:
- a. The objectives of the facility;
  - b. Practices of confidentiality;
  - c. The decision-making plan;
  - d. ~~These regulations~~ This chapter, including the prohibited actions as outlined in this ~~regulation~~ chapter; and
  - e. Other policies and procedures that are applicable to ~~their~~ the individual's positions, duties, and responsibilities.
4. Within 30 days following their begin date, all staff working with residents shall be enrolled in a standard first aid class and in a cardiopulmonary resuscitation class facilitated by the American Red Cross or other recognized authority, unless the individual is currently certified in first aid and cardiopulmonary resuscitation.
5. Within 30 days following their begin date, all staff working with residents shall be trained in child abuse and neglect, mandatory reporting, maintaining appropriate professional relationships, and interaction among staff and residents, and suicide prevention.
6. Within 30 days following their begin date, all staff shall be trained on the facility's policies and procedures regarding standard precautions.
7. Within 30 days following their begin date, all staff shall be trained on appropriate siting of children's residential facilities, and good neighbor policies and community relations.
8. Before administering medication, all staff responsible for medication administration shall have successfully completed a medication training program approved by the Board of Nursing or be licensed by the Commonwealth of Virginia to administer medications.
9. ~~All staff~~ The provider shall be trained carry out targeted staff training in any area of quality improvement as identified from the results of the quality improvement plan.

## B. Required annual retraining.

1. All employees, contractors, ~~students/interns~~ students and interns, and volunteers shall complete an annual refresher emergency preparedness and response training that shall include:
  - a. Alerting emergency personnel and sounding alarms;

- b. Implementing evacuation procedures, including evacuation of residents with special needs (~~i.e.~~ e.g., deaf, blind, nonambulatory);
- c. Using, maintaining, and operating emergency equipment;
- d. Accessing emergency information for residents, including medical information; and
- e. Utilizing community support services.

2. All staff who administer medication shall complete annual refresher medication training.

3. All child care staff shall receive annual retraining on the provider's behavior supports and timeout policies and procedures.

4. All staff working with residents shall receive annual retraining in child abuse and neglect, mandatory reporting, maintaining appropriate professional relationships, and interaction among staff and residents, and suicide prevention.

5. All staff shall receive annual retraining on the provider's policies and procedures regarding standard precautions.

~~C. Each full time staff person who works with residents shall complete an additional 15 hours of annual training applicable to their job duties.~~

~~D. Providers shall develop and implement written policies and procedures to ensure that part time staff receive training applicable to their positions.~~

~~E. C.~~ Training provided shall be comprehensive and based on the needs of the population served to ensure that staff have the competencies to perform their jobs.

## 12VAC35-46-330. The applicant.

As a condition of initial licensure and, if appropriate, license renewal, each applicant shall:

1. Provide documentation ~~that they have been trained on~~ training on appropriate siting of children's residential facilities, and good neighbor policies and community relations;
2. Be interviewed in person by the department to determine the qualifications of the owner or operator as set out in ~~these regulations. Should the applicant not be qualified to perform the duties of the chief administrative officer, the applicant shall hire an individual with the qualifications, as set out in these regulations, to perform the duties of the chief administrative officer~~ this chapter; and
3. Provide evidence of ~~having~~ relevant prior experience.

## 12VAC35-46-340. ~~The chief administrative officer.~~ **(Repealed.)**

~~A. The chief administrative officer shall have the following~~

responsibilities:

1. Responsibility for compliance with these regulations and other applicable regulations;
2. Responsibility for all personnel;
3. Responsibility for overseeing the facility operation in its entirety, including the approval of the design of the structured program of care and its implementation; and
4. Responsibility for the facility's financial integrity.

~~B. A chief administrative officer appointed after December 28, 2007, shall have at least:~~

1. A master's degree in social work, psychology, counseling, nursing, or administration and a combination of two years professional experience working with children and in administration and supervision;
2. A baccalaureate degree in social work, psychology, counseling, nursing, or administration and three years of combined professional experience with children, and in administration and supervision; or
3. A baccalaureate degree and a combination of four years professional experience in a children's residential facility and in administration and supervision.

~~C. Any applicant for the chief administrative officer position shall submit the following to demonstrate compliance with the qualifications required by this regulation for the chief administrative officer:~~

1. Official transcripts from the accredited college or university of attendance within 30 days of hire; and
2. Documentation of prior relevant experience.

**12VAC35-46-380. Child care staff.**

~~A. The Each child care worker shall have responsibility be responsible for guidance and supervision of the children to whom he the child care worker is assigned including:~~

1. ~~Overseeing physical care;~~
2. ~~Development of acceptable habits and attitudes;~~
3. ~~Management of resident behavior; and~~
4. ~~Helping to meet the goals and objectives of any required individualized service plan.~~

~~B. A Each child care worker and a relief child care worker shall furnish evidence of having obtained one of the following experience or education standards:~~

1. ~~Have a A baccalaureate degree in human services;~~
2. ~~Have an associates An associate's degree and three months of experience working with children; or~~
3. ~~Be a A high school graduate diploma or have a G.E.D. and have six months of experience working with children.~~

~~C. Child care staff A person with a high school diploma or G.E.D. with no and less than six months of experience working with children may be hired as child care staff, provided that the person does not work alone, but may be employed as long as they are working independently. Provisional child care staff shall at all times work directly with the chief administrative officer, program director, case manager, child care supervisor, or a an experienced child care worker with who has at least one or more years year of professional experience working with children.~~

~~D. Child care staff in brain injury residential services shall have two years experience working with children with disabilities.~~

~~E. An individual hired, promoted, demoted, or transferred to a D. A person serving in a child care worker's position after August 6, 2009, shall be at least 21 19 years old of age, except as provided in 12VAC35-46-270 A.~~

~~F. E. The provider shall not be dependent on temporary contract workers to provide resident care.~~

**12VAC35-46-400. Volunteers, students, and student/interns interns.**

~~A. A facility that uses volunteers or students/interns shall develop and implement written policies and procedures governing their selection and use.~~

~~B. The facility shall not be dependent upon volunteers, students, or students/interns interns to provide basic services.~~

~~C. Responsibilities of volunteers and students/interns shall be clearly defined in writing.~~

~~D. Volunteers and students/interns shall have qualifications appropriate to the services they render.~~

**12VAC35-46-420. Buildings, inspections, and building plans.**

~~A. All buildings and building-related building-related equipment shall be inspected and approved by the local building official. Approval shall be documented by a certificate of occupancy.~~

~~B. The facility shall document at the time of its original application evidence of consultation with state or local fire prevention authorities.~~

~~C. The facility shall document annually after the initial application that buildings and equipment are maintained in accordance with the Virginia Statewide Fire Prevention Code (13VAC5-51) (13VAC5-52).~~

~~D. At the time of the original application and at least annually thereafter the buildings, any location where the provider is responsible for serving food shall be inspected and approved by state or local health authorities, whose inspection and approval shall include: 1. General sanitation; 2. The sewage disposal system; 3. The water supply; and 4. Food regarding~~

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food service operations and general sanitation in accordance with Food Regulations (12VAC5-421).

E. The buildings and physical environment shall provide adequate space and shall be of a design that is suitable to house the programs and services provided and meet specialized needs of the residents.

F. Building plans and specifications for new construction, change in use of existing buildings, and any structural modifications or additions to existing buildings shall be submitted to and approved by the department and by other appropriate regulatory authorities.

G. Swimming pools shall be inspected ~~annually~~ by the state or local health authorities or by a swimming pool business.

## **12VAC35-46-470. Personal necessities.**

A. An adequate supply of personal necessities shall be available to the residents at all times for purposes of personal hygiene and grooming.

B. Clean, individual washcloths and towels shall be in good repair and available once each week and more often if needed.

~~C. When residents are incontinent or not toilet trained: 1. Provision shall be made for sponging, diapering, or other similar care on a nonabsorbent changing surface that shall be cleaned with warm soapy water after each use. 2. A covered diaper pail, or its equivalent, with leakproof disposable liners shall be used to dispose of diapers. If both cloth and disposable diapers are used, there shall be a diaper pail for each. 3. Adapter seats and toilet chairs shall be cleaned immediately after each use with appropriate cleaning materials. 4. Staff shall thoroughly wash their hands with warm soapy water immediately after assisting a child or themselves with toileting. 5. Appropriate, appropriate measures shall be taken for sanitation and to protect each individual's privacy, confidentiality, and dignity shall be maintained for residents during toileting and diapering, and health.~~

## **12VAC35-46-480. Sleeping areas.**

A. When residents are four years of age or older, boys and girls shall have separate sleeping areas.

B. No more than four children shall share a bedroom or sleeping area.

C. Children who use wheelchairs, crutches, canes, or other mechanical devices for assistance in walking shall be provided with a planned, personalized means of effective egress for use in emergencies.

D. Beds shall be at least three feet apart at the head, foot, and sides and double-decker beds shall be at least five feet apart at the head, foot, and sides.

E. Sleeping quarters in facilities established, constructed, or structurally modified after July 1, 1981, shall have:

1. At least 80 square feet of floor area in a bedroom accommodating one person;

2. At least 60 square feet of floor area per person in rooms accommodating two or more persons; and

3. Ceilings with a primary height of at least 7-1/2 feet exclusive of protrusions, duct work, or dormers.

F. Each child shall have a separate, clean, comfortable bed equipped with a clean mattress, clean pillow, clean blankets, clean bed linens, and, if needed, a clean waterproof mattress cover.

G. Bed linens shall be changed at least every seven days and more often if needed.

H. Mattresses shall be fire retardant as evidenced by documentation from the manufacturer, except in buildings equipped with an automated sprinkler system as required by the Virginia Uniform Statewide Building Code (13VAC5-63).

I. Cribs shall be provided for residents under two years of age.

J. Each resident shall be assigned drawer space and closet space; or ~~their~~ equivalent; that is accessible to the sleeping area for storage of clothing and personal belongings, except in secure custody facilities.

~~K. The environment of sleeping areas shall be conducive to sleep and rest.~~

## **12VAC35-46-560. Storage. (Repealed.)**

~~Space shall be provided for safe storage of items such as first aid equipment, household supplies, recreational equipment, luggage, out of season clothing, and other materials.~~

## **12VAC35-46-660. Maintenance of residents' resident records.**

A. ~~A~~ The provider shall maintain a separate written or automated case record shall be maintained for each resident in accordance with § 32.1-127.1:03 of the Code of Virginia. In addition, all correspondence and documents received by the facility relating to the care of that resident shall be maintained as part of the case record. A separate health record may be kept on each resident.

B. Each record shall be kept up to date and in a uniform manner.

C. The provider shall develop and implement a written policies and procedures for records management of all records, written and automated, policy that shall describe describes confidentiality, accessibility, security, and retention of paper and electronic records pertaining to residents, including:

1. Access, duplication, dissemination, and ~~acquiring~~ acquisition of resident information only to persons legally authorized according to federal and state laws;

~~2. Facilities using automated records shall address procedures that include:~~

- ~~a. How records are protected from unauthorized access;~~
- ~~b. How records are protected from unauthorized Internet access;~~
- ~~c. How records are protected from loss;~~
- ~~d. How records are protected from unauthorized alteration; and~~
- ~~e. How records are backed up~~

2. Storage, processing, and handling of active and closed records;

3. Security measures to protect records from loss, unauthorized alteration, inadvertent or unauthorized access, and disclosure of information ~~and~~ during transportation of records between service sites;

~~4. Designation of person responsible for records management~~ Strategies for service continuity and record recovery from interruptions that result from disasters or emergencies, including contingency plans, electronic or manual back-up systems, and data retrieval systems; and

5. Disposition of records in the event the facility ceases to operate.

D. The policy shall specify what information is available to the resident.

E. Active and closed records shall be kept in areas that are accessible to authorized staff and protected from unauthorized access, fire, and flood.

~~1. When not in use written records shall be stored in a metal file cabinet or other metal compartment.~~

~~2. Facility staff shall assure the confidentiality of the residents' records by placing them in a locked cabinet or drawer or in a locked room when the staff member is not present.~~

F. Each resident's written record shall be stored separately subsequent to the resident's discharge according to applicable statutes and regulations.

G. ~~Written and automated~~ Case records shall be retained in their entirety for a minimum of three years after the date of discharge unless otherwise specified by state or federal requirements.

~~H. The face sheet shall be retained permanently unless otherwise specified by state or federal requirements.~~

~~I. H.~~ Entries in a resident's record shall be current, dated, and authenticated by the person making the entry. Errors shall be corrected by striking through and initialing. ~~If records are electronic, the provider shall develop and implement a policy and procedure to identify how corrections to the record will be made.~~

**12VAC35-46-690. Participation of residents in human research. (Repealed.)**

The provider shall:

- ~~1. Implement a written policy stating that residents will not be used as subjects of human research; or~~
- ~~2. Document approval, as required by the department for each research project using residents as subjects of human research, unless such research is exempt from review.~~

**12VAC35-46-710. Application for admission.**

A. Admission shall be based on evaluation of ~~an~~ a screening application for admission. The requirements of this section do not apply to court-ordered placements or transfer of a resident between residential facilities located in Virginia and operated by the same sponsor.

B. Providers shall develop, and fully complete prior to acceptance for care, an application for admission that is designed to compile screening information necessary to determine:

- 1. The educational needs of the prospective resident;
- 2. The mental health, emotional, and psychological needs of the prospective resident;
- 3. The physical health needs, including the immunization needs, of the prospective resident;
- 4. The protection needs of the prospective resident;
- 5. The suitability of the prospective resident's admission;
- 6. The behavior support needs of the prospective resident;
- 7. Family history and relationships;
- 8. Social and development history;
- 9. Current behavioral functioning and social competence;
- 10. History of previous treatment for mental health, ~~mental retardation~~ developmental disability, substance abuse, brain injury, and behavior problems; and
- 11. Medication and drug use profile, which shall include:
  - a. History of prescription, nonprescription, and illicit drugs ~~that were~~ taken over the six months prior to admission;
  - b. Drug allergies, unusual and other adverse drug reactions, and ineffective medications; and
  - c. Information necessary to develop an individualized service plan and a behavior support plan.

C. The resident's record shall contain a completed assessment based on information compiled from the screening application at the time of a routine admission or within 30 days after an emergency admission.

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D. Each facility shall develop and implement written policies and procedures to assess each prospective resident as part of the application process to ensure that:

1. The needs of the prospective resident can be addressed by the facility's services;
2. The facility's staff ~~are~~ is trained to meet the prospective resident's needs; and
3. The admission of the prospective resident would not pose any significant risk to (i) the prospective resident or (ii) the facility's residents or staff.

## 12VAC35-46-720. Written placement agreement.

A. The facility, ~~except a facility that accepts admission only upon receipt of the order of a court of competent jurisdiction,~~ shall develop and execute a written placement agreement that: ~~1. Authorizes authorizing the resident's placement; 2. Addresses acquisition of and consent for any medical treatment needed by the resident; 3. Addresses the rights and responsibilities of each party involved; 4. Addresses financial responsibility for the placement; 5. Addresses visitation with the resident; and 6. Addresses the education plan for the resident and the responsibilities of all parties, signed by a facility representative and the parent, legal guardian, or placing agency.~~

~~B. Each resident's record shall contain, prior to a routine admission, a completed placement agreement signed by a facility representative and the parent, legal guardian, or placing agency.~~

~~C. The record of each person admitted based on a court order shall contain B. Notwithstanding the provisions of subsection A of this section, a facility that accepts an admission upon receipt of the order of a court of competent jurisdiction shall place a copy of the court order in the resident's record.~~

## 12VAC35-46-730. Face sheet.

A. At the time of admission, each resident's record shall include a completed face sheet that contains (i) the resident's full name, last known residence, birth date, birthplace, gender, race, social security number or other unique identifier, religious preference, and admission date; and (ii) names, addresses, and telephone numbers of the resident's legal guardians, placing agency, emergency contacts, and parents, if appropriate.

~~B. Information~~ The provider shall be updated update information when changes occur.

C. The face sheet for pregnant teens shall also include the expected date of delivery and the name of the hospital to provide delivery services to the resident.

~~D. The face sheet of residents who are transferred to facilities operated by the same sponsor shall indicate the address and dates of placement and transfer at each location.~~

~~E. At the time of discharge the following information shall be added to the face sheet:~~

- ~~1. Date of discharge;~~
- ~~2. Reason for discharge;~~
- ~~3. Names and addresses of persons to whom the resident was discharged; and~~
- ~~4. Forwarding address of the resident, if known.~~

## 12VAC35-46-740. Initial objectives and strategies.

Within three days following admission, individualized, measurable objectives and strategies for the first 30 days shall be developed, distributed to affected staff and the resident, and placed in the resident's record. ~~The objectives and strategies shall be based on the reasons for admitting the resident.~~

## 12VAC35-46-750. Individualized service plans/quarterly plans and quarterly reports.

A. An individualized service plan shall be developed and placed in the resident's record within 30 days following admission and implemented immediately thereafter.

B. Individualized service plans shall describe in measurable terms the:

1. Strengths and needs of the resident;
2. Resident's current level of functioning;
3. Goals, objectives, and strategies established for the resident;
4. Projected family involvement;
5. Projected date for accomplishing each objective; and
6. Status of the projected discharge plan and estimated length of stay, except that this requirement shall not apply to a facility that discharges only upon receipt of the order of a court of competent jurisdiction.

~~C. The initial individualized service plan shall be reviewed within 60 days of the initial plan and within each 90-day period thereafter and revised as necessary.~~

~~D. C.~~ The provider shall develop and implement written policies and procedures to document progress of the resident towards toward meeting the ISP goals and objectives ~~of the individualized service plan~~ that shall include the:

1. Format;
2. Frequency; and
3. Person responsible.

~~E. D.~~ There shall be a documented quarterly review of each resident's progress 60 days following the initial individualized service plan and within each 90-day period thereafter that shall report the:

1. Resident's progress toward meeting the plan's objectives;



2. Family's involvement;
3. Continuing needs of the resident;
4. Resident's progress ~~towards~~ toward discharge; and
5. Status of discharge planning.

~~F. E.~~ Each ~~plan~~ ISP revision and quarterly progress report shall include the date it was developed and the signature of the person ~~who developed it~~ responsible.

~~G. F.~~ Staff responsible for daily implementation of the resident's individualized service plan shall be able to describe the resident's behavior in terms of the objectives in the ~~plan~~ current ISP.

~~H. There shall be documentation showing G. In developing and updating the ISP and in developing the quarterly progress report, the provider shall document the involvement of the following parties unless clearly inappropriate, in developing and updating the individualized service plan and in developing the quarterly progress report:~~

1. The resident;
2. The resident's family, if appropriate, and legal guardian;
3. The placing agency; and
4. Facility staff.

~~I. H.~~ The initial individualized service plan, each update, and all quarterly progress reports shall be distributed to the resident; the resident's family, if appropriate, legal guardian, or authorized representative; the placing agency; and appropriate facility staff.

**12VAC35-46-760. Resident transfer between residential facilities located in Virginia and operated by the same sponsor.**

A. Except when transfer is ordered by a court of competent jurisdiction, the ~~provider's~~ receiving provider service or facility shall document receipt of the following at the time of the resident's transfer:

- ~~1. Preparation through sharing information with the resident, the family, if appropriate, the legal guardian, and the placing agency about the facility, the staff, the population served, activities, and criteria for admission;~~
- ~~2. Notification~~ 1. Documentation of advance notification to the family, if appropriate; the resident, the placement agency, and the legal guardian;
- ~~3. Receipt from the sending facility of a~~ 2. A written summary of the resident's progress while at the transferring facility, justification for the transfer, and the resident's current strengths and needs; and
- ~~4. Receipt~~ 3. A copy of the resident's record.

~~B. The sending transferring service or facility shall retain a copy of the face sheet and a written summary of the child's progress while at the facility and shall document the date of transfer and the name of the receiving service or facility to which the resident has been was transferred.~~

**12VAC35-46-800. Structured program of care.**

A. There shall be evidence of a structured program of care designed to:

- ~~1. Meet the residents'~~ each resident's physical and emotional needs;
2. Provide protection, guidance, and supervision; and
3. Meet the objectives of any required individualized service plan.

B. There shall be evidence of a structured daily routine designed to ensure the delivery of program services.

~~C. A~~ The provider shall maintain a daily communication log ~~shall be maintained to inform~~ share information with staff ~~of~~ about significant happenings or problems experienced by residents, with the identity of the person making each entry in the log recorded.

D. Health and dental complaints and injuries shall be recorded and shall include the (i) resident's name, complaint, and affected area; and (ii) time of the complaint.

~~E. The identity of the individual making each entry in the daily communication log shall be recorded.~~

~~F. E.~~ Routines shall be planned to ensure that each resident receives the amount of sleep and rest appropriate for ~~his~~ the resident's age and physical condition.

~~G. F.~~ Staff shall promote good personal hygiene of residents by monitoring and supervising hygiene practices each day and by providing instruction when needed.

~~H. The structured daily routine shall comply with any facility and locally imposed curfews.~~

**12VAC35-46-810. Health care procedures.**

A. The provider shall ~~have and~~ implement written procedures for promptly:

1. Providing or arranging for the provision of medical and dental services for health problems identified at admission;
2. Providing or arranging for the provision of routine ongoing and follow-up medical and dental services after admission;
3. Providing emergency services for each resident; and
4. Providing emergency services for any resident ~~experiencing or showing signs of suicidal or homicidal thoughts, symptoms of mood or thought disorders, or other mental health problems;~~ and
- ~~5. Ensuring that the required~~

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~~information in subsection B of this section is accessible and up to date in crisis, including procedures for crisis or clinical stabilization and immediate access to appropriate internal and external resources, including a provision for obtaining physician and mental health clinical services.~~

B. The following written information concerning each resident shall be readily accessible to staff who may have to respond to a medical or dental emergency:

1. Name, address, and telephone number of the physician and dentist to be notified;
2. Name, address, and telephone number of a relative or other person to be notified;
3. Medical insurance company name and policy number or Medicaid number;
4. Information concerning:
  - a. Use of medication;
  - b. All allergies, including medication allergies;
  - c. Substance abuse and use; and
  - d. Significant past and present medical problems; and
5. Written permission for emergency medical care, dental care, and obtaining immunizations or a procedure and contacts for obtaining consent.

~~C. Facilities approved to provide respite care shall update the information required by subsection B of this section at the time of each stay at the facility.~~

## **12VAC35-46-820. ~~Written policies and procedures for a crisis or clinical emergency. (Repealed.)~~**

~~The provider shall develop and implement written policies and procedures for a crisis or clinical emergency that shall include:~~

- ~~1. Procedures for crisis or clinical stabilization, and immediate access to appropriate internal and external resources, including a provision for obtaining physician and mental health clinical services if on-call physician back-up or mental health clinical services are not available; and~~
- ~~2. Employee or contractor responsibilities.~~

## **12VAC35-46-830. Documenting crisis intervention and clinical emergency services.**

A. The provider shall develop and implement a method for documenting the provision of crisis intervention and clinical emergency services. Documentation shall include ~~the~~ following:

1. Date and time;
2. Nature of crisis or emergency;
3. Name of resident;
4. Precipitating factors;

5. ~~Interventions/treatment~~ Interventions or treatment provided;
6. Employees or contractors involved;
7. Outcome; and
8. Any required follow-up.

B. If a crisis or clinical emergency involves a resident who receives medical or mental health services, the crisis intervention documentation shall become part of ~~his~~ the resident's record.

~~C. There shall be written policies and procedures for referring to or receiving residents from:~~

- ~~1. Hospitals;~~
- ~~2. Law enforcement officials;~~
- ~~3. Physicians;~~
- ~~4. Clergy;~~
- ~~5. Schools;~~
- ~~6. Mental health facilities;~~
- ~~7. Court services;~~
- ~~8. Private outpatient providers; and~~
- ~~9. Support groups or others, as applicable.~~

## **12VAC35-46-850. Medication.**

A. The provider shall develop and implement written policies and procedures regarding the delivery and administration of prescription and nonprescription medications used by residents. At a minimum these policies will address:

1. Identification of the staff member responsible for routinely communicating to the prescribing physician: ~~a. The effectiveness of prescribed medications; and b. Any adverse reactions, or any suspected side effects.;~~
2. Storage of controlled substances;
3. Documentation of medication errors and drug reactions; ~~and~~
4. Documentation of any medications prescribed and administered following admission.;
5. Disposal of medication; and
6. Distribution of medication off campus.

B. All medication shall be securely locked and properly labeled.

~~C. All staff responsible for medication administration shall have successfully completed a medication training program approved by the Board of Nursing or be licensed by the Commonwealth of Virginia. Policies shall include training requirements necessary for employees or contractors who are~~

~~authorized to administer medications before they can administer medication. Medications shall be administered only by persons authorized to do so by the Drug Control Act (§ 54.1-3400 et seq. of the Code of Virginia).~~

D. Staff authorized to administer medication shall be informed of any known side effects of the medication and the symptoms of the side effects.

E. A program of medication, including over-the-counter medication, shall be initiated for a resident only when prescribed in writing by a person authorized by law to prescribe medication.

F. Medication prescribed by a person authorized by law shall be administered as prescribed.

G. A medication administration record shall be maintained of all medicines received by each resident and shall include:

1. Date the medication was prescribed;
2. Drug name;
3. Schedule for administration;
4. Strength;
5. Route;
6. Identity of the individual who administered the medication; and
7. Dates the medication was discontinued or changed.

H. In the event of a medication error or an adverse drug reaction, first aid shall be administered if indicated. Staff shall promptly contact a poison control center, pharmacist, nurse, or physician and shall take actions as directed. If the situation is not addressed in standing orders, the attending physician shall be notified as soon as possible and the actions taken by staff shall be documented.

I. Medication refusals shall be documented including action taken by staff.

~~J. The provider shall develop and implement written policies and procedures for documenting medication errors, reviewing medication errors and reactions and making any necessary improvements, the disposal of medication, the storage of controlled substances, and the distribution of medication off campus. The policy and procedures must be approved by a health care professional. The provider shall keep documentation of this approval.~~

~~K. J.~~ The telephone number of a regional poison control center and other emergency numbers shall be posted on or next to each ~~nonpay~~ non-pay telephone that has access to an outside line in each building in which children sleep or participate in programs.

~~L. K.~~ Syringes and other medical implements used for injecting or cutting skin shall be locked.

**12VAC35-46-860. Nutrition.**

A. Each resident shall be provided a daily diet that (i) consists of at least three nutritionally balanced meals and an evening snack; (ii) includes an adequate variety and quantity of food for the age of the resident; and (iii) meets minimum nutritional requirements and the U.S. Department of Health and Human Services and U.S. Department of Agriculture Dietary Guidelines for Americans, 2005, 6th Edition.

~~B. Menus of actual meals served shall be kept on file for at least six months.~~

~~C. B.~~ Special diets shall be provided when prescribed by a physician and the established religious dietary practices of the ~~resident~~ residents shall be observed.

~~D. C.~~ Staff who eat in the presence of the residents shall be served the same meals as the residents unless (i) a special diet has been prescribed by a physician for the staff or residents or (ii) the staff or residents are observing established religious dietary practices.

~~E. D.~~ There shall ~~not~~ be no more than 15 hours between the evening meal and breakfast the following day.

~~F. E.~~ Providers shall ~~assure~~ ensure that food is available to residents who need to eat breakfast before the 15 hours have expired.

~~G. Providers shall receive approval from the department if they wish to extend the time between meals on weekends and holidays. There shall never be more than 17 hours between the evening meal and breakfast the following day on weekends and holidays.~~

**12VAC35-46-880. Emergency telephone numbers.**

~~A.~~ There shall be an emergency telephone number where a staff person may be immediately contacted 24 hours a day.

~~B. Residents who are away from the facility and the adults responsible for their care during the absence shall be furnished with the emergency phone number.~~

**12VAC35-46-890. Searches.**

A. Strip searches and body cavity searches are prohibited except: 1. As permitted by other applicable state regulations; or 2. As ordered by a court of competent jurisdiction.

~~B. A provider that does not conduct pat downs shall have a written policy prohibiting them.~~

~~C. B.~~ A provider that conducts pat downs shall develop and implement written policies and procedures governing ~~them~~ that shall provide the use of pat downs providing that:

1. Pat downs shall be limited to instances where ~~they are~~ necessary to prohibit contraband;
2. Pat downs shall be conducted by personnel of the same gender as the resident being searched;

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3. Pat downs shall be conducted only by personnel who are specifically trained and authorized to conduct searches by the written policies and procedures; and

4. Pat downs shall be conducted in such a way as to protect the resident's dignity in accordance with 12VAC35-115 and in the presence of one or more witnesses.

## 12VAC35-46-900. Behavior support.

A. Within 30 days of admission, the provider shall develop and implement a written behavior support plan that allows the resident to self-manage his own behaviors. Each individualized behavior support plan shall include:

1. Identification of positive and problem behavior;
2. Identification of triggers for behaviors;
3. Identification of successful intervention strategies for problem behavior;
4. Techniques for managing anger and anxiety; and
5. Identification of interventions that may escalate inappropriate behaviors.

B. Individualized behavior support plans shall be developed in consultation with the:

1. Resident;
2. Legal guardian;
3. Resident's parents, if appropriate;
4. Program director;
5. Placing agency staff; and
6. Other appropriate individuals.

C. Prior to working alone with an assigned resident, each staff member shall demonstrate knowledge and understanding of that resident's behavior support plan.

D. Each provider shall develop and implement written policies and procedures concerning behavior support plans and other behavioral interventions that are directed toward maximizing the growth and development of the resident consistent with the requirements of 12VAC35-115-105. ~~In addition to addressing the previous requirements of this regulation, these policies and procedures shall:~~

1. ~~Define and list techniques that are used and are available for use in the order of their relative degree of intrusiveness or restrictiveness;~~
2. ~~Specify the staff members who may authorize the use of each technique;~~
3. ~~Specify the processes for implementing such policies and procedures;~~
4. ~~Specify the mechanism for monitoring the use of behavior support techniques; and~~

~~5. Specify the methods for documenting the use of behavior support techniques.~~

## 12VAC35-46-940. Behavior interventions.

A. The provider shall develop and implement written policies and procedures for behavioral interventions and consistent with the requirements of 12VAC35-115. Minimum provisions shall include rules of conduct and methods for documenting and monitoring the management of resident behavior. ~~Rules of conduct shall be included in the written policies and procedures. These policies and procedures shall:~~

1. ~~Define and list techniques that are used and available for use in the order of their relative degree of restrictiveness;~~
2. ~~Specify the staff members who may authorize the use of each technique; and~~
3. ~~Specify the processes for implementing such policies and procedures.~~

B. Written information concerning ~~the policies and procedures~~ of the provider's behavioral support and intervention ~~programs~~ policies and procedures shall be provided prior to admission to prospective residents, legal guardians, and placing agencies. For court-ordered and emergency admissions, this information shall be provided to:

1. Residents within 12 hours following admission;
2. Placing agencies within 72 hours following the resident's admission; and
3. Legal guardians within 72 hours following the resident's admission. ~~This requirement does~~ The requirements of this subsection do not apply when a state psychiatric hospital is evaluating a child's treatment needs as provided by the Code of Virginia.

C. When substantive revisions are made to policies and procedures governing management of resident behavior, written information concerning the revisions shall be provided to:

1. Residents prior to implementation; and
2. Legal guardians and placing agencies prior to implementation, except when a state psychiatric hospital is evaluating a child's treatment needs as provided by the Code of Virginia.

D. The provider shall develop and implement written policies and procedures governing use of physical restraint that shall include: 1. The staff position who will write the report and timeframe; 2. The staff position who will review the report and timeframe; and 3. Methods to be followed should physical restraint, less intrusive interventions, or measures permitted by other applicable state regulations prove unsuccessful in calming and moderating the resident's behavior comply with the requirements of 12VAC35-115.

E. All physical restraints shall be reviewed and evaluated to plan for continued staff development for performance improvement.

F. Use of physical restraint shall be limited to that which is minimally necessary to protect the resident or others as required by 12VAC35-115.

G. Trained staff members may physically restrain a resident only after less restrictive interventions.

H. Only trained staff members may manage resident behavior.

I. Each application of physical restraint shall be fully documented in the resident's record, including:

1. Date;
2. Time;
3. Staff involved;
4. Justification for the restraint;
5. Less restrictive interventions that were unsuccessfully attempted prior to using physical restraint;
6. Duration;
7. Description of ~~method or~~ methods of physical restraint techniques used;
8. Signature of the person completing the report and date; and
9. Reviewer's signature and date.

J. Providers shall ensure that restraint may only be implemented, monitored, and discontinued by staff who have been trained in the proper and safe use of restraint, including hands-on techniques.

K. The provider shall review the facility's behavior intervention techniques and policies and procedures at least annually to determine appropriateness for the population served.

L. Any time children are present, staff shall be present who have completed all trainings in behavior intervention.

**12VAC35-46-950. Seclusion.**

Seclusion is allowed only as permitted by 12VAC35-115 and other applicable state regulations.

**12VAC35-46-990. Recreation.**

A. The provider shall have a written description of its recreation program that describes activities that are consistent with the facility's total program and with the ages, developmental levels, interests, and needs of the residents that includes:

1. Opportunities for individual and group activities;

2. Free time for residents to pursue personal interests that shall be in addition to a formal recreation program, except that this subdivision does not apply to secure custody facilities;

3. Use of available community recreational resources and facilities, except that this subdivision does not apply to secure custody facilities;

4. Scheduling of activities so that ~~they~~ the activities do not conflict with meals, religious services, educational programs, or other regular events; and

5. Regularly scheduled indoor and outdoor recreational activities that are structured to develop skills and attitudes.

B. The provider shall develop and implement written policies and procedures to ensure the safety of residents participating in recreational activities that include:

1. How activities will be directed and supervised by individuals knowledgeable in the safeguards required for the activities; ~~2. How residents are assessed for suitability for an activity and the supervision provided; and~~
- ~~3.~~ 2. How safeguards for water-related activities will be provided, including ensuring that a certified lifeguard supervises all swimming activities.

C. For all overnight recreational trips away from the facility, the provider shall document trip planning, to include:

1. A supervision plan for the entire duration of the activity, including awake and sleeping hours;
2. A plan for safekeeping and distribution of medication;
3. An overall emergency, safety, and communication plan for the activity, including emergency numbers of facility administration;
4. Staff training and experience requirements for each activity;
- ~~5. Resident preparation for each activity;~~
- ~~6. A plan to ensure that all necessary equipment for the activity is in good repair and appropriate for the activity;~~
- ~~7. A trip schedule giving addresses and phone numbers of locations to be visited and how the location was chosen/evaluated;~~
- ~~8.~~ 5. A plan to evaluate residents' each resident's physical health throughout the activity and to ensure that the activity is conducted within the boundaries of the resident's capabilities, dignity, and respect for self-determination; ~~9. A plan to ensure that a certified life guard supervises all swimming activities in which residents participate; and~~
- ~~10.~~ 6. Documentation of any variations from trip plans and reason for the variation.

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D. All overnight out-of-state or out-of-country recreational trips require written permission from each resident's legal guardian. ~~Documentation of the written permission shall be kept in the resident's record.~~

## **12VAC35-46-1010. Clothing.**

A. Provision shall be made for each resident to have an adequate supply of clean, comfortable, and well-fitting clothes and shoes for indoor and outdoor wear.

~~B. Clothes and shoes shall be similar in style to those generally worn by children of the same age in the community who are engaged in similar activities, except this requirement does not apply to secure custody facilities.~~

~~C. B.~~ Residents shall have the opportunity to participate in the selection of their clothing, except that this requirement does not apply to secure custody facilities.

~~D. Residents shall be allowed to take personal clothing when leaving the facility.~~

## **12VAC35-46-1020. Allowances and spending money.**

~~A. The provider shall provide opportunities appropriate to the ages and developmental levels of the residents for learning the value and use of money.~~

~~B. There shall be a written policy regarding allowances that shall be made available to legal guardians at the time of admission.~~

~~C. A.~~ The provider shall develop and implement written policies for safekeeping and for recordkeeping of any money that belongs to residents.

~~D. B.~~ A resident's funds, including any allowance or earnings, shall be used for the resident's benefit.

## **12VAC35-46-1040. Visitation at the facility and to the resident's home. (Repealed.)**

~~A. The provider shall have and implement written visitation policies and procedures that allow reasonable visiting privileges and flexible visiting hours, except as permitted by other applicable state regulations.~~

~~B. Copies of the written visitation policies and procedures shall be made available to the parents, when appropriate, legal guardians, the resident, and other interested persons important to the resident no later than the time of admission, except that when parents or legal guardians do not participate in the admission process, visitation policies and procedures shall be mailed to them within 24 hours after admission.~~

## **12VAC35-46-1060. Vehicles and power equipment.**

A. Transportation provided for or used by children shall comply with local, state, and federal laws relating to:

1. Vehicle safety and maintenance;
2. Licensure of vehicles;
3. Licensure of drivers; and

4. Child passenger safety, including requiring children to wear appropriate seat belts or restraints for the vehicle in which they are being transported.

B. There shall be written safety rules for transportation of residents appropriate to the population served that shall include taking head counts at each stop.

~~C. The provider shall develop and implement written safety rules for use and maintenance of vehicles and power equipment.~~

## **12VAC35-46-1090. Grievance procedures Human rights complaint process.**

A. ~~The provider shall develop and implement written policies and procedures governing the handling of grievances by residents. If not addressed by other applicable regulations, the policies and procedures shall:~~

1. Be written in clear and simple language;
2. Be communicated to the residents in an age or developmentally appropriate manner;
3. Be posted in an area easily accessible to residents and their parents and legal guardians;
4. Ensure that any grievance shall be investigated by an objective employee who is not the subject of the grievance; and
5. ~~Require continuous monitoring by the provider of any grievance to assure there is no retaliation or threat of retaliation against the child.~~

~~B. All documentation regarding grievances shall be kept on file at the facility for three years unless other regulations require a longer retention period.~~

~~The provider shall comply with the Office of Human Rights regulations, including the human rights complaint process outlined in 12VAC35-115-175.~~

## **12VAC35-46-1100. ~~Disaster or emergency planning.~~ (Repealed.)**

~~The facility is required to have written procedures to follow in emergencies. It is also required that these plans be known by staff and, as appropriate, residents. It is advisable that the facility develop its emergency plans with the assistance of state or local public safety authorities.~~

## **12VAC35-46-1120. ~~Independent living programs.~~ (Repealed.)**

~~A. Each independent living program must demonstrate that a structured program using materials and curriculum, approved by the department, is being used to teach independent living skills. The curriculum must include information regarding each of the following areas:~~

1. ~~Money management and consumer awareness;~~

2. Food management;
3. Personal appearance;
4. Social skills;
5. Health/sexuality;
6. Housekeeping;
7. Transportation;
8. Educational planning/career planning;
9. Job-seeking skills;
10. Job maintenance skills;
11. Emergency and safety skills;
12. Knowledge of community resources;
13. Interpersonal skills/social relationships;
14. Legal skills;
15. Leisure activities; and
16. Housing.

B. Within 14 days of placement the provider must complete an assessment, including strengths and needs, of the resident's life skills using an independent living assessment tool approved by the department. The assessment must cover the following areas:

1. Money management and consumer awareness;
2. Food management;
3. Personal appearance;
4. Social skills;
5. Health/sexuality;
6. Housekeeping;
7. Transportation;
8. Educational planning/career planning;
9. Job-seeking skills;
10. Job maintenance skills;
11. Emergency and safety skills;
12. Knowledge of community resources;
13. Interpersonal skills/social relationships;
14. Legal skills;
15. Leisure activities; and
16. Housing.

C. The resident's individualized service plan shall, in addition to the requirements found in 12VAC35-105-750, address each of the following areas, as applicable:

1. Money management and consumer awareness;
2. Food management;
3. Personal appearance;
4. Social skills;
5. Health/sexuality;
6. Housekeeping;
7. Transportation;
8. Educational planning/career planning;
9. Job-seeking skills;
10. Job maintenance skills;
11. Emergency and safety skills;
12. Knowledge of community resources;
13. Interpersonal skills/social relationships;
14. Legal skills;
15. Leisure activities; and
16. Housing.

D. Each independent living program shall develop and implement policies and procedures to train all direct care staff within 14 days of employment on the content of the independent living curriculum, the use of the independent living materials, the application of the assessment tool, and the documentation methods used. Documentation of the orientation shall be kept in the employee's staff record.

E. If residents age 18 years or older are to share in the responsibility for their own medication with the provider, the independent living program shall develop and implement written policies and procedures that include:

1. Training for the resident in self administration of medication and recognition of side effects;
2. Method for storage and safekeeping of medication;
3. Method for obtaining approval for the resident to self administer medication from a person authorized by law to prescribe medication; and
4. Method for documenting the administration of medication.

F. Each independent living program shall develop and implement written policies and procedures that ensure that each resident is receiving adequate nutrition as required in 12VAC35-46-860.

**12VAC35-46-1130. Mother/baby programs. (Repealed.)**

A. Each provider shall develop and implement written policies and procedures to orient direct care staff within 14 days of hire regarding the following:

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- ~~1. Responsibilities of mothers regarding the child;~~
- ~~2. Child development including age appropriate behavior for each stage of development;~~
- ~~3. Appropriate behavioral interventions for infants and toddlers;~~
- ~~4. Basic infant and toddler care including but not limited to nutritional needs, feeding procedures, bathing techniques; and~~
- ~~5. Safety issues for infants and toddlers.~~

~~B. Each direct care worker shall have certification in infant CPR and first aid prior to working alone with infants or toddlers.~~

~~C. A placement agreement shall be signed by the legal guardian for each adolescent mother and a separate placement agreement shall be signed for each child at the time of admission.~~

~~D. In addition to the requirements of 12VAC35-46-710 the application for admission for the adolescent's child must include:~~

- ~~1. The placement history of the child;~~
- ~~2. The developmental milestones of the child; and~~
- ~~3. The nutritional needs of the child.~~

~~E. In addition to the requirements of 12VAC35-46-660, the face sheet for adolescent's child shall also include:~~

- ~~1. Type of delivery;~~
- ~~2. Weight and length at birth;~~
- ~~3. Any medications or allergies; and~~
- ~~4. Name and address, if known, of the biological father.~~

~~F. A combined service plan following the requirements of 12VAC35-46-750 must be written for the adolescent mother and her child within 30 days of the admission of the adolescent's child.~~

~~G. There shall be a combined documented review of the adolescent mother's and her child's progress following the requirements of the quarterly report 60 days following the first combined service plan and within each 90 day period thereafter.~~

~~H. The developmental milestones of the adolescent's child must be documented in each quarterly progress report.~~

~~I. The record of each child 18 months or younger shall include the child's feeding schedule and directions for feeding. This information shall be posted in the kitchen.~~

~~J. The provider shall develop and implement written policies and procedures for tracking:~~

- ~~1. What a child 18 months or younger is eating;~~

~~2. How much a child 18 months or younger is eating; and~~

~~3. The response to newly introduced foods of the child 18 months or younger.~~

~~K. The provider shall develop and implement written policies and procedures to record all diaper changes.~~

~~L. The provider shall monitor that all infants are held and spoken to and placed in a position to observe activities when they are awake.~~

~~M. Bottle-fed infants who cannot hold their own bottles shall be held when fed. Bottles shall not be propped.~~

~~N. The provider shall monitor that all children of adolescent mothers have access to age appropriate toys and are provided opportunity for visual and sound stimulation.~~

~~O. The provider shall ensure that when an adolescent mother is in school or is working, her child is appropriately cared for, either in a licensed child day program or at the facility.~~

~~P. A daily activity log must be kept for each child of the adolescent mother showing what activities the child actually participated in during the day. The daily log must show that children have the opportunity to participate in sensory, language, manipulative, building, large muscle, and learning activities.~~

~~Q. The provider shall develop and implement written policies and procedures regarding health care of the adolescent's child including:~~

- ~~1. Obtaining health care;~~
- ~~2. Ensuring follow up care is provided;~~
- ~~3. Ensuring adolescent mothers administer to their children only prescription and nonprescription medication authorized by a health care professional licensed to prescribe medication; and~~
- ~~4. Medication administration.~~

~~R. The provider shall develop and implement written policies and procedures to ensure that all toys and equipment to be used by children are sturdy, are of safe construction, are nontoxic and free of hazards, and meet industry safety standards.~~

~~S. The facility shall develop and implement written policies and procedures for inspecting toys and equipment on a regular basis for cleanliness and safety.~~

~~T. Cribs shall be placed where objects outside the crib such as cords from the blinds or curtains are not within reach of infants or toddlers.~~

~~U. Pillows and filled comforters shall not be used by children under two years of age.~~

~~V. Infant walkers shall not be used.~~



~~W. Adolescent mothers and their babies may share a bedroom as allowed by 12VAC35-46-480, but shall not share a room with other adolescents or their children.~~

~~X. Pregnant adolescents may share a room as allowed by 12VAC35-46-480.~~

~~Y. Providers shall develop and implement written policies and procedures to protect infants, toddlers, and young children from dangers in their environment. The policies and procedures must include but not be limited to protection from:~~

- ~~1. Electrocutation;~~
- ~~2. Falling down steps or ramps or gaining access to balconies, porches, or elevated areas; and~~
- ~~3. Poisons, including poisonous plants.~~

**12VAC35-46-1140. Campsite programs or adventure activities. (Repealed.)**

~~A. All wilderness campsite programs and providers that take residents on wilderness/adventure activities shall develop and implement policies and procedures that include:~~

- ~~1. Staff training and experience requirements for each activity;~~
- ~~2. Resident training and experience requirements for each activity;~~
- ~~3. Specific staff-to-resident ratio and supervision plan appropriate for each activity; including sleeping arrangements and supervision during night time hours;~~
- ~~4. Plans to evaluate and document each participant's physical health throughout the activity;~~
- ~~5. Preparation and planning needed for each activity and time frames;~~
- ~~6. Arrangement, maintenance, and inspection of activity areas;~~
- ~~7. A plan to ensure that any equipment and gear that is to be used in connection with a specified wilderness/adventure activity is appropriate to the activity, certified if required, in good repair, in operable condition, and age and body size appropriate;~~
- ~~8. Plans to ensure that all ropes and paraphernalia used in connection with rope rock climbing, rappelling, high and low ropes courses, or other adventure activities in which ropes are used are approved annually by an appropriate certifying organization, and have been inspected by staff responsible for supervising the adventure activity before engaging residents in the activity;~~
- ~~9. Plans to ensure that all participants are appropriately equipped, clothed, and wearing safety gear, such as a helmet, goggles, safety belt, life jacket, or a flotation device, that is~~

~~appropriate to the adventure activity in which the resident is engaged;~~

- ~~10. Plans for food and water supplies and management of these resources;~~
- ~~11. Plans for the safekeeping and distribution of medication;~~
- ~~12. Guidelines to ensure that participation is conducted within the boundaries of the resident's capabilities, dignity, and respect for self-determination;~~
- ~~13. Overall emergency, safety, and communication plans for each activity including rescue procedures, frequency of drills, resident accountability, prompt evacuation, and notification of outside emergency services; and~~
- ~~14. Review of trip plans by the trip coordinator.~~

~~B. All wilderness campsite programs and providers that take residents on wilderness/adventure activities must designate one staff person to be the trip coordinator who will be responsible for all facility wilderness or adventure trips.~~

- ~~1. This person shall have experience in and knowledge regarding wilderness activities and be trained in wilderness first aid. The individual shall also have at least one year experience at the facility and be familiar with the facility procedures, staff, and residents.~~
- ~~2. Documentation regarding this knowledge and experience shall be found in the individual's staff record.~~
- ~~3. The trip coordinator shall review all trip plans and procedures and shall ensure that staff and residents meet the requirements as outlined in the facility's policy regarding each wilderness/adventure activity to take place during the trip.~~

~~C. The trip coordinator shall conduct a posttrip debriefing within 72 hours of the group's return to base to evaluate individual and group goals as well as the trip as a whole.~~

~~D. The trip coordinator shall be responsible for writing a summary of the debriefing session and shall be responsible for ensuring that procedures and policies are updated to reflect improvements needed.~~

~~E. A trip folder shall be developed for each wilderness/adventure activity conducted away from the facility and shall include:~~

- ~~1. Medical release forms including pertinent medical information on the trip participants;~~
- ~~2. Phone numbers for administrative staff and emergency personnel;~~
- ~~3. Daily trip logs;~~
- ~~4. Incident reports;~~
- ~~5. Swimming proficiency list if trip is near water;~~

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6. Daily logs;
  7. Maps of area covered by the trip; and
  8. Daily plans.
- ~~F. Initial physical forms used by wilderness campsite programs and providers that take residents on wilderness or adventure activities shall include:~~
- ~~1. A statement notifying the doctor of the types of activities the resident will be participating in; and~~
  - ~~2. A statement signed by the doctor stating the individual's health does not prevent him from participating in the described activities.~~
- ~~G. First aid kits used by wilderness campsite programs and providers that take residents on adventure activities shall be activity appropriate and shall be accessible at all times.~~
- ~~H. Direct care workers hired by wilderness campsite programs and providers that take residents on wilderness/adventure activities shall be trained in a wilderness first aid course.~~
- ~~I. The provider shall ensure that before engaging in any aquatic activity, each resident shall be classified by the trip coordinator or designee according to swimming ability in one of two classifications: swimmer and nonswimmer. This shall be documented in the resident's record and in the trip folder.~~
- ~~J. The provider shall ensure that lifesaving equipment is provided for all aquatic activities and is placed so that it is immediately available in case of an emergency. At a minimum, the equipment shall include:~~
- ~~1. A whistle or other audible signal device; and~~
  - ~~2. A lifesaving throwing device.~~
- ~~K. A separate bed, bunk, or cot shall be made available for each person.~~
- ~~L. A mattress cover shall be provided for each mattress.~~
- ~~M. Sleeping areas shall be protected by screening or other means to prevent admittance of flies and mosquitoes.~~
- ~~N. Bedding shall be clean, dry, sanitary, and in good repair.~~
- ~~O. Bedding shall be adequate to ensure protection and comfort in cold weather.~~
- ~~P. Sleeping bags, if used, shall be fiberfill and rated for 0°F.~~
- ~~Q. Linens shall be changed as often as required for cleanliness and sanitation but not less frequently than once a week.~~
- ~~R. Each resident shall be provided with an adequate supply of clean clothing that is suitable for outdoor living and is appropriate to the geographic location and season.~~
- ~~S. Sturdy, water resistant, outdoor footwear shall be provided for each resident.~~

- ~~T. Each resident shall have adequate personal storage area.~~
- ~~U. Fire extinguishers of a 2A 10BC rating shall be maintained so that it is never necessary to travel more than 75 feet to a fire extinguisher from combustion type heating devices, campfires, or other source of combustion.~~
- ~~V. Artificial lighting shall be provided in a safe manner.~~
- ~~W. All areas of the campsite shall be lighted for safety when occupied by residents.~~
- ~~X. Staff of the same sex may share a sleeping area with the residents.~~
- ~~Y. A telephone or other means of communication is required at each area where residents sleep or participate in programs.~~

VA.R. Doc. No. R25-7433; Filed March 21, 2025, 1:17 p.m.

## Fast-Track Regulation

Title of Regulation: **12VAC35-105. Rules and Regulations for Licensing Providers by the Department of Behavioral Health and Developmental Services (amending 12VAC35-105-60, 12VAC35-105-120, 12VAC35-105-170, 12VAC35-105-180, 12VAC35-105-190, 12VAC35-105-210, 12VAC35-105-270, 12VAC35-105-280, 12VAC35-105-290, 12VAC35-105-320, 12VAC35-105-390 through 12VAC35-105-440, 12VAC35-105-470, 12VAC35-105-510, 12VAC35-105-530, 12VAC35-105-580, 12VAC35-105-590, 12VAC35-105-645, 12VAC35-105-690 through 12VAC35-105-700, 12VAC35-105-720, 12VAC35-105-740, 12VAC35-105-770, 12VAC35-105-800, 12VAC35-105-870, 12VAC35-105-890; repealing 12VAC35-105-490, 12VAC35-105-500, 12VAC35-105-570, 12VAC35-105-790, 12VAC35-105-880, 12VAC35-105-900, 12VAC35-105-920, 12VAC35-105-1055, 12VAC35-105-1060, 12VAC35-105-1080).**

Statutory Authority: §§ 37.2-203 and 37.2-400 of the Code of Virginia.

Public Hearing Information: No public hearing is currently scheduled.

Public Comment Deadline: June 5, 2025.

Effective Date: June 19, 2025.

Agency Contact: Susan Puglisi, Regulatory Research Specialist, Department of Behavioral Health and Developmental Services, Jefferson Building, 1220 Bank Street, Fourth Floor, Richmond, VA 23219, telephone (804) 385-6549, FAX (804) 371-6638, TDD (804) 371-8977, or email [susan.puglisi@dbhds.virginia.gov](mailto:susan.puglisi@dbhds.virginia.gov).

Basis: Section 37.2-203 of the Code of Virginia authorizes the State Board of Behavioral Health and Developmental Services to adopt regulations that may be necessary to carry out the provisions of Title 37.2 of the Code of Virginia and other laws of the Commonwealth administered by the Commissioner of Department of Behavioral Health and Developmental Services (DBHDS) and DBHDS. Section 37.2-404 of the Code of Virginia authorizes the commissioner, subject to regulations adopted by the board, to license providers.

**Purpose:** Because the licensing regulations establish parameters of health, safety, and welfare for services licensed and funded by DBHDS, the purpose of this action is to implement Executive Directive One (2022) while preserving protections for individuals.

**Rationale for Using Fast-Track Rulemaking Process:** This action is expected to be noncontroversial and therefore appropriate for the fast-track rulemaking process because the amendments reduce the regulatory burden on licensed providers.

**Substance:** The changes reduce the intensity of compliance mandates, simplify requirements and eliminate duplication, streamline processing and modernize operations, and reflect current best practices.

**Issues:** The primary advantage of this action is that the amendments reduce and clarify the regulatory requirements, improving ease of use and understanding by licensed providers, individuals receiving services, and other stakeholders. As the action does not add burden or remove protections for individuals, there are no disadvantages to the public. The primary advantages to DBHDS and the Commonwealth are that the regulatory language is reflective of current practice and simplified to promote increased compliance. There is no disadvantage to the Commonwealth.

**Department of Planning and Budget Economic Impact Analysis:**

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 Code of Virginia and Executive Order 19. The analysis presented represents DPB's best estimate of the potential economic impacts as of the date of this analysis.<sup>1</sup>

Summary of the Proposed Amendments to Regulation, Pursuant to the Executive Directive Number One (2022) (ED 1),<sup>2</sup> the State Board of Behavioral Health and Developmental Services (board) proposes numerous discretionary changes to reduce the administrative burdens and compliance costs on licensed providers by repealing or simplifying regulatory provisions that are deemed obsolete, overly prescriptive, duplicative, or confusing.

Background. ED 1 requires executive branch agencies to remove regulations not mandated by federal or state statute, in consultation with the Office of the Attorney General, and in a manner consistent with the laws of the Commonwealth. In response, the board proposes numerous changes by repealing or simplifying discretionary regulatory provisions that are deemed obsolete, overly prescriptive, duplicative, or confusing. The providers regulated under this regulation offer various behavioral health and developmental disability services.<sup>3</sup> Currently, there are 2,153 licensed providers offering 450 types of services. The specific changes that are substantive are discussed.

**Estimated Benefits and Costs. License modification:** The proposal would decrease from 45 to 30 days the advance written notice providers must give the Department of Behavioral Health and Developmental Services (DBHDS) for requested license changes (i.e., disability, age, or gender characteristics of individuals served, the services offered, the locations where services are provided, existing stipulations, or the maximum number of individuals served under the provider license). According to DBHDS, this change reflects current practice and would streamline and modernize operations.

**Variations:** The board proposes to remove the requirement to demonstrate a hardship that is unique to the provider in order to qualify for a variance, thereby allowing providers to request a temporary exemption from a specific regulatory provision after demonstrating only that it will not jeopardize the individuals being served. This change is expected to reduce the administrative costs on licensed providers, reflects current practice, and would streamline processing and modernize operations.

**Fiscal accountability:** The proposal would eliminate the obligation for providers to prepare annual financial information (i.e., an operating statement showing revenue and expenses for the fiscal year just ended and a balance sheet showing assets and liabilities for the fiscal year just ended) in accordance with generally accepted accounting principles (GAAP) or those standards promulgated by the Governmental Accounting Standards Board (GASB) and the state Auditor of Public Accounts (APA). This change is proposed in part because DBHDS does not have the staff resources to analyze financial information in a meaningful way. However, providers would still be required to show that they have enough financial resources to operate for 90 days. The main expected economic impact is a reduction in the administrative costs on licensed providers associated with preparing financials according to GAAP, GASB, or APA standards. The board also proposes to no longer require that the fiscal manager be bonded. With this change, the fiscal manager would continue to be covered under the provider general or professional liability insurance. As a result, a reduction in provider bond costs is expected. However, unlike liability policies that cover only errors and omissions, fidelity bonds or employee dishonesty insurance policies generally cover fraud or embezzlement, thus a reduction in provider bonds may lead to lack of protection if a fiscal manager commits such crimes. DBHDS points out that requirements for written internal controls, which would remain in the regulation, would minimize the risk from theft or embezzlement.

**Tuberculosis screening:** The proposal would require staff, students, and volunteers at substance use disorder outpatient or residential providers to receive annual tuberculosis (TB) education, rather than be certified as TB-free by a licensed practitioner every year. According to DBHDS, this change reflects the current best practice for small and medium enterprises. With this change, providers are expected to avoid

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current TB certification costs, although this savings would be offset by new TB education expenses.

Physical examination for residential and inpatient services patients: The board proposes to eliminate language enumerating components of a physical exam that it has deemed to be overly prescriptive. These components are general physical condition (history and physical); evaluation for communicable diseases; recommendations for further diagnostic tests and treatment, if appropriate; and other examinations that may be indicated. According to DBHDS, some licensed providers encounter specific physicians who refuse to use the provider forms. More generally, physicians follow professional standards and typically prefer to use their own office forms and do not want to use a different form. This change would allow health care practitioners to follow professional standards and use their own office forms, which would reduce the administrative burden on providers. In summary, the proposed changes are expected to reduce compliance costs (e.g., administrative costs, bond costs, TB certification costs) for licensed providers. The changes would also give providers more discretion over standard business operations, such as financial reporting. However, there are no available data to quantify such cost savings and benefits.

**Businesses and Other Entities Affected.** Currently, there are 2,153 licensed providers offering 450 types of services. The Code of Virginia requires DPB to assess whether an adverse impact may result from the proposed regulation.<sup>4</sup> An adverse impact is indicated if there is any increase in net cost or reduction in net benefit for any entity, even if the benefits exceed the costs for all entities combined.<sup>5</sup> The proposed changes are expected to reduce compliance costs or provide operational flexibility to the regulated providers. Thus, an adverse impact is not indicated.

**Small Businesses<sup>6</sup> Affected.**<sup>7</sup> It is likely most of the providers would meet the definition of a small business, but the proposed amendments do not appear to adversely affect them.

**Localities<sup>8</sup> Affected.**<sup>9</sup> According to DBHDS, approximately 40 of the regulated entities are community service boards (CSB), which are a part of local governments. However, the proposed changes do not introduce costs for CSBs nor do they particularly affect any locality more than others.

**Projected Impact on Employment.** Although the proposed changes are expected to reduce administrative requirements and may affect employment positions related to such requirements, the net impact of these changes on total employment is not known.

**Effects on the Use and Value of Private Property.** Generally, a reduction in compliance costs should improve profits and consequently add to the asset values of regulated providers that are owned by private businesses. No direct impact on real estate development costs is expected.

amendments. Further the analysis should include but not be limited to: (1) the projected number of businesses or other entities to whom the proposed regulatory action would apply, (2) the identity of any localities and types of businesses or other entities particularly affected, (3) the projected number of persons and employment positions to be affected, (4) the projected costs to affected businesses or entities to implement or comply with the regulation, and (5) the impact on the use and value of private property.

<sup>2</sup> <https://www.governor.virginia.gov/media/governorvirginiagov/governor-of-virginia/pdf/ed/ED-1-Regulatory-Reduction.pdf>.

<sup>3</sup> In § 37.2-403 of the Code of Virginia, service means: 1. Planned individualized interventions intended to reduce or ameliorate mental illness, developmental disabilities, or substance abuse through care, treatment, training, habilitation, or other supports that are delivered by a provider to persons with mental illness, developmental disabilities, or substance abuse. Services include outpatient services, intensive in-home services, opioid treatment services, inpatient psychiatric hospitalization, community geropsychiatric residential services, assertive community treatment, and other clinical services; day support, day treatment, partial hospitalization, psychosocial rehabilitation, and habilitation services; case management services; and supportive residential, special school, halfway house, in-home services, crisis stabilization, and other residential services; and 2. Planned individualized interventions intended to reduce or ameliorate the effects of brain injury through care, treatment, or other supports provided in residential services for persons with brain injury.

<sup>4</sup> Pursuant to § 2.2-4007.04 D: In the event this economic impact analysis reveals that the proposed regulation would have an adverse economic impact on businesses or would impose a significant adverse economic impact on a locality, business, or entity particularly affected, the Department of Planning and Budget shall advise the Joint Commission on Administrative Rules, the House Committee on Appropriations, and the Senate Committee on Finance. Statute does not define "adverse impact," state whether only Virginia entities should be considered, nor indicate whether an adverse impact results from regulatory requirements mandated by legislation.

<sup>5</sup> Statute does not define "adverse impact," state whether only Virginia entities should be considered, nor indicate whether an adverse impact results from regulatory requirements mandated by legislation. As a result, DPB has adopted a definition of adverse impact that assesses changes in net costs and benefits for each affected Virginia entity that directly results from discretionary changes to the regulation.

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

<sup>7</sup> If the proposed regulatory action may have an adverse effect on small businesses, § 2.2-4007.04 requires that such economic impact analyses include: (1) an identification and estimate of the number of small businesses subject to the proposed regulation, (2) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the proposed regulation, including the type of professional skills necessary for preparing required reports and other documents, (3) a statement of the probable effect of the proposed regulation on affected small businesses, and (4) a description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation. Additionally, pursuant to § 2.2-4007.1 of the Code of Virginia, if there is a finding that a proposed regulation may have an adverse impact on small business, the Joint Commission on Administrative Rules shall be notified.

<sup>8</sup> "Locality" can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulatory change are most likely to occur.

<sup>9</sup> Section 2.2-4007.04 defines "particularly affected" as bearing disproportionate material impact.

**Agency Response to Economic Impact Analysis:** The State Board of Behavioral Health and Developmental Services concurs with the economic impact analysis prepared by the Department of Planning and Budget.

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<sup>1</sup> Section 2.2-4007.04 of the Code of Virginia requires that such economic impact analyses determine the public benefits and costs of the proposed

**Summary:**

*In response to Executive Directive One (2022), the amendments reduce the administrative burden and compliance costs on licensed providers by repealing or simplifying regulatory provisions that are obsolete, overly prescriptive, duplicative, or confusing. Substantive changes include (i) decreasing to 30 days the advance written notice providers must give the Department of Behavioral Health and Developmental Services for requested license changes; (ii) removing the requirement to demonstrate a hardship that is unique to the provider in order to qualify for a variance; (iii) eliminating the obligation for providers to prepare annual financial information and no longer requiring that the fiscal manager be bonded; (iv) requiring staff, students, and volunteers at substance use disorder outpatient or residential providers to receive annual tuberculosis (TB) education, rather than be certified as TB-free by a licensed practitioner every year; and (v) eliminating language enumerating components of a physical exam.*

**12VAC35-105-60. Modification.**

A. A provider shall submit a written service modification application at least ~~45~~ 30 days in advance of a proposed modification to ~~its~~ the provider's license. The modification may address the characteristics of individuals served (e.g., disability, age, or gender), the services offered, the locations where services are provided, existing stipulations, or the maximum number of individuals served under the provider license.

B. Upon receipt of the completed service modification application, the commissioner may revise the provider license. Approval of such request shall be at the sole discretion of the commissioner.

C. A change requiring a modification of the license shall not be implemented prior to approval by the commissioner. The department may send the provider a letter approving implementation of the modification pending the issuance of the modified license.

**12VAC35-105-120. Variances.**

The commissioner may grant a variance to a specific regulation if he determines that such a variance will not jeopardize the health, safety, or welfare of individuals. A provider shall submit a request for such variance in writing to the commissioner. The request shall demonstrate ~~that complying with the regulation would be a hardship unique to the provider and~~ that the variance will not jeopardize the health, safety, or welfare of individuals. The department may limit the length of time a variance will be effective. The provider shall not implement a variance until it has been approved in writing by the commissioner.

**12VAC35-105-170. Corrective action plan.**

A. If there is noncompliance with any applicable regulation during an initial or ongoing review, inspection, or investigation, the department shall issue a licensing report describing the noncompliance and requesting the provider to submit a corrective action plan for each violation cited.

B. The provider shall submit to the department a written corrective action plan for each violation cited.

C. The corrective action plan shall include a:

1. Detailed description of the corrective actions to be taken that will minimize the possibility that the violation will occur again and correct any systemic deficiencies;
2. Date of completion for each corrective action; and
3. ~~Signature of the Responsible person responsible for oversight of the~~ Responsible person responsible for oversight of the designated to oversee implementation of the pledged corrective action.

D. The provider shall submit a corrective action plan to the department within 15 business days of the issuance of the licensing report. One extension may be granted by the department when requested prior to the due date, but extensions shall not exceed an additional 10 business days. An immediate corrective action plan shall be required if the department determines that the violations pose a danger to individuals receiving the service.

E. Upon receipt of the corrective action plan, the department shall review the plan and determine whether the plan is approved or not approved. The provider has an additional 10 business days to submit a revised corrective action plan after receiving a notice that the department has not approved the revised plan. ~~If the submitted revised corrective action plan is not approved, the provider shall follow the dispute resolution process identified in this section.~~

F. ~~When the~~ If a provider disagrees with a citation of a violation or the disapproval of a revised corrective action plan, the provider shall discuss this disagreement with the licensing specialist initially. If the disagreement is not resolved, the provider may ask for a meeting with the licensing specialist's supervisor, in consultation with the director of licensing, to challenge a finding of noncompliance. The determination of the director is final.

G. The provider shall implement ~~their~~ an approved written corrective action plan for each violation cited by the date of completion identified in the plan.

H. The provider shall monitor implementation and effectiveness of approved corrective actions as part of its quality improvement program required by 12VAC35-105-620. If the provider determines that an approved corrective action was fully implemented, but did not prevent the recurrence of a regulatory violation or correct any systemic deficiencies, the provider shall:

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1. Continue implementing the corrective action plan and put into place additional measures to prevent the recurrence of the cited violation and address identified systemic deficiencies; or

2. Submit a revised corrective action plan to the department for approval.

## 12VAC35-105-180. Notification of changes.

A. The provider shall notify the department in writing prior to implementing changes that affect: ~~1. Organizational or administrative structure, including the name of the provider; 2. Geographic location of the provider or its services; 3. Service description as defined in these regulations; 4. Significant changes to the staffing plan, position descriptions, or employee or contractor qualifications; or 5. Bed capacity for services providing residential or inpatient services.~~

~~B. The provider shall not implement the specified changes without the prior approval of the department.~~

~~C. The provider shall provide any documentation necessary for the department to determine continued compliance with these regulations after any of these specified changes are implemented.~~

~~D. B.~~ A provider shall notify the department in writing of its intent to discontinue services at least 30 days prior to the cessation of services. The provider shall continue to provide all services that are identified in each individual's ISP after it has given official notice of its intent to cease operations and until each individual is appropriately discharged in accordance with 12VAC35-105-693. The provider shall further continue to maintain substantial compliance with all applicable regulations as it discontinues its services.

~~E. C.~~ All individuals receiving services and their authorized representatives shall be notified of the provider's intent to cease services in writing at least 30 days prior to the cessation of services. ~~This written notification shall be documented in each individual's ISP.~~

## 12VAC35-105-190. Operating authority, governing body and organizational structure.

A. The provider shall provide the following evidence of its operating authority:

1. Public organizations shall provide documents describing the administrative framework of the governmental department of which ~~it~~ the organization is a component or describing the legal and administrative framework under which ~~it~~ the organization was established and operates.

2. All private organizations, except sole ~~proprietorships~~ proprietors trading under the proprietor's own name shall provide a certificate from the State Corporation Commission pursuant to § 59.1-69 of the Code of Virginia.

B. The provider shall provide an organizational chart that clearly identifies ~~its~~ the provider's governing body and organizational structure.

~~C. The provider shall document the role and actions of the governing body, which shall be consistent with its operating authority. The provider shall identify its operating elements and services, the internal relationship among these elements and services, and its management or leadership structure.~~

## 12VAC35-105-210. Fiscal accountability.

A. The provider shall document financial arrangements or a line of credit that are adequate to ensure maintenance of ongoing operations for at least 90 days on an ongoing basis. The amount needed shall be based on a working budget showing projected revenue and expenses.

~~B. At the end of each fiscal year, the provider shall prepare, according to generally accepted accounting principles (GAAP) or those standards promulgated by the Governmental Accounting Standards Board (GASB) and the State Auditor of Public Accounts:~~

~~1. An operating statement showing revenue and expenses for the fiscal year just ended.~~

~~2. A balance sheet showing assets and liabilities for the fiscal year just ended. The department may require an audit of all financial records by an independent Certified Public Accountant (CPA) or as otherwise provided by law or regulation.~~

~~3. Providers operating as a part of a local government agency are not required to provide a balance sheet; however, they shall provide a financial statement.~~

~~C. The B.~~ In addition to the indemnity coverage required pursuant to 12VAC35-105-220, the provider shall have written internal controls to minimize the risk of theft or embezzlement of provider funds.

~~D. C.~~ The provider shall identify in writing the title and qualifications of the person ~~who has~~ with the authority and responsibility for the fiscal management of ~~its~~ the provider's services. ~~At a minimum, the person who has the authority and responsibility for fiscal management shall be bonded or otherwise indemnified.~~

~~E. D.~~ The provider shall notify the department in writing when ~~its~~ the provider's line of credit or other financial arrangement has been cancelled or significantly reduced at any time during the licensing period.

## 12VAC35-105-270. Building modifications.

~~A. The provider shall submit building plans and specifications for any planned construction at a new location, changes in the use of existing locations, and any structural modifications or additions to existing locations where services are provided for review by the department to determine~~

~~compliance with the licensing regulations. This section does not apply to correctional facilities, jails, or home and noncenter based services.~~

~~B. The provider shall submit an interim a plan to the department addressing safety and continued service delivery if new for any planned construction involving (i) changes in the use of existing locations or (ii) structural modifications or additions to new or existing buildings is planned. This section does not apply to correctional facilities, jails, or home-based and noncenter-based services.~~

**12VAC35-105-280. Physical environment.**

A. The physical environment, design, structure, furnishings, and lighting shall be appropriate ~~to~~ and safe for the individuals served and the services provided.

B. The physical environment shall be accessible to individuals with physical and sensory disabilities, if applicable.

C. The physical environment and furnishings shall be clean, dry, free of foul odors, safe, and well-maintained.

D. Floor surfaces and floor coverings shall promote mobility in areas used by individuals and shall promote maintenance of sanitary conditions.

E. The physical environment shall be well ventilated. Temperatures shall be maintained between 65°F and 80°F in all areas used by individuals.

F. Adequate hot and cold running water of a safe and appropriate temperature shall be available. Hot water accessible to individuals being served shall be maintained within a range of 100° to ~~110°F~~ 120°F. If temperatures cannot be maintained within the specified range, the provider shall make provisions for protecting individuals from injury due to scalding.

~~G. Lighting shall be sufficient for the activities being performed and all areas within buildings and outside entrances and parking areas shall be lighted for safety.~~

~~H. G.~~ Recycling, composting, and garbage disposal shall not create a nuisance, permit transmission of disease, or create a breeding place for insects or rodents.

~~I. H.~~ If smoking is permitted, the provider shall make provisions for alternate smoking areas that are separate from the service environment. ~~This subsection does not apply to home based services.~~

~~J. I.~~ For all program areas added after September 19, 2002, minimum room height shall be 7-1/2 feet.

~~K. J.~~ This section does not apply to home-based and noncenter-based or crisis services. Sponsored residential services shall certify compliance of sponsored residential homes with this section.

**12VAC35-105-290. Food service inspections.**

A. Any location where the provider is responsible for preparing or serving food shall request inspection and shall obtain approval by state or local health authorities regarding food service and general sanitation at the time of the original application and annually thereafter in accordance with Food Regulations (12VAC5-421).

~~B.~~ Documentation of the most recent ~~three inspections~~ inspection and approval shall be kept on file. This section does not apply to sponsored residential services or to group homes or community residential homes.

**12VAC35-105-320. Fire inspections.**

The provider shall document at the time of its original application and annually thereafter that buildings and equipment in residential service locations serving more than eight individuals are maintained in accordance with the Virginia Statewide Fire Prevention Code (~~13VAC5-51~~ 13VAC5-52). This section does not apply to correctional facilities ~~or home and noncenter based or sponsored residential home services.~~

**12VAC35-105-390. Confidentiality and security of personnel records.**

A. The provider shall maintain an organized system to manage and protect the confidentiality of personnel files and records.

~~B. Physical and data security controls shall exist for personnel records maintained in electronic databases.~~

~~C. B.~~ Providers shall comply with requirements of the Americans with Disabilities Act (42 USC § 12101 et seq.) and the Virginians with Disabilities Act (§ 51.5-1 et seq. of the Code of Virginia) regarding retention of employee health-related information in a file separate from personnel files.

**12VAC35-105-400. Criminal background checks and registry searches.**

A. Providers shall comply with the requirements for obtaining criminal history background checks as outlined in §§ 37.2-416, ~~37.2-416.1, 37.2-506, 37.2-506.1, and 37.2-607~~ of the Code of Virginia ~~for individuals hired after July 1, 1999.~~

B. The provider shall develop a written policy for criminal history background checks and registry searches that addresses what actions the provider must take if an applicant has certain prior convictions or a founded case of child abuse or neglect. The policy shall require, at a minimum ~~a disclosure statement stating, that the applicant disclose~~ whether the ~~person~~ applicant has (i) ever been convicted of or is the subject of pending charges for any an offense and shall address what actions the provider will take should it be discovered that a person listed in § 37.2-416, 37.2-416.1, 37.2-506, 37.2-506.1, or 37.2-607 of the Code of Virginia; or (ii) has a founded case of abuse or neglect or both, or a conviction or pending criminal charge.

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~~Any plea of nolo contendere shall be considered a conviction for purposes of this section.~~

~~C. The provider shall submit all personally descriptive applicant information required by the department necessary to complete the criminal history background checks and registry searches.~~

~~D. The provider shall maintain the following documentation:~~

~~1. The disclosure statement from the applicant stating whether he has ever been convicted of or is the subject of pending charges for any offense required pursuant to subsection B of this section; and~~

~~2. Documentation Evidence that the provider submitted all information required by the department necessary to complete the criminal history background checks and registry searches, report from the Central Criminal Records Exchange, or memoranda from the department transmitting the results to the provider, if as applicable, and the results from the Child Protective Registry search.~~

## 12VAC35-105-410. Job description.

~~A. Each employee or contractor shall have a access to the employee's or contractor's current written job description that includes:~~

- ~~1. Job title;~~
- ~~2. Duties and responsibilities required of the position;~~
- ~~3. Job title of the immediate supervisor; and~~
- ~~4. 3. Minimum knowledge, skills, and abilities; education or training; or experience or professional qualifications required for entry level as specified in 12VAC35-105-420.~~

~~B. Employees or contractors shall have access to their current job description. The provider shall have written documentation of the mechanism used to advise employees or contractors of changes to their job responsibilities.~~

## 12VAC35-105-420. Qualifications of employees or contractors.

~~A. Any Each person who assumes the responsibilities of any a position as an employee or a contractor shall meet the minimum qualifications of that position as determined by in accordance with the current job descriptions description.~~

~~B. Employees and contractors shall comply, as required, with the regulations of the Department of Health Professions. The provider shall design, implement, and document the process used to verify professional credentials.~~

~~C. Supervisors shall have experience in working with individuals being served and in providing the services outlined in the service description.~~

~~D. Job descriptions shall include minimum knowledge, skills and abilities, professional qualifications and experience~~

~~appropriate to the duties and responsibilities required of the position.~~

~~E. All staff C. Each employee or contractor shall demonstrate a working knowledge of the policies and procedures that are applicable to his that employee's or contractor's specific job or position.~~

## 12VAC35-105-430. Employee or contractor personnel records.

~~A. Employee or contractor personnel records, whether hard-copy or electronic, shall include:~~

- ~~1. Individual identifying information;~~
- ~~2. Education and training history;~~
- ~~3. Employment history;~~
- ~~4. Results of any provider credentialing process including methods of verification of applicable professional licenses or certificates;~~
- ~~5. Results of reasonable efforts to secure job-related references and reasonable verification of employment history;~~
- ~~6. Results of the required criminal background checks and searches of the registry of founded complaints of child abuse and neglect;~~
- ~~7. Results of performance evaluations;~~
- ~~8. and~~
- ~~4. A record of disciplinary action taken by the provider, if any;~~
- ~~9. A record of adverse action by any licensing and oversight bodies or organizations, if any; and~~
- ~~10. A record of participation in employee development activities, including orientation.~~

~~B. Each employee or contractor personnel record shall be retained in its entirety for a minimum of three years after the employee's or contractor's termination of employment.~~

## 12VAC35-105-440. Orientation of new employees, contractors, volunteers, and students.

~~New employees, contractors, volunteers, and students shall be oriented commensurate with their the individual's function or job-specific responsibilities within 15 business days. The provider shall document that the orientation covers each of the following policies, procedures, and practices:~~

- ~~1. Objectives and philosophy of the provider;~~
- ~~2. Practices of confidentiality, including access, duplication, and dissemination of any portion of an individual's record;~~
- ~~3. 2. Practices that assure ensure an individual's rights, including orientation to human rights regulations;~~



4. ~~Applicable personnel policies;~~
5. ~~3.~~ Emergency preparedness procedures;
6. ~~4.~~ Person-centeredness;
7. ~~5.~~ Infection control practices and measures;
8. ~~6.~~ Other policies and procedures that apply to specific positions and specific duties and responsibilities; and
9. ~~7.~~ Serious incident reporting, including when, how, and under what circumstances a serious incident report must be submitted and the consequences of failing to report a serious incident to the department in accordance with this chapter.

#### 12VAC35-105-470. Notification of policy changes.

~~All~~ The provider shall keep all employees or and contractors shall be kept informed of policy changes that affect the employee's or contractor's performance of duties. The provider shall have written documentation of the process used to advise employees or contractors of policy changes.

#### 12VAC35-105-490. ~~Written grievance policy. (Repealed.)~~

~~The provider shall implement a written grievance policy and shall inform employees of grievance procedures. The provider shall have documentation of the process used to advise employees of grievance procedures.~~

#### 12VAC35-105-500. ~~Students and volunteers. (Repealed.)~~

A. ~~The provider shall implement a written policy that clearly defines and communicates the requirements for the use and responsibilities of students and volunteers including selection and supervision.~~

B. ~~The provider shall not rely on students or volunteers to supplant direct care positions. The provider staffing plan shall not include volunteers or students.~~

#### 12VAC35-105-510. Tuberculosis screening.

A. Each new employee, contractor, student, or volunteer who will have direct contact with individuals receiving services shall obtain a statement of certification by a qualified licensed practitioner indicating the absence of tuberculosis in a communicable form within 30 days of employment or initial contact with individuals receiving services. The employee shall submit a copy of the original screening to the provider. A statement of certification shall not be required for a new employee who has separated from service with another licensed provider with a break in service of six months or less or who is currently working for another licensed provider.

B. All employees, contractors, students, or volunteers in substance abuse co-occurring outpatient or residential treatment services shall be certified as receive tuberculosis free education on an annual basis by a qualified licensed practitioner. The education shall focus on self-presentation in the event of exposure to active tuberculosis or the development of symptoms of active tuberculosis.

C. Any employee, contractor, student, or volunteer who comes in contact with a known case of active tuberculosis disease or who develops symptoms of active tuberculosis disease ~~(, including, but not limited to fever, chills, hemoptysis, cough, fatigue, night sweats, weight loss, or anorexia),~~ of three weeks duration shall be screened as determined appropriate for continued contact with employees, contractors, students, volunteers, or individuals receiving services based on consultation with the local health department.

D. ~~An~~ No employee, contractor, student, or volunteer suspected of having active tuberculosis shall ~~not~~ be permitted to return to work or have contact with employees, contractors, students, volunteers, or individuals receiving services until a physician has determined that the person is free of active tuberculosis.

#### 12VAC35-105-530. Emergency preparedness and response plan.

A. The scope of emergency preparedness in relation to this section applies to disasters and emergencies as defined by § 44-146.16 of the Code of Virginia. The provider shall develop a written emergency preparedness and response plan for all ~~of its~~ services and locations that describes ~~its~~ the provider's approach to emergencies throughout the organization or community. ~~This plan shall include an analysis of potential emergencies that could disrupt the normal course of service delivery including emergencies that would require expanded or extended care over a prolonged period of time.~~ The plan shall address:

1. Specific procedures describing mitigation, preparedness, response, and recovery strategies, actions, and responsibilities for each emergency.
2. ~~Documentation of coordination with the local emergency authorities to determine local disaster risks and community-wide plans to address different disasters and emergency situations.~~
3. ~~2.~~ The process for notifying local and state authorities of the emergency and a process for contacting staff when emergency response measures are initiated.
4. ~~3.~~ Written emergency management policies outlining specific responsibilities for provision of administrative direction and management of response activities, coordination of logistics during the emergency, communications, life safety of employees, contractors, students, volunteers, visitors, and individuals receiving services, property protection, community outreach, and recovery and restoration.
5. ~~Written emergency response procedures for initiating the response and recovery phase of the plan including a description of how, when, and by whom the phases will be activated. This includes assessing the situation; protecting individuals receiving services, employees, contractors,~~

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students, volunteers, visitors, equipment, and vital records; and restoring services. Emergency procedures shall address

#### 4. Procedures for:

- a. ~~Warning and, notifying, and communicating with individuals receiving services;~~ b. Communicating with, employees, contractors, and community responders;
- e. ~~Designating alternative roles and responsibilities of staff during emergencies including to whom they will report in the provider's organization command structure and when activated in the community's command structure;~~
- ~~d. b.~~ Providing emergency access to secure areas and opening locked doors;
- e. ~~Evacuation procedures, including for individuals who need evacuation assistance;~~
- f. ~~Conducting evacuations~~ c. Evacuating to emergency shelters or other alternative sites, relocating individuals receiving residential or inpatient services to new service locations, and accounting for all individuals receiving services;
- ~~g. Relocating individuals receiving residential or inpatient services, if necessary;~~
- ~~h. d.~~ Notifying family members or authorized representatives;
- i. ~~Alerting emergency personnel and sounding alarms;~~
- ~~j. Locating and shutting off utilities when necessary;~~ and
- ~~k. e.~~ Maintaining a 24-hour telephone answering 24-hour communications capability to respond to emergencies for individuals receiving services.

#### 6. ~~5.~~ Processes for managing the following under emergency conditions:

- a. Activities related to the provision of care, treatment, and services, including scheduling, modifying, or discontinuing services; ~~controlling~~ protecting confidential information about individuals receiving services; providing medication; and coordinating transportation services; and
- b. Logistics related to critical supplies, such as pharmaceuticals, food, linen, and water;
- e. ~~Security including access, crowd control, and traffic control; and~~
- d. ~~Back up communication systems in the event of electronic or power failure.~~

7. ~~Specific processes and protocols for evacuation of the provider's building or premises when the environment cannot support adequate care, treatment, and services.~~

8. ~~Supporting documents that would be needed in an emergency, including emergency call lists, building and site maps necessary to shut off utilities, designated escape~~

~~routes, and list of major resources such as local emergency shelters.~~

9. ~~Schedule 6. Schedules~~ for testing the implementation of the plan and conducting emergency preparedness drills. Fire and evacuation drills shall be conducted at least monthly.

B. The provider shall evaluate each individual receiving services and, based on ~~that evaluation~~ the individualized evaluations, shall provide appropriate environmental supports and adequate staff to safely evacuate all individuals during an emergency.

C. The provider shall implement annual emergency preparedness and response training for all employees, contractors, students, and volunteers. ~~This training shall also be provided as part of orientation for new employees and cover that covers~~ responsibilities for:

1. Alerting emergency personnel and sounding alarms;
2. Implementing evacuation procedures, including evacuation of individuals with special needs (i.e., deaf, blind, nonambulatory);
3. Using, maintaining, and operating emergency equipment;
4. Accessing emergency medical information for individuals receiving services; and
5. Utilizing community support services.

D. The provider shall review the emergency preparedness plan annually and make necessary revisions. Such revisions shall be communicated to employees, contractors, students, volunteers, and individuals receiving services and incorporated into orientation and ~~training for employees, contractors, students, and volunteers and into the orientation of individuals to services~~ materials.

~~E. In the event of a disaster, fire, emergency, or any other condition that may jeopardize the health, safety, or welfare of individuals, the provider shall take appropriate action to protect the health, safety, and welfare of individuals receiving services and take appropriate actions to remedy the conditions as soon as possible.~~

F. Employees, contractors, students, and volunteers shall be knowledgeable in and prepared to implement the emergency preparedness plan in the event of an emergency. The plan shall include a policy regarding regularly scheduled emergency preparedness training for all employees, contractors, students, and volunteers.

G. ~~In the event of a disaster, fire, emergency, or any other condition that may jeopardize the health, safety, or welfare of individuals, the provider should first respond and stabilize the disaster or emergency. After the disaster or emergency is stabilized, the provider should report the disaster or emergency to the department, but no later than 24 hours after the incident occurs.~~

~~H. E.~~ Providers of residential services shall have at all times a three-day supply of emergency food and water for all ~~residents~~ individuals receiving services and staff. Emergency food supplies should include foods that do not require cooking. Water supplies shall include one gallon of water per person per day.

~~I. F.~~ All provider locations shall be equipped with at least one approved ~~type-ABC~~ type-ABC portable fire extinguisher with a minimum rating of 2A10BC installed in each kitchen.

~~J. G.~~ All provider locations shall have an appropriate number of properly installed smoke detectors based on the size of the location, which shall include, at a minimum:

1. At least one smoke detector on each level of multi-level buildings, including the basement;
2. At least one smoke detector in each bedroom in locations with bedrooms;
3. At least one smoke detector in any area adjacent to any bedroom in locations with bedrooms; and
4. Any additional smoke detectors necessary to comply with all applicable federal and state laws and regulations and local ordinances.

~~K. H.~~ Smoke detectors shall be tested monthly for proper operation.

~~L. I.~~ All provider locations shall maintain a floor plan identifying locations of:

1. Exits;
2. Primary and secondary evacuation routes;
3. Accessible egress routes;
4. Portable fire extinguishers; and
5. Flashlights.

~~M. J.~~ This section does not apply to ~~home and~~ home-based or noncenter-based services.

**12VAC35-105-570. Mission statement. (Repealed.)**

~~The provider shall develop a written mission statement that clearly identifies its philosophy, purpose, and goals.~~

**12VAC35-105-580. Service description requirements.**

A. The provider shall develop, and implement, ~~review, and~~ revise its descriptions of services offered according to the provider's mission and shall make service descriptions available for public review.

B. The provider shall outline how each service offers a structured program of individualized interventions and care designed to meet the ~~individuals'~~ individual's physical and emotional needs; provide protection, guidance, and supervision; and meet the objectives of any required individualized services plan.

~~C. The provider shall prepare a written description of each service it offers.~~ Elements of each service description required by subsection A of this section shall include:

1. Service goals;
2. A description of care, treatment, skills acquisition, or other supports provided;
3. Characteristics and needs of individuals to receive services;
4. Contract services, if any;
5. Eligibility requirements and admission, continued stay, and exclusion criteria;
6. Service termination and discharge or transition criteria; and
7. Type and role of employees or contractors.

~~D. The provider shall revise the written service description whenever the operation of the service changes.~~

~~E. D.~~ The provider shall not implement services that are inconsistent with its most current service description.

~~F. E.~~ The provider shall admit only those individuals whose service needs are consistent with the service description, for whom services are available, and for ~~which~~ whom staffing levels and types meet the needs of the ~~individuals~~ individual receiving services.

~~G. F.~~ The provider shall provide for the physical separation of children and adults in residential and inpatient services and shall provide separate group programming for adults and children, except in the case of family services. The provider shall provide for the safety of children accompanying parents receiving services. ~~Older adolescents transitioning from school to adult activities may participate in developmental day support services with adults.~~

~~H. G.~~ The service description for substance abuse treatment services shall address the timely and appropriate treatment of pregnant women with substance abuse (substance use disorders).

~~I. If the provider plans to serve individuals as of a result of a temporary detention order to a service, prior to admitting those individuals to that service, the provider shall submit a written plan for adequate staffing and security measures to ensure the individual can receive services safely within the service to the department for approval. If the plan is approved, the department shall add a stipulation to the license authorizing the provider to serve individuals who are under temporary detention orders.~~

**12VAC35-105-590. Provider staffing plan.**

A. The provider shall implement a written staffing plan that includes the types, roles, and numbers of employees and

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contractors that are required to provide the service. This staffing plan shall reflect the:

1. Needs of the individuals receiving services;
2. Types of services offered;
3. Service description;
4. Number of individuals to receive services at a given time; and
5. Adequate number of staff required to safely evacuate all individuals during an emergency.

B. The provider staffing plan shall not include volunteers or students and shall not rely on students or volunteers to supplant direct care positions.

C. The provider shall develop a written transition staffing plan for new services, added locations, and changes in capacity.

~~C.~~ D. The provider shall meet the following staffing requirements related to supervision.

1. The provider shall describe how employees, ~~volunteers,~~ and contractors, ~~and student interns~~ will be supervised in the staffing plan and how that supervision will be documented.
2. Supervision of employees, ~~volunteers,~~ and contractors, ~~and student interns~~ shall be provided by persons who have experience in working with individuals receiving services and in providing the services outlined in the service description.
3. Supervision shall be appropriate to the services provided and the needs of the individual. Supervision shall be documented.
4. Supervision shall include responsibility for approving assessments and individualized services plans, as appropriate. This responsibility may be delegated to an employee or contractor who meets the qualification for supervision as defined in this section.
5. Supervision of mental health, substance abuse, or co-occurring services that are of an acute or clinical nature, such as outpatient, inpatient, intensive in-home, or day treatment, shall be provided by a licensed mental health professional or a mental health professional who is license-eligible and registered with a board of the Department of Health Professions.
6. Supervision of mental health, substance abuse, or co-occurring services that are of a supportive or maintenance nature, such as psychosocial rehabilitation or mental health supports, shall be provided by a QMHP-A, a licensed mental health professional, or a mental health professional who is license-eligible and registered with a board of the Department of Health Professions. An individual who is a QMHP-T may not provide this type of supervision.

7. Supervision of developmental services shall be provided by a person with at least one year of documented experience working directly with individuals who have developmental disabilities and who holds at least a bachelor's degree in a human services field, such as sociology, social work, special education, rehabilitation counseling, nursing, or psychology. Experience may be substituted for the education requirement.

8. Supervision of brain injury services shall be provided, at a minimum, by a clinician in the health professions field who is trained and experienced in providing brain injury services to individuals who have a brain injury diagnosis, including (i) a doctor of medicine or osteopathy licensed in Virginia; (ii) a psychiatrist who is a doctor of medicine or osteopathy specializing in psychiatry and licensed in Virginia; (iii) a psychologist who has a master's degree in psychology from a college or university with at least one year of clinical experience; (iv) a social worker who has a bachelor's degree in human services or a related field (e.g., social work, psychology, psychiatric evaluation, sociology, counseling, vocational rehabilitation, human services counseling, or other degree deemed equivalent to those described) from an accredited college or university with at least two years of clinical experience providing direct services to individuals with a diagnosis of brain injury; (v) a Certified Brain Injury Specialist; (vi) a registered nurse licensed in Virginia with at least one year of clinical experience; or (vii) any other licensed rehabilitation professional with one year of clinical experience.

~~D.~~ E. The provider shall employ or contract with persons with appropriate training, as necessary, to meet the specialized needs of and to ensure the safety of individuals receiving services in residential services with medical or nursing needs; speech, language, or hearing problems; or other needs where specialized training is necessary.

~~E.~~ F. Providers of brain injury services shall employ or contract with a neuropsychologist or licensed clinical psychologist specializing in brain injury to assist, as appropriate, with initial assessments, development of individualized services plans, crises, staff training, and service design.

~~F.~~ G. Staff in direct care positions providing brain injury services shall have at least a high school diploma and two years of experience working with individuals with disabilities or shall have successfully completed an approved training curriculum on brain injuries within six months of employment.

**12VAC35-105-645. Initial contacts, screening, and admission, ~~assessment, service planning, orientation and discharge.~~**

A. The provider shall implement policies and procedures for initial contacts and screening, admissions, and referral of

individuals to other services and designate staff to perform these activities.

B. The provider shall maintain written documentation of ~~an~~ each individual's initial contact and screening ~~prior to his admission,~~ including the:

1. Date of contact;
2. Name, age, and gender of the individual;
3. Address and telephone number of the individual, if applicable;
4. Reason why the individual is requesting services; and
5. Disposition of the individual, including his referral to other services for further assessment, placement on a waiting list for service, or admission to the service.

C. ~~The provider~~ Providers of crisis or case management services shall assist individuals who are not admitted to identify other appropriate services.

D. ~~The~~ For individuals who are not admitted, the provider shall retain documentation of the individual's initial ~~contacts~~ contact and screening referenced in subsection B of this section for a period of six months. ~~Documentation shall be included in the individual's record if the individual is admitted to the service.~~

**12VAC35-105-690. Orientation of individuals and authorized representatives.**

A. The provider shall implement a written policy regarding the orientation ~~of~~ to services for individuals and their authorized representatives, if applicable ~~to services.~~

B. As appropriate to the scope and level of services, the policy shall require the provision to individuals and authorized representatives, if applicable, the following information:

- ~~1. The mission of the provider or service;~~ 2. Service confidentiality Confidentiality practices and protections for individuals receiving services;
- ~~3. 2.~~ Human rights policies and protections and instructions on how to report violations;
4. 3. Opportunities for participation in services and discharge planning;
5. 4. Fire safety and emergency preparedness procedures, if applicable;
- ~~6. 5.~~ The provider's grievance complaint procedure;
7. 6. Service guidelines, including criteria for admission ~~to~~ and discharge or transfer ~~from services;~~
8. 7. Hours and days of operation;
9. 8. Availability of after-hours service; and
10. 9. Any charges or fees due from the individual.

C. In addition to the provisions of subsection B of this section, orientation for individuals receiving treatment services in a correctional facility shall ~~receive an orientation to~~ cover the facility's security restrictions.

D. The provider shall document that the individual and authorized representative, if applicable, received an orientation to services.

**12VAC35-105-691. Transition of individuals among service services by the same provider.**

A. ~~The provider shall implement written procedures that define the process for transitioning an individual between or among services operated by the provider. At a minimum the policy shall address:~~ 1. The process by which the provider will assure continuity of services during and following transition; 2. The participation of the individual or his authorized representative, as applicable, in the decision to move and in the planning for transfer; 3. The process and timeframe for transferring the access to individual's record and ISP to the destination location; 4. The process and timeframe for completing the transfer summary; and 5. The process and timeframe for transmitting or accessing, where applicable, discharge summaries to the destination service Except when transfer is ordered by a court of competent jurisdiction, the receiving service shall obtain from the sending service at the time of transfer:

1. Documentation of:
  - a. Informed choice by the individual or authorized representative, as applicable, in the decision to and planning for the transfer;
  - b. Notification to the family, if appropriate; and
  - c. Signature of the employee or contractor responsible for preparing the transfer summary and transfer date;
2. A written summary of the individual's progress while at the facility, justification for the transfer, and the individual's current strengths and needs; and
3. The individual's record, including emergency medical information.

B. ~~The transfer summary~~ sending service shall include ~~at a minimum the following:~~ 1. Reason for the individual's transfer; 2. Documentation of informed choice by the individual or his authorized representative, as applicable, in the decision to and planning for the transfer; 3. Current psychiatric and known medical conditions or issues of the individual and the identity of the individual's health care providers; 4. Updated progress of the individual in meeting goals and objectives in his ISP; 5. Emergency medical information; 6. Dosages of all currently prescribed medications and over the counter medications used by the individual when prescribed by the provider or known by the case manager; 7. Transfer date; and 8. Signature of employee or contractor responsible for preparing the transfer summary retain a copy of the face sheet and a written summary

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of the individual's progress while within the service and shall document the date of transfer and the name of the service to which the individual was transferred.

~~C. The transfer summary may be documented in the individual's progress notes or in information easily accessible within an electronic health record.~~

## 12VAC35-105-693. Discharge.

A. The provider shall have written policies and procedures regarding the discharge or termination of individuals from the service. These policies and procedures shall include medical and clinical criteria for discharge.

B. Discharge instructions shall be provided in writing to the individual, the individual's authorized representative, and the successor provider, as applicable. ~~Discharge~~ At a minimum, discharge instructions shall include, ~~at a minimum,~~ medications and dosages, if applicable; names, telephone numbers, and addresses of any successor providers to whom the individual is referred; current medical issues or conditions; and the identity of the individual's treating health care ~~providers~~ practitioners.

C. The provider shall make appropriate arrangements or referrals to all service services or successor providers identified in the discharge plan prior to the individual's scheduled discharge date.

D. The content of the discharge plan and the determination to discharge the individual shall be consistent with the ISP and the criteria for discharge.

~~E. The provider shall document in the individual's service record that the individual, the individual's authorized representative, and the individual's family members, as appropriate, have been involved in the discharge planning process.~~

~~F. A E. The provider shall complete a written discharge summary shall be completed~~ The provider shall complete a written discharge summary ~~shall be completed~~ within 30 days of discharge ~~and shall include that includes,~~ and at a minimum, the following:

1. Reason for the individual's admission to and discharge from the service;
2. Description of participation by the individual's individual or the individual's authorized ~~representative's participation~~ representative in discharge planning;
3. The individual's current level of functioning or functioning limitations, if applicable;
4. Recommended procedures, activities, or referrals to assist the individual in maintaining or improving functioning and increased independence;
5. The status, location, and arrangements that ~~have been~~ were made for future services;

6. Progress made by the individual in achieving goals and objectives identified in the ISP and a summary of critical events during service provision;

~~7. Discharge date~~ Date of discharge and when the discharge summary was actually written or documented; ~~8. Discharge medications prescribed by the provider, if applicable;~~ ~~9. Date the discharge summary was actually written or documented;~~ and

~~10. 8. Signature of the person who prepared~~ Signature of the employee or contractor responsible for preparing the discharge summary.

~~G. F.~~ F. This section does not apply to crisis services as crisis services shall comply with Part VIII of this chapter.

## 12VAC35-105-700. Written policies and procedures for crisis or emergency interventions; required elements.

A. The provider shall implement written policies and procedures for prompt intervention in the event of a crisis, as defined in 12VAC35-105-20, or a behavioral, medical, or psychiatric emergency that may occur during screening and referral, at admission, or during the period of service provision.

B. The policies and procedures shall include:

1. A service-specific working definition of what constitutes a ~~crisis or~~ behavioral, medical, or psychiatric emergency;
- ~~2. Procedures for immediately accessing appropriate internal and external resources. This shall include a provision for obtaining physician and mental health clinical services if the provider's or service's on-call or back-up physician or mental health clinical services are not available at the time of the emergency;~~
- ~~3. 2.~~ Employee or contractor responsibilities; and
4. ~~3.~~ Location of emergency medical information for each individual receiving services, including any advance psychiatric or medical directive or crisis response plan developed by the individual, which shall be readily accessible to employees or contractors on duty in an emergency or crisis.

## 12VAC35-105-720. Health care policy.

A. The provider shall implement a policy, appropriate to the scope and level of service offered, that addresses provision of adequate and appropriate medical care. This policy shall describe how:

1. Medical care needs will be assessed, including circumstances that will prompt the decision to obtain a medical assessment.
2. Individualized services plans will address any medical care needs appropriate to the scope and level of service.
3. Identified medical care needs will be addressed.

4. The provider will manage medical care needs or respond to abnormal findings.

5. The provider will communicate medical assessments and diagnostic laboratory results to the individual and authorized representative, as appropriate.

6. The provider will keep accessible to staff and contractors on duty the names, addresses, and ~~phone~~ telephone numbers of the individual's medical and dental providers.

7. The provider will ensure a means for facilitating and arranging, as appropriate, transportation to medical and dental appointments and medical tests; when services cannot be provided on site.

B. The provider shall implement written policies to identify any individuals who are at risk for falls and develop and implement a fall prevention and management plan and program for each at risk individual.

~~C. Providers of residential or inpatient services shall provide or arrange for the provision of appropriate medical care. Providers of other services shall define instances when they shall provide or arrange for appropriate medical and dental care and instances when they shall refer the individual to appropriate medical care.~~

~~D. C.~~ The provider shall implement written infection control measures, including the use of universal precautions.

~~E. D.~~ The provider shall report outbreaks of infectious diseases to the Virginia Department of Health pursuant to § 32.1-37 of the Code of Virginia.

**12VAC35-105-740. Physical examination for residential and inpatient services.**

A. ~~Providers~~ Within 30 days of an individual's admission, providers of residential or inpatient services shall either administer a physical examination or obtain results of physical exams an examination conducted within 30 days of an individual's admission the previous 12 months. ~~The examination must have been conducted within one year of admission to the service.~~ Providers of inpatient services shall administer physical exams within 24 hours of an individual's admission.

B. A physical examination shall include, ~~at a minimum:~~ 1. General physical condition (history and physical); 2. Evaluation for communicable diseases; 3. Recommendations for further diagnostic tests and treatment, if appropriate; 4. Other examinations that may be indicated; and 5. The the date of examination and signature of a qualified practitioner.

~~C. Locations designated for physical examinations shall ensure individual privacy.~~

~~D. C.~~ The provider shall review and follow up with the results of the physical examination and of any follow-up diagnostic tests, treatments, or examinations in the individual's record.

~~E. D.~~ This section does not apply to crisis services as crisis services shall comply with Part VIII of this chapter.

**12VAC35-105-770. Medication management.**

A. The provider shall implement written policies addressing:

1. The safe administration, handling, storage, and disposal of medications;

2. The use of medication orders;

3. The handling of packaged medications brought by individuals from ~~home or other residences~~ outside the facility;

4. ~~Employees~~ Training requirements necessary for employees or contractors who are authorized to administer medication ~~and training required for administration of medication~~; 5. ~~The use of professional samples~~; and

~~6. 5.~~ The window within which medications can be given in relation to the ordered or established time of administration.

B. Medications shall be administered only by persons ~~who are authorized to do so by state law~~ the Drug Control Act (§ 54.1-3400 et seq. of the Code of Virginia).

C. Medications shall be administered as prescribed and only to the individuals for whom the medications are prescribed ~~and shall be administered as prescribed.~~

D. The provider shall maintain a daily log of all medicines received and refused by each individual. This log shall identify the employee or contractor who administered the medication, the name of the medication and dosage administered or refused, and the time the medication was administered or refused.

E. If the provider administers medications or supervises self-administration of medication in a service, a current medication order for all medications the individual receives shall be maintained on site.

F. The provider shall promptly dispose of discontinued drugs, outdated drugs, and drug containers with worn, illegible, or missing labels according to the applicable regulations of the Virginia Board of Pharmacy.

**12VAC35-105-790. Medication administration and storage or pharmacy operation. (Repealed.)**

~~A. A provider responsible for medication administration and medication storage or pharmacy operations shall comply with:~~

~~1. The Drug Control Act (§ 54.1-3400 et seq. of the Code of Virginia);~~

~~2. The Virginia Board of Pharmacy regulations;~~

~~3. The Virginia Board of Nursing regulations; and~~

~~4. Applicable federal laws and regulations relating to controlled substances.~~

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# Regulations

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~~B. A provider responsible for medication administration and storage or pharmacy operation shall provide in-service training to employees and consultation to individuals and authorized representatives on issues of basic pharmacology including medication side effects.~~

## **12VAC35-105-800. Policies and procedures on behavior interventions and supports.**

A. The provider shall implement written policies and procedures that describe conditions for the use of behavior interventions that comply with the requirements of 12VAC35-115, including seclusion, restraint, and time out. The policies and procedures shall:

- ~~1. Be consistent with applicable federal and state laws and regulations;~~
- ~~2. Emphasize positive approaches to behavior interventions;~~
- ~~3. 1. List and define behavior interventions in the order of their relative degree of intrusiveness or restrictiveness and the conditions under which they each intervention may be used in each service for each individual accordance with each individual's ISP;~~
- ~~4. 2. Protect the safety and well-being of the individual at all times, including during fire and other emergencies; 5. and~~
- ~~3. Specify the mechanism for monitoring and documenting the use of behavior interventions; and 6. Specify the methods for documenting the use of behavior interventions.~~

B. Employees and contractors trained in behavior support interventions shall implement and monitor all behavior interventions.

C. Policies and procedures related to behavior interventions shall be available to individuals, ~~their~~ families, authorized representatives, and advocates. Notification of policies does not need to occur in correctional facilities.

D. ~~Individuals~~ No individual receiving services shall ~~not~~ discipline, restrain, seclude, or implement behavior interventions on other individuals receiving services.

E. Injuries resulting from or occurring during the implementation of seclusion or restraint shall be reported to the department as provided in 12VAC35-115-230 C.

## **12VAC35-105-870. ~~Paper and electronic records~~ Records management policy.**

A. The provider shall develop and implement a written records management policy that describes confidentiality, accessibility, security, and retention of ~~paper and electronic~~ records pertaining to individuals, including:

- ~~1. Access and limitation of access, duplication, or dissemination, and acquisition of individual information only to persons who are legally authorized to access such information according to federal and state laws;~~

~~2. Storage, processing, and handling of active and closed records;~~

~~3. Storage, processing, and handling of electronic records;~~

~~4. 3. Security measures that to~~ protect records from loss, unauthorized alteration, inadvertent or unauthorized access, disclosure of information, and transportation of records between service sites;

~~5. 4. Strategies for service continuity and record recovery from interruptions that result from disasters or emergencies, including contingency plans, electronic or manual back-up systems, and data retrieval systems;~~

~~6. Designation of the person responsible for records management; and~~

~~7. 5. Disposition of records in the event that the service ceases operation. If the disposition of records involves a transfer to another provider, the provider shall have a written agreement with that provider.~~

B. The records management policy shall be consistent with applicable state and federal laws and regulations related to privacy of health records, including:

1. Section 32.1-127.1:03 of the Code of Virginia;
2. 42 USC § 290dd;
3. 42 CFR Part 2; and
4. The Health Insurance Portability and Accountability Act (Public Law 104-191) and implementing regulations (45 CFR Parts 160, 162, and 164).

C. The policy shall specify what information is available to the individual.

D. Active and closed records shall be kept in areas that are accessible to authorized staff and protected from unauthorized access, fire, and flood.

E. Entries in the individual's record shall be current, dated, and authenticated by the person making the entry. Errors shall be corrected by striking through and initialing.

## **12VAC35-105-880. ~~Documentation policy.~~ (Repealed.)**

~~A. The provider shall define, by policy, all records it maintains that address an individual's care and treatment and what each record contains.~~

~~B. The provider shall define, by policy, and implement a system of documentation that supports appropriate service planning, coordination, and accountability. At a minimum this policy shall outline:~~

- ~~1. The location of the individual's record;~~
- ~~2. Methods of access by employees or contractors to the individual's record; and~~



~~3. Methods of updating the individual's record by employees or contractors including the frequency and format of updates.~~

~~C. Entries in the individual's record shall be current, dated, and authenticated by the persons making the entries. For paper records, errors shall be corrected by striking through and initialing the incorrect information. If records are electronic, the provider shall implement a written policy to include the identification of errors and corrections to the record.~~

**12VAC35-105-890. Individual's service record.**

A. There shall be a separate primary record for each individual admitted for service. A separate record shall be maintained for each family member who is receiving individual treatment. The provider shall maintain each individual's record in accordance with § 32.1-127.1:03 of the Code of Virginia.

B. All individuals admitted to the service shall have identifying information readily accessible in the individual's service record. Identifying information shall include the following:

1. Identification number unique for the individual;
2. Name of individual;
3. Current residence, if known;
4. Social security number;
5. Gender;
6. Marital status;
7. Date of birth;
8. Name of authorized representative, if applicable;
9. Name, address, and telephone number for emergency contact;
10. Adjudicated legal incompetency or legal incapacity, if applicable; and
11. Date of admission to service.

C. In addition, an individual's service record shall contain, at a minimum:

1. Screening documentation;
2. Assessments;
3. Medical evaluation, as applicable to the service;
4. Individualized services plans and reviews;
5. Progress notes; and
6. A discharge summary, if applicable.

~~**12VAC35-105-900. Record storage and security. (Repealed.)**~~

~~A. When not in use, active and closed paper records shall be stored in a locked cabinet or room.~~

~~B. Physical and data security controls shall exist to protect electronic records.~~

~~**12VAC35-105-920. Review process for records. (Repealed.)**~~

~~The provider shall implement a review process to evaluate both current and closed records for completeness, accuracy, and timeliness of entries.~~

~~**12VAC35-105-1055. Description of level of care provided. (Repealed.)**~~

~~In the service description the provider shall describe the level of services and the medical management provided.~~

~~**12VAC35-105-1060. Cooperative agreements with community agencies. (Repealed.)**~~

~~The provider shall establish cooperative agreements with other community agencies to accept referrals for treatment, including provisions for physician coverage if not provided on site, and emergency medical care. The agreements shall clearly outline the responsibility of each party.~~

~~**12VAC35-105-1080. Direct care training for providers of detoxification services. (Repealed.)**~~

~~A. The provider shall document staff training in the areas of:~~

- ~~1. Management of withdrawal; and~~
- ~~2. First responder training.~~

~~B. Untrained employees or contractors shall not be solely responsible for the care of individuals.~~

~~FORMS (12VAC35-105)(Repealed)~~

~~Initial Provider Application For Licensing (rev.1/10).~~

~~Renewal Provider Application For Licensing (rev. 2/09).~~

~~Service Modification Provider Request, DMH 966E 1140 (rev. 1/09).~~

VA.R. Doc. No. R25-7447; Filed March 20, 2025, 3:39 p.m.

**TITLE 16. LABOR AND EMPLOYMENT**

**VIRGINIA EMPLOYMENT COMMISSION**

**Fast-Track Regulation**

Title of Regulation: **16VAC5-80. Adjudication (amending 16VAC5-80-10).**

Statutory Authority: §§ 60.2-111 and 60.2-623 of the Code of Virginia.

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# Regulations

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Public Hearing Information: No public hearing is currently scheduled.

Public Comment Deadline: May 21, 2025.

Effective Date: June 5, 2025.

Agency Contact: Ashley Ervin, Director of Policy and Legislative Affairs, Virginia Employment Commission, 6606 West Broad Street, Richmond, VA 23220, telephone (804) 774-2713, or email [ashley.ervin@vec.virginia.gov](mailto:ashley.ervin@vec.virginia.gov).

Basis: Section 60.2-111 of the Code of Virginia authorizes the Virginia Employment Commission to adopt, amend, or rescind such rules and regulations as it deems necessary or suitable to carry out the commission's duties and powers. Section 60.2-623 authorizes the commission to prescribe the manner in which disputed claims shall be presented, reports required from the claimant and from employers, and the conduct of hearings and appeals before any deputy, appeals examiner, or the commission.

Purpose: The amendments are being made to better reflect the current unemployment insurance (UI) process by removing language that has become obsolete due to technology or internal process changes. The updates conform to existing federal regulatory requirements and are beneficial to the welfare of the public because the changes more accurately reflect the UI process, allowing claimants to understand the process and claimant obligations under the regulation.

Rationale for Using Fast-Track Rulemaking Process: This action is expected to be noncontroversial and therefore appropriate for the fast-track rulemaking process because the amendments bring the regulation up to speed with current practices and remove obsolete language.

Substance: The amendments add the word "electronically" as a delivery method for determinations or decisions. This change will bring the regulation up to date with current practices, as the commission uses both the mail and UI portal to communicate with claimants and employers.

Issues: The primary advantage to both the public and the agency is that the regulation will now conform to the current practices of the UI division and remove language already addressed by federal regulations or prior existing commission regulations to reduce the overall regulatory burden. There is no disadvantage, as no changes in the UI process will occur because of the amendments.

## Department of Planning and Budget Economic Impact Analysis:

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 Code of Virginia and Executive Order 19. The analysis presented represents DPB's best estimate of the potential economic impacts as of the date of this analysis.<sup>1</sup>

Summary of the Proposed Amendments to Regulation. The Virginia Employment Commission (VEC) proposes to (i) remove text concerning the promptness of determinations and

decisions and (ii) add that determinations and decisions can be delivered electronically.

Background. The current regulation states that "As soon as possible following the acquisition of facts necessary to make a determination or decision, either from the parties' submissions or from a predetermination proceeding, the deputy shall render a determination or decision in writing which shall include the effective date of any qualification or disqualification, the dates of any eligibility or ineligibility, the law or regulation upon which the determination or decision is based, and the reasons for the determination or decision, together with information concerning the filing of an appeal. This determination or decision shall be promptly delivered or mailed to the parties at their last known addresses or designated point of contact." In the first sentence, VEC proposes to remove all of the text prior to "the deputy shall render a determination or decision." The agency points out that "The timeline for issuing decisions or determinations is governed by the Code and is also federally regulated. There will be no impact as a result of the change because the VEC will continue to operate based on federal timeliness standards."<sup>2</sup> Also, in the last sentence, VEC proposes to add the word "electronically" after "promptly delivered."

Estimated Benefits and Costs. As removing the text concerning the promptness of determinations and decisions would have no impact on promptness in practice, this proposed change would not have substantive impact. VEC has indicated that determinations and decisions are already being communicated electronically. Thus, the proposal to add the word electronically would moderately improve clarity in that it would better describe what occurs in practice, but otherwise would have no substantive impact.

Businesses and Other Entities Affected. The regulation concerns the adjudication of unemployment claims and therefore pertains to all individuals who may at some time apply for unemployment benefits, as well as VEC staff. The Code of Virginia requires DPB to assess whether an adverse impact may result from the proposed regulation.<sup>3</sup> An adverse impact is indicated if there is any increase in net cost or reduction in net benefit for any entity, even if the benefits exceed the costs for all entities combined.<sup>4</sup> As the proposed amendments neither increase net costs nor reduce net benefits, no adverse impact is indicated.

Small Businesses<sup>5</sup> Affected.<sup>6</sup> The proposed amendments do not appear to adversely affect small businesses.

Localities<sup>7</sup> Affected.<sup>8</sup> The proposed amendments neither disproportionately affect particular localities nor affect costs for local governments.

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

Effects on the Use and Value of Private Property. The proposed amendments do not substantively affect the use and value of private property or real estate development costs.

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<sup>1</sup> Section 2.2-4007.04 of the Code of Virginia requires that such economic impact analyses determine the public benefits and costs of the proposed

amendments. Further the analysis should include but not be limited to: (1) the projected number of businesses or other entities to whom the proposed regulatory action would apply, (2) the identity of any localities and types of businesses or other entities particularly affected, (3) the projected number of persons and employment positions to be affected, (4) the projected costs to affected businesses or entities to implement or comply with the regulation, and (5) the impact on the use and value of private property.

<sup>2</sup> See § 60.2-619 of the Code of Virginia (<https://law.lis.virginia.gov/vacode/title60.2/chapter6/section60.2-619/#v2/>) for the relevant Code of Virginia section, and [https://oui.doleta.gov/unemploy/pdf/Core\\_Measures.pdf](https://oui.doleta.gov/unemploy/pdf/Core_Measures.pdf) for the applicable federal regulatory metrics.

<sup>3</sup> Pursuant to § 2.2-4007.04 D: In the event this economic impact analysis reveals that the proposed regulation would have an adverse economic impact on businesses or would impose a significant adverse economic impact on a locality, business, or entity particularly affected, the Department of Planning and Budget shall advise the Joint Commission on Administrative Rules, the House Committee on Appropriations, and the Senate Committee on Finance. Statute does not define "adverse impact," state whether only Virginia entities should be considered, nor indicate whether an adverse impact results from regulatory requirements mandated by legislation.

<sup>4</sup> Statute does not define "adverse impact," state whether only Virginia entities should be considered, nor indicate whether an adverse impact results from regulatory requirements mandated by legislation. As a result, DPB has adopted a definition of adverse impact that assesses changes in net costs and benefits for each affected Virginia entity that directly results from discretionary changes to the regulation.

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

<sup>6</sup> If the proposed regulatory action may have an adverse effect on small businesses, § 2.2-4007.04 requires that such economic impact analyses include: (1) an identification and estimate of the number of small businesses subject to the proposed regulation, (2) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the proposed regulation, including the type of professional skills necessary for preparing required reports and other documents, (3) a statement of the probable effect of the proposed regulation on affected small businesses, and (4) a description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation. Additionally, pursuant to § 2.2-4007.1 of the Code of Virginia, if there is a finding that a proposed regulation may have an adverse impact on small business, the Joint Commission on Administrative Rules shall be notified.

<sup>7</sup> "Locality" can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulatory change are most likely to occur.

<sup>8</sup> Section 2.2-4007.04 defines "particularly affected" as bearing disproportionate material impact.

**Response to Economic Impact Analysis:** The Virginia Employment Commission has reviewed the economic impact analysis prepared by the Department of Planning and Budget. The commission has added a reference to § 60.2-619 of the Code of Virginia as suggested by the Director of the Office of Regulatory Management. The regulation also refers to promptly delivering a decision by mail or electronically.

**Summary:**

*In response to Executive Order 19 (2022), the amendments (i) clarify current unemployment insurance practices, (ii) update language to conform to current policies, (iii) remove duplicative language, and (iv) eliminate requirements already addressed by federal statute or regulation.*

**16VAC5-80-10. Deputy's determinations or decisions.**

A. Whenever, after a claim is filed, a deputy obtains information from a claimant, employer, or third party that could affect the claimant's entitlement to benefits, the deputy shall initiate further investigation. The deputy may contact the parties to obtain information. Documentary evidence prepared specifically for the claim or for other purposes may be considered by the deputy. Any party to an investigation may be represented by counsel or a duly authorized representative. No information or evidence shall be considered by the deputy unless the claimant has been given the opportunity to see or hear it and comment upon it. Information concerning eligibility or qualification for benefits shall be entered into commission records.

B. A predetermination fact-finding proceeding may be conducted with a deputy when deemed necessary by the commission in order to resolve an outstanding issue on a claim.

The proceeding may be conducted telephonically with the deputy presiding. This informal interview shall not be recorded in any way, although notes can be taken by the deputy. Statements made by parties or witnesses shall not be taken under oath and formal examination or cross-examination shall not be permitted. The deputy shall direct questions to the parties and witnesses. Rebuttal to statements made by opposing parties or witnesses shall be permitted. Any party to a predetermination proceeding may be represented by counsel or other duly authorized agent. The record of facts of the proceeding shall become a part of the commission's records.

C. ~~As soon as possible following the acquisition of facts necessary to make a determination or decision, either from the parties' submissions or from a predetermination proceeding, the~~ The deputy shall render a determination or decision in writing in accordance with § 60.2-619 of the Code of Virginia, which shall include the effective date of any qualification or disqualification, the dates of any eligibility or ineligibility, the law or regulation upon which the determination or decision is based, and the reasons for the determination or decision, together with information concerning the filing of an appeal. This determination or decision shall be promptly delivered electronically or mailed to the parties at their last known addresses or designated point of contact.

VA.R. Doc. No. R25-8166; Filed March 21, 2025, 4:37 p.m.

**Fast-Track Regulation**

**Title of Regulation:** **16VAC5-80. Adjudication (amending 16VAC5-80-20, 16VAC5-80-30).**

**Statutory Authority:** §§ 60.2-111 and 623 of the Code of Virginia.

**Public Hearing Information:** No public hearing is currently scheduled.

**Public Comment Deadline:** May 21, 2025.

**Effective Date:** June 5, 2025.

**Agency Contact:** Ashley Ervin, Director of Policy and Legislative Affairs, Virginia Employment Commission, 6606

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# Regulations

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West Broad Street, Richmond, VA 23230, telephone (804) 774-2713, or email [ashley.ervin@vec.virginia.gov](mailto:ashley.ervin@vec.virginia.gov).

**Basis:** Section 60.2-111 of the Code of Virginia authorizes the Virginia Employment Commission to adopt, amend, or rescind such rules and regulations as it deems necessary or suitable to carry out the commission's duties and powers.

**Purpose:** The amendments reflect an updated and more accurate layout of the unemployment insurance process, more specifically the appeals process. The amendments also conform the regulation to statutory language. This action benefits the welfare of the public because the amendments make the regulation easier to understand.

**Rationale for Using Fast-Track Rulemaking Process:** This action is expected to be noncontroversial and therefore appropriate for the fast-track rulemaking process because the amendments update outdated language and processes to bring the regulation up to current agency practices.

**Substance:** The amendments (i) allow for telephonic hearings and agency discretion for in-person hearings and (ii) include procedures for instances when the appealing party fails to participate in a hearing.

**Issues:** The advantage to both the public and the agency is that the regulation will now conform with the current practices of the Appeals Division and will remove language already addressed by statute or regulation, which reduces the overall regulatory burden. There are no disadvantages to the public or Commonwealth.

## Department of Planning and Budget Economic Impact Analysis:

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 Code of Virginia and Executive Order 19. The analysis presented represents DPB's best estimate of the potential economic impacts as of the date of this analysis.<sup>1</sup>

Summary of the Proposed Amendments to Regulation. In response to Executive Order 19 (2022) (EO 19),<sup>2</sup> the Virginia Employment Commission (commission) proposes to update the regulation to conform to the commission's current practices for conducting first level appeals and commission reviews, to update language to clarify practices, and also update agency names to be consistent with statute.

Background. EO 19 requires all executive branch agencies to reduce regulatory requirements by 25%. The commission proposes several changes that would primarily reduce the length of the regulatory text while aiming to clarify current policies and practices. For example, the current text lays out the factors the commission considers when granting a split hearing (where one party participates through the Internet and the other party participates in-person) or an in-person hearing. These factors include access to a telephone, the number of witnesses involved, the length of documents, time requests made, etc. The commission proposes to remove the specific

factors from the text of the regulation and proposes to instead insert, "The commission may grant timely requests for split hearings or in-person hearings at its discretion." According to the commission, the new text would leave the decision up to agency discretion, which would allow for changes in technology and processes under the proposal. Additionally, this change would reduce the length of the text. The commission also proposes to remove the current requirement to include the last four digits of a social security number because the agency is moving away from utilizing such information in order to improve data security; and to remove the current requirement for a signature as it is not required in practice and because appeals may be considered via all formats, some of which do not allow for signature. Other changes include clarifying that appeals are considered filed on the date of the postmark or, if no date is stamped, on the date received by the commission; and that a hearing may be conducted when a reopening request is received because it is discretionary under current practice. Finally, the proposal would add language to address procedures for conducting a hearing and issuing a decision when an appellant does not participate in the hearing.

Estimated Benefits and Costs. To the extent that the changes reflect the commission's current practices and are consistent with statute regarding the rights and responsibilities of participants pertaining to first level appeals and commission reviews, no significant economic impact is expected from this proposed regulatory action.

Businesses and Other Entities Affected. According to the commission, there were 16,313 first level appeals received in 2023. The Code of Virginia requires DPB to assess whether an adverse impact may result from the proposed regulation.<sup>3</sup> An adverse impact is indicated if there is any increase in net cost or reduction in net benefit for any entity, even if the benefits exceed the costs for all entities combined.<sup>4</sup> As noted above, the proposed changes are editorial in nature and are not expected to increase costs or reduce revenues for any entity. Thus, an adverse impact is not indicated.

Small Businesses<sup>5</sup> Affected.<sup>6</sup> The proposed amendments do not appear to adversely affect small businesses.

Localities<sup>7</sup> Affected.<sup>8</sup> The proposed amendments do not appear to disproportionately affect any localities or introduce costs for local governments.

Projected Impact on Employment. No impact on total employment is expected.

Effects on the Use and Value of Private Property. No impact on the use and value of private property nor on real estate development costs is expected.

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<sup>1</sup> Section 2.2-4007.04 of the Code of Virginia requires that such economic impact analyses determine the public benefits and costs of the proposed amendments. Further the analysis should include but not be limited to: (1) the projected number of businesses or other entities to whom the proposed regulatory action would apply, (2) the identity of any localities and types of businesses or other entities particularly affected, (3) the projected number of

persons and employment positions to be affected, (4) the projected costs to affected businesses or entities to implement or comply with the regulation, and (5) the impact on the use and value of private property.

<sup>2</sup> <https://townhall.virginia.gov/EO-19-Development-and-Review-ofState-Agency-Regulations.pdf>.

<sup>3</sup> Pursuant to § 2.2-4007.04 D: In the event this economic impact analysis reveals that the proposed regulation would have an adverse economic impact on businesses or would impose a significant adverse economic impact on a locality, business, or entity particularly affected, the Department of Planning and Budget shall advise the Joint Commission on Administrative Rules, the House Committee on Appropriations, and the Senate Committee on Finance. Statute does not define "adverse impact," state whether only Virginia entities should be considered, nor indicate whether an adverse impact results from regulatory requirements mandated by legislation.

<sup>4</sup> Statute does not define "adverse impact," state whether only Virginia entities should be considered, nor indicate whether an adverse impact results from regulatory requirements mandated by legislation. As a result, DPB has adopted a definition of adverse impact that assesses changes in net costs and benefits for each affected Virginia entity that directly results from discretionary changes to the regulation.

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

<sup>6</sup> If the proposed regulatory action may have an adverse effect on small businesses, § 2.2-4007.04 requires that such economic impact analyses include: (1) an identification and estimate of the number of small businesses subject to the proposed regulation, (2) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the proposed regulation, including the type of professional skills necessary for preparing required reports and other documents, (3) a statement of the probable effect of the proposed regulation on affected small businesses, and (4) a description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation. Additionally, pursuant to § 2.2-4007.1 of the Code of Virginia, if there is a finding that a proposed regulation may have an adverse impact on small business, the Joint Commission on Administrative Rules shall be notified.

<sup>7</sup> "Locality" can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulatory change are most likely to occur.

<sup>8</sup> Section 2.2-4007.04 defines "particularly affected" as bearing disproportionate material impact.

**Agency Response to Economic Impact Analysis:** The Virginia Employment Commission has reviewed the economic impact analysis prepared by the Department of Planning and Budget and has no response.

**Summary:**

*In response to Executive Order 19 (2022), the amendments (i) clarify current practices and update language to conform to current policies of first level and commission appeals, (ii) update language to clarify practices, (iii) update agency names and employee titles, and (iv) conform the regulation to changes made in statute.*

**16VAC5-80-20. First level appeals.**

A. The claimant, the claimant's liable employer, or any subsequent employing unit with a direct interest in an issue may appeal from an adverse deputy's determination or decision as specified in § 60.2-619 of the Code of Virginia.

1. Appeals shall be filed with the commission's Administrative Law Division's Office of First Level Appeals in one of the following ways:

- a. In person at any ~~agency service location, including workforce, adjudication, or one-stop centers or the commission's administrative office in Richmond, Virginia Works office;~~
- b. By mail to the Administrative Law Division's Office of First Level Appeals at the address specified on the deputy's determination or decision;
- c. By facsimile transmission to the Administrative Law Division's Office of First Level Appeals at the facsimile number specified on the deputy's determination or decision;
- ~~d. By the Internet at a site or address specified by the commission; or~~
- e. d. By an electronic format as prescribed by the commission.

2. Appeals shall be presumed to be filed on the date of receipt by the commission. An appeal mailed to the commission shall be presumed to be filed on the date of postmark by the U.S. Postal Service. If no postmark appears on the envelope, the appeal shall be presumed to be filed on the date it was received by the commission.

3. Appeals shall be in writing and should set forth the grounds upon which ~~they are~~ the appeal is sought, as well as the name ~~and last four digits of the social security account number~~ of the claimant; however, any document in writing submitted to the commission by a party or a party's authorized representative expressing a desire to appeal shall be sufficient to initiate an appeal. Agency personnel shall furnish an appellant or an appellant's authorized representative whatever assistance is necessary to file an appeal. ~~The appeal should be signed by the appealing party or that party's authorized representative; however, the absence of a signature shall not result in the dismissal of the appeal.~~

B. After the filing of an appeal, the record in connection with the claim, together with the notice of appeal, shall be assigned to an ~~appeal tribunal consisting of a salaried examiner only~~ appeals examiner. Should evidence indicate that the appeal was not filed within the time prescribed by law, the first issue to be considered at the hearing shall be whether the appeal was timely filed or whether there exists good cause for extending the appeal period.

1. ~~Except as otherwise provided in this chapter, all~~ All hearings shall be conducted by telephone conference call. ~~At the discretion of the commission, a split hearing or an in-person hearing may be scheduled if the complexity of the case or the quality of telephone service in a particular locality makes participation in the hearing unreasonably difficult. A split or in-person hearing will be scheduled if a~~

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~~party does not have reasonable access to a telephone that would permit meaningful participation in a telephonic hearing. In assessing the complexity of a particular case, the commission shall consider the number of witnesses involved, the number and length of any documents that will likely be proposed as exhibits, whether one or both parties are represented, whether an interpreter is required, and any other relevant factors. The commission may grant timely requests for split hearings or in-person hearings at its discretion.~~ In-person or split hearings shall be scheduled at a location administratively feasible for the commission.

~~2. Any party who desires to appear in person for the hearing shall be permitted to do so provided a timely request is received by the commission. A request shall be deemed timely if it is received by the commission before the scheduled hearing convenes. If a request to appear in person is received after the hearing has been convened, the presiding appeals examiner may grant or deny the request based upon consideration of all relevant circumstances. A request by a party to appear in person shall not require any other party to also appear in person; however, any other parties to the proceeding should be promptly informed of the request for in-person participation and be given the opportunity to participate in person if the commission grants a party's in-person hearing request.~~

~~3. 2.~~ A hearing that is postponed or continued to accommodate a request for in-person participation shall be rescheduled as soon as administratively feasible.

~~4. 3.~~ A notice of hearing shall be mailed to all parties and their known authorized representatives at least 10 days in advance of the hearing. The hearing notice shall set forth the particular statutory provisions and regulations that must be considered to resolve the case. The appeals examiner may consider any other applicable issues that are raised or become evident during the course of the hearing provided that all parties in interest are present and all agree on the record to waive the 10-day notice requirement with respect to such new issue. The appeals examiner may refer a new issue to the deputy if it has not been ruled upon at that level and may, upon the appeals examiner's own motion, postpone or continue the case if a new issue has become evident and it is necessary to give proper written notice in order to proceed.

C. The Office of First Level Appeals (First Level Appeals) shall endeavor to schedule hearings as soon as possible in the order in which appeals are received. Special requests regarding dates or times of hearings will be given consideration; however, ~~they~~ the special requests need not always be honored. Requests for postponement of scheduled hearings shall be granted only when a party or the party's authorized representative demonstrates good cause for an inability to appear at the scheduled date and time. Good cause shall be deemed to exist if a likelihood of material and substantial harm

is shown. Postponements may be granted only by the Chief Appeals Examiner or the Chief Appeals Examiner's designee, the Clerk of the Commission for First Level Appeals, the examiner assigned to hear the case, or an appeals examiner acting in charge of the Office of First Level Appeals, although ~~they~~ a postponement may be communicated to the parties by other authorized persons. A postponed hearing may be rescheduled without notice if all parties in interest agree. Otherwise, notice of a postponed hearing shall be given as if it were a new hearing.

D. Once a hearing has commenced, it may be continued only by the presiding appeals examiner, either upon the presiding appeals examiner's own motion or that of a party. Continuances may be granted in situations where (i) there is insufficient time to properly hear the evidence; or (ii) unexpected or unavoidable circumstances arise during the course of a hearing that require a continuance in order to protect the substantive or procedural rights of the parties.

A continued hearing may be rescheduled by the presiding appeals examiner without written notice if all parties in interest are present and all concur. ~~Otherwise, notice of a continued hearing shall be given as if it were a new hearing.~~

E. If the appellant wishes to withdraw the appeal, a request, together with the reasons therefor, must be made in writing and sent to the Clerk of the Commission of First Level Appeals at the commission's administrative office in Richmond, Virginia. The request will be granted only if the Chief Appeals Examiner, the Chief Appeals Examiner's designee, or the appeals examiner assigned to hear the case is satisfied that:

1. The appellant understands the effect that withdrawal will have upon benefit entitlement, potential benefit charges, and potential overpayment;
2. The request is not the result of any coercion, collusion, or illegal waiver of benefits prohibited under § 60.2-107 of the Code of Virginia; and
3. The appealed determination is not clearly erroneous based upon the existing record.

Once granted, a withdrawal cannot be rescinded unless an evidentiary hearing on the issue of rescission is held before an appeals examiner, and the former appellant demonstrates that the criteria required for withdrawal were not fully met. A request to rescind a withdrawal must be filed with the commission within 30 days from the issuance of the Order of Dismissal or the discovery of information that would establish that withdrawal criteria were not met.

F. In any hearing before an appeals examiner where the appellant appears for the scheduled hearing, all testimony shall be taken under oath or affirmation and a record of the proceedings shall be made by the presiding appeals examiner who shall inform all parties of this fact. No other recording of the proceedings other than that specifically authorized by the

Virginia Unemployment Compensation Act (§ 60.2-100 et seq. of the Code of Virginia) shall be permitted.

The appeals examiner shall conduct the hearing in such a manner as to ascertain the substantive rights of the parties without having to be bound by common law, statutory rules of evidence, or technical rules of procedure. In addition to testimony, the appeals examiner may accept relevant documents or other evidence into the record as exhibits, upon the motion of a party.

1. Where a party is unrepresented, the appeals examiner shall assist that party in presenting that party's case and testing the case of the opposing party.
2. At any hearing before an appeals examiner, an interested party may appear in person, by counsel, or by an authorized representative. All such persons will be permitted to attend the entire hearing.
3. An employer shall be permitted one representative, in addition to counsel or duly authorized agent, who may attend the entire proceeding. The appeals examiner shall exclude any other witnesses from the hearing until such time as their testimony is to be taken. Observers may be permitted to attend the hearing so long as there is no objection by a party.
4. The appeals examiner shall control the order of proof, rule upon the admission of evidence, and may examine and cross-examine witnesses. The examiner shall have the authority to maintain order and eject disruptive or unruly individuals. At a hearing, the parties, counsel, or duly authorized representatives shall be given an opportunity to cross-examine witnesses, to inspect documents, and to offer evidence in explanation and rebuttal. On motion of the appeals examiner or any party, documents already in a claimant's file or obtained during the course of a hearing may be admitted into the record as exhibits, provided they the documents are relevant to the issues in dispute. Before the hearing is closed, the parties shall be given an opportunity to present oral argument on all the issues of law and fact to be decided. In addition, the appeals examiner may permit the parties to submit written arguments.
5. When the appellant fails to appear for a hearing in accordance with the instructions on the notice of hearing, the appeals examiner shall review the record upon which the deputy based the determination. If the appeals examiner's review of the record demonstrates that the determination is not incorrect as a matter of law and is supported by the evidence in the record, the appeals examiner may enter a summary affirmation decision or order. The appellant may request a reopening pursuant to subsection I of this section.

G. The decision of the appeals examiner shall be reduced to writing and shall state the issues, findings of fact, opinion or reasons for the decision, and final ~~judgement~~ judgment of the examiner. A copy of the decision shall be delivered in a format prescribed by the commission to each of the interested parties

and their known representatives who have requested to be notified of the decision. If the decision is rendered by an appeals examiner other than the one who presided at the hearing, that examiner shall review the record of the hearing and so state in the decision.

H. If any party believes that the appeals examiner exhibits bias toward one or more parties in a case, a challenge to the interest of such appeals examiner shall be made promptly after the discovery of facts on which such challenge is based, but not later than the date on which the decision is issued. A challenge to the interest of the appeals examiner made during the course of the hearing shall be decided and ruled upon by the presiding appeals examiner. If the presiding appeals examiner grants the challenge and withdraws from the case, the appeals examiner shall adjourn the hearing and promptly return the case to the Clerk of the Commission for rescheduling before a different appeals examiner. If a party challenges the interest of an appeals examiner after the conclusion of the hearing, but before the decision is issued, the challenge shall be set forth in writing with the reasons therefor, and sent to the chief appeals examiner at the Administrative Office of First Level Appeals of the ~~Commission~~ commission in Richmond, Virginia. If the Chief Appeals Examiner or the Chief Appeals Examiner's designee does not remove the challenged appeals examiner, the appeals examiner shall render a decision in the case. If the challenged appeals examiner is removed, is unavailable, or chooses to withdraw, the Chief Appeals Examiner or the Chief Appeals Examiner's designee shall decide the case. Failure to remove the appeals examiner shall be subject to review by the commission on appeal by the aggrieved party, in the same manner as any other issue in the case.

I. Any party who is unable to appear for the scheduled hearing or who appeared but wishes to present additional evidence may request a reopening of the case, which will be granted if good cause is shown. The request, together with the reasons therefor, shall be made in writing and sent to the Chief Appeals Examiner in the administrative office of the commission in Richmond, Virginia.

1. Where a request for reopening is received before the decision of the appeals examiner is issued, the decision shall be withheld if the Chief Appeals Examiner, the Chief Appeals Examiner's designee, or the appeals examiner assigned to the case finds that the reasons given in the request, if proven, would establish good cause to reopen the hearing. In that event, a hearing ~~will~~ may be scheduled on the reopening issue. If, after the hearing, the appeals examiner should decide that reopening is warranted, the case shall be reopened for the taking of additional evidence. If no reasons are given for the reopening request or if the reasons given would not establish good cause to reopen the hearing, the appeals examiner shall render a decision denying the request and adjudicating the merits of the case. In any event, the decision concerning the issue of reopening shall be

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subject to review by the commission on appeal by the aggrieved party.

2. A request for reopening after the appeals examiner has issued a decision on the merits of the case, but within the appeal period, shall be submitted in a format prescribed by the commission to the Administrative Law Division's Office of Commission Appeals in the administrative office of the commission in Richmond, Virginia and shall set forth in writing the reasons therefor. If the commission is of the opinion that the written request establishes good cause for reopening, it shall remand the case to the Chief Appeals Examiner of First Level Appeals. If the commission is of the opinion that the written request does not set forth good cause for reopening, it shall treat the request as an appeal to the commission on the merits of the case pursuant to this part. The commission may, in its discretion, schedule a hearing to receive evidence with respect to a reopening request or remand the case to the appeals examiner to hear and decide the reopening issue.

3. Once a decision is rendered and becomes final, it cannot be reopened for any reason. A request for a reopening after the decision of the appeals examiner has become final shall be treated as an untimely appeal to the commission pursuant to this chapter. In the discretion of the commission, a hearing on the issue of reopening may be held.

## 16VAC5-80-30. Commission review.

A. The claimant, the claimant's liable employer, or any subsequent employing unit with a direct interest in an issue may appeal from an adverse appeals examiner's decision as provided in § 60.2-620 of the Code of Virginia.

1. Appeals should be filed with the commission's Administrative Law Division's Office of Commission Appeals, in one of the following ways:

a. In person at any ~~agency service location, including its workforce or adjudication centers, one-stop centers, or the commission's administrative office in Richmond, Virginia~~ Works office;

b. By mail to the Administrative Law Division's Office of Commission Appeals, at the address specified on the appeals examiner's decision;

c. By facsimile transmission to the Administrative Law Division's Office of Commission Appeals, at the facsimile number specified on the appeals examiner's determination or decision; or

d. ~~By the Internet to the site or address specified~~ In an electronic format as prescribed by the commission.

2. Appeals shall be presumed to be filed on the date of receipt by the commission. An appeal mailed to the commission shall be presumed to be filed on the date of postmark by the ~~United States~~ U.S. Postal Service. If no postmark appears on the envelope, the appeal shall be

presumed to be filed on the date it was received by the commission.

3. At any time before the decision of the appeals examiner becomes final, the commission may on its own motion assume jurisdiction of any case pending before an appeals examiner and place such case on the appeal docket of the commission. The commission may consider and review the case and affirm, modify, or set aside and vacate the decision of the appeals examiner on the basis of the evidence previously submitted as shown by the record, or may direct the taking of additional evidence before the commission or the appeals examiner. Such additional evidence may not be taken unless notice of the date, time, and place of the taking thereof of the evidence has been mailed to all parties to the case at least 10 days before such time.

4. If the appeal to the commission is not filed within the statutory time limit set forth in § 60.2-620 of the Code of Virginia, the appellant shall set forth in writing the reasons for the late filing. If the reasons set forth, if proven, would show good cause for extending the appeal period, the commission shall schedule a hearing to take testimony on the issue of good cause for late filing. If the reasons set forth in the notice of appeal are insufficient to show good cause for late filing, or if no reasons are provided, the appeal shall be dismissed, and the decision of the appeals examiner shall become the final decision of the commission.

B. Except as otherwise provided by this chapter, all appeals to the commission shall be decided on the basis of a review of the evidence in the record. The commission, in its discretion, may direct the taking of additional evidence after giving written notice of such hearing to the parties, provided:

1. It is shown that the additional evidence is material and not merely cumulative, corroborative, or collateral, could not have been presented at the prior hearing through the exercise of due diligence, and is likely to produce a different result at a new hearing; or

2. The record of the proceedings before the appeals examiner is insufficient to enable the commission to make proper, accurate, or complete findings of fact and conclusions of law.

A party wishing to present additional evidence or oral argument before the commission must file a written request within 14 days from the date of delivery or mailing of the Notice of Appeal. A request for a hearing shall be ~~deemed~~ presumed to be filed on the date of receipt by the commission. A request for a hearing mailed to the ~~Office of Commission Appeals~~ commission shall be ~~deemed~~ presumed to be filed on the date of postmark by the ~~United States~~ U.S. Postal Service. ~~In such cases, the~~ If no postmark date appears on the envelope, the request shall be conclusive as presumed to be filed on the date of filing it was received by the commission. The commission shall notify the parties of the date, time, and place where additional evidence will be taken or oral argument will be heard. Such notice shall be mailed to the parties and their last known representatives at least 10 days in advance of the



scheduled hearing. A request to present additional evidence will be granted only if the guidelines in this section are met. A timely request for oral argument will be granted unless, after a review of the record of the case, the commission determines that the record is either defective or insufficient, under which circumstances the case may be remanded to the appeals examiner for further proceedings.

3. Except as otherwise provided in this chapter, commission level hearings shall be conducted in person at the administrative office for the agency's Administrative Law Division in Richmond, Virginia. In its discretion, the commission may permit oral argument and other hearings to be conducted by telephone conference call. All parties shall have the right to submit a written argument or affidavit in lieu of participating in an oral argument a hearing. ~~Parties may also submit affidavits in lieu of a personal appearance at hearings scheduled for additional evidence issues such as reopening of an appeals examiner's hearing or timeliness of an appeal to the Office of Commission Appeals.~~ The commission may prescribe reasonable conditions for the submission of written arguments or affidavits.

4. Notwithstanding any other provision of this chapter, the commission shall have the authority to schedule a hearing on its own motion, to be conducted in person, by telephone conference call, or by split hearing, whenever ~~the~~ the commission believes doing so would serve the ends of justice.

C. Postponements, continuances, and withdrawals of appeals before the commission shall be handled in the same manner as First Level Appeals, as set forth in this chapter, except that requests shall be made through the Office of Commission Appeals or through the special examiner assigned to hear the case. Only a special examiner shall have the authority to grant a postponement.

D. A transcript of the appeals examiner's hearing shall be provided to the parties whenever there has been a timely request for a hearing before the commission; provided, however, that no transcript need be provided if the purpose of the commission hearing is limited to receiving evidence to determine (i) whether the appeal was timely filed and, if not, whether good cause exists to extend the statutory appeal period or (ii) whether good cause exists to reopen the appeals examiner's hearing. A hearing before the commission for additional evidence shall be conducted under the same rules as outlined in subsection F of 16VAC5-80-20 for the conduct of First Level Appeals hearings, except that the party being granted the right to present additional evidence shall proceed first. If both parties are allowed to present additional evidence, the appellant shall proceed first. Oral argument shall commence with the appellant, allowing the appellee the chance to respond with oral argument and rebuttal, and close with the appellant in rebuttal.

E. The decision of the commission affirming, modifying, or setting aside any decision of an appeals examiner shall be in writing and shall be delivered or mailed to each party to the appeal as well as to their known representatives who have requested to be notified of the decision. The date of such notification shall be recorded on the commission's appeal docket.

F. Any party to an appeal before the commission who was unable to appear for the scheduled hearing may request a reopening of the matter. The request shall be in writing to the Office of Commission Appeals and shall set forth the basis upon which it is being made. If the commission is of the opinion that the reasons in the request show good cause to reopen, the request for reopening shall be granted. If the commission is of the opinion that the reasons given in the request do not show good cause, reopening shall be denied. In the discretion of the commission, a hearing on the issue of reopening may be held. Once a decision is rendered and has become final, the case may not thereafter be reopened for any reason.

G. If any party believes that the presiding special examiner exhibits bias, prejudice, a lack of impartiality, or has an interest in the outcome of the proceeding, a challenge to the special examiner's interest shall be promptly made after the discovery of the facts on which such challenge is based. A challenge to the interest of the special examiner may be made orally during a hearing or in writing before or after a hearing, but only prior to the date the commission's decision becomes final. If made before or at the hearing, all parties present shall be afforded an opportunity to address the merits of the challenge. The ruling may be made orally at the hearing or in writing after the hearing has been concluded. If the special examiner rules orally and denies the challenge, that ruling shall also be reduced to writing and included in the commission's final decision. If the special examiner grants the challenge, then the case shall be referred to the chief administrative law judge, or the chief administrative law judge's designee, for reassignment. A challenge to the interest of the special examiner that is made after the hearing has been conducted shall be referred to the presiding special examiner for review and resolution; provided, however, that if the special examiner has already ruled on the challenge during the hearing or in a decision, the matter shall be referred to the chief administrative law judge for resolution. The commission may schedule a hearing to take evidence with respect to any challenge, or request the parties to submit affidavits, memoranda, or briefs with respect to the challenge.

A written challenge made before or after the hearing has been conducted shall be submitted to the Chief Administrative Law Judge, Administrative Law Division, Office of Commission Appeals, at the commission's administrative office in Richmond, Virginia. A party's disagreement with a procedural or evidentiary ruling is not a basis, standing alone, for challenging the interest of a special examiner.

VA.R. Doc. No. R25-8167; Filed March 21, 2025, 4:35 p.m.



## TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

### BOARD FOR BARBERS AND COSMETOLOGY

#### Proposed Regulation

Title of Regulation: **18VAC41-20. Barbering and Cosmetology Regulations (amending 18VAC41-20-10 through 18VAC41-20-40, 18VAC41-20-60, 18VAC41-20-80, 18VAC41-20-100, 18VAC41-20-110 through 18VAC41-20-140, 18VAC41-20-160 through 18VAC41-20-280; adding 18VAC41-20-15; repealing 18VAC41-20-50, 18VAC41-20-70, 18VAC41-20-150).**

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

Public Hearing Information:

June 3, 2025 - 10 a.m. - Department of Professional and Occupational Regulation, 9960 Mayland Drive, Board Room One, Suite 200, Richmond, VA 23233.

Public Comment Deadline: June 20, 2025.

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

Basis: Section 54.1-201 of the Code of Virginia authorizes the Board for Barbers and Cosmetology to promulgate regulations necessary to ensure continued competency and prevent deceptive or misleading practices by practitioners and to effectively administer the regulatory system.

Purpose: The performance of barbering, cosmetology, nail care, or waxing services by those who lack sufficient expertise poses a risk to the public health, safety, and welfare, including the potential for infection or injury. The board protects the public welfare, in part, by establishing through regulation (i) the minimum qualifications of applicants for certification or licensure, provided that all qualifications are necessary to ensure either competence or integrity to engage in the profession or occupation; (ii) minimum standards to ensure continued competency and to prevent deceptive or misleading practices by practitioners; and (iii) requirements to effectively administer the regulatory system administered by the board.

Substance: The proposed amendments:

1. Revise, add, and remove definitions.
2. Provide clarification on exemption from licensure and what are considered gratuitous services.
3. Revise the provisions regarding disclosure of prior regulatory discipline to (i) require that an applicant must provide a copy of prior disciplinary actions taken in all jurisdictions; (ii) add probation to the types of disciplinary actions that must be reported; (iii) remove a requirement that an applicant disclose whether the applicant previously held a license in Virginia as a barber, master barber, cosmetologist, nail technician, or wax technician; (iv) remove duplicative

language providing that the board will decide cases by taking into account the totality of the circumstances; and (v) remove provisions that a plea of nolo contendere is considered a disciplinary action and that a copy of the prior disciplinary action is considered prima facie evidence of such disciplinary action.

4. Allow all applicants to provide a post office box address as a secondary address to a physical address, provided that a mobile shop or salon must provide a physical address where the shop or salon is permanently garaged.

5. Revise the provisions regarding disclosure of prior criminal history to (i) clarify the misdemeanor reporting requirements; (ii) require only the disclosure of felony convictions occurring within 10, rather than 20, years of the date of application; and (iii) remove provisions that a plea of nolo contendere is considered a conviction and that the record of a conviction will be accepted as prima facie evidence of a conviction.

6. Revise provisions regarding eligibility to sit for the board-approved examination to (i) significantly reorganize the provisions of the section, including relocating to the section provisions regarding examination eligibility that are located in other sections; (ii) reduce from five years to three years the amount of required experience for applicants who received training outside of Virginia in a training program that is not substantially equivalent to Virginia training; and (iii) revise the provisions to provide that an applicant who has received training outside of the United States must have their degree translated, authenticated, and evaluated by an education evaluation service if credit is being sought for such education. Currently, the chapter does not allow for out-of-country training to be accepted to sit for the respective license examination.

7. Revise licensure by endorsement to (i) allow for individuals who have completed an apprenticeship program that is substantially equivalent to that required by the chapter to qualify for licensure by endorsement; (ii) reduce from five to three years the amount of work experience required in lieu of training for applicants who completed a training program that is not substantially equivalent to Virginia's training requirements; and (iii) incorporate provisions of board guidance by enabling individuals endorsing from other states who have completed one examination (written or practical) that is substantially equivalent to the Virginia examination to take the other examination (written or practical, as applicable) in Virginia.

8. Revise apprenticeship training to (i) remove a provision that those completing a registered apprenticeship are eligible to sit for the license examination, which will be relocated to 18VAC41-20-20, and (ii) provide that licensed shops or salons where apprentices train must comply with standards for registered apprenticeship training.

9. Repealing exceptions to training requirements that are no longer necessary and relocating certain provisions.

10. Revise examination requirements and fees to (i) clarify that the license examination consists of both a practical and a written portion, as opposed to separate examinations; (ii) remove a provision that failing to appear for a scheduled examination results in forfeiting of the examination fee; (iii) remove a provision that the examination is administered by the board or a designated testing services; (iv) remove a provision that examination records will be maintained for a maximum of five years; and (v) move the reexamination requirements currently in 18VAC41-20-70 to 18VAC41-20-60.

11. Add a provision that a licensed cosmetologist may serve as an examiner for any discipline that falls within the scope of the cosmetology profession, such as nail technician and wax technician, and combine training requirements for examiners and chief examiners.

12. Revise provisions regarding disclosure of prior regulatory discipline for barber instructor certificate, cosmetology instructor certificate, nail technician instructor certificate, or wax technician instructor certificate applicants to (i) require that an applicant provide a copy of prior disciplinary actions taken in all jurisdictions; (ii) add probation to the types of disciplinary actions that must be reported; (iii) remove a requirement that an applicant disclose whether the applicant has been previously certified in Virginia as a barber, master barber, cosmetology, nail technician, or wax technician instructor; (iv) remove duplicative language that the board will decide each case by taking into account the totality of circumstances; and (v) remove language that states that a plea of nolo contendere is considered a disciplinary action and that the copy of the prior disciplinary action is considered prima facie evidence of such disciplinary action.

13. Combine provisions that require an applicant hold and maintain a license in the profession to qualify for certification.

14. Revise training qualifications for instructors to require that a barber instructor certificate, cosmetology instructor certificate, nail technician instructor certificate, or wax technician instructor certificate applicant either (i) pass a teaching course in teaching techniques at the post-secondary education level or (ii) pass an instructor examination to qualify for an instructor certificate and to remove a provision allowing an applicant to qualify based on completing a board-approved instructor training course.

15. Revise the provisions regarding disclosure of criminal convictions for barber instructor certificate, cosmetology instructor certificate, nail technician instructor certificate, or wax technician instructor certificate applicants to (i) provide that an applicant only disclose criminal convictions occurring since initial licensure; (ii) clarify the misdemeanor reporting requirements; (iii) require only the disclosure of felony convictions occurring within 10, rather than 20, years of the date of application; and (iv) remove provisions that a plea of nolo contendere is considered a conviction and that the record of a conviction will be accepted as prima facie evidence.

16. Add language that provides certified instructors may teach in any profession for which they hold the underlying license.

17. Revise requirements related to student instructor temporary licensure, including (i) replacing the term "temporary permit" with "temporary license" so as to conform the regulation with terminology with the provisions of the board's statutes; (ii) reflecting the current requirement that a student instructor must pass an instructor examination; (iii) adding provisions that student instructors may teach in any profession for which they hold the underlying license and student instructors must be associated with a school and direct supervisor; and (iv) providing that (a) licensed cosmetologists may supervise nail and waxing temporary license holders, (b) licensed estheticians may supervise waxing temporary license holders, and (c) licensed master barbers may supervise barber temporary license holders.

18. Clarify that mobile shops and salons must obtain a shop or salon license.

19. Revise provisions regarding the disclosure of prior regulatory discipline for shop, salon, and school license applicants to (i) require that an applicant and responsible management must provide a copy of prior disciplinary actions taken in all jurisdictions; (ii) add probation to the types of disciplinary actions that must be reported; (iii) remove a requirement that an applicant disclose whether the applicant or a member of the firm's responsible management previously held a license in Virginia as a barbershop, cosmetology salon, nail salon, or waxing salon or a barbering, cosmetology, nail, or wax school, respectively; (iv) remove a provision that the board will decide each case by taking into account the totality of circumstances; and (v) remove language that states that a plea of nolo contendere is considered a disciplinary action and that a copy of the prior disciplinary action is considered prima facie evidence of such disciplinary action.

20. Revise the provisions regarding disclosure of prior criminal history for shop, salon, and school license applicants to (i) clarify the misdemeanor reporting requirements; (ii) require only the disclosure of felony convictions occurring within 10, rather than 20, years of the date of application; and (iii) remove language providing that a plea of nolo contendere is considered a conviction and that the record of a conviction will be accepted as prima facie evidence.

21. Require that a licensed firm notify the board within 30 days of a change of business entity (e.g. formation of a new firm, dissolution of an existing firm) and destroy the license, rather than returning the license to the board.

22. Relocate a provision that requires any school ceasing to operate to provide a written report to the board detailing performances and hours of each student who has not completed their program.

23. Combine provisions that specify that fees are nonrefundable and will not be prorated and change the fee structure for an instructor certificate to reduce fees for the renewal and reinstatement of an instructor certificate.

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24. Remove the requirement that a licensee must submit a reinstatement application and revise the reinstatement provisions for individual licensees to require that an individual who fails to reinstate a license or certificate within two years of the expiration date must either (i) apply for licensure or certification as a new applicant and meet current entry requirements or (ii) if the individual was previously licensed in Virginia for a minimum of three years, submit a new application and pass the required examination.
25. Revise provisions for reinstatement of school licenses to provide that a school must submit a reinstatement application and have an inspection to reinstate a license if the expired license has not been renewed for more than 180 days.
26. Require any suites or classrooms that are located in a different building or are further than 500 feet from the main office to hold an additional license.
27. Clarify that a school must hold a shop license if the school receives compensation for services provided in its clinic.
28. Revise the provisions regarding school staff to (i) require that instructor programs be taught under the direct supervision of a certified instructor, (ii) clarify that licensed and certified barber or master barber instructors may teach straight razor shaving on the face and neck in a cosmetology school, and (iii) add a provision to require that any change in instructors be reported to the board within 30 days of the change.
29. Revise the provisions regarding minimum curriculum hours to reduce the number of minimum clock hours for barber, master barber, and dual barber/master barber, including reducing (i) barber curricula to a minimum of 750 clock hours from the current 1,100 clock hours requirement; (ii) master barber curricula to a minimum of 250 clock hours from the current 400 clock hours requirement; and (iii) dual barber/master barber curricula to a minimum of 1,000 clock hours from the current 1,500 clock hours requirement.
30. Add new provisions to incorporate previous board guidance for online instruction.
31. Revise the minimum curriculum requirements for a barber, master barber, and dual barber/master barber training program to align with the reduced minimum clock hours for the respective training program in 18VAC41-20-200 and specify the minimum number of hours required for each training subject.
32. Revise the minimum curriculum requirements for nail technician and wax technician training programs to specify the minimum number of hours required for each training subject.
33. Allow for schools to make a transfer student assessment based on (i) review of the student's transcript, (ii) documentation of hours and performances provided by the student, and (iii) completion of a competency examination. Currently, schools are required to review the student's transcript and conduct a board-approved competency examination.
34. Remove duplicative language regarding the minimum number of training hours.
35. Reduce the total number of required performances (i) from 370 to 332 for a barber training program, (ii) from 120 to 100 for a master barber training program, (iii) from 490 to 432 for a dual master/master barber training program, (iv) from 275 to 255 for a nail technician training program, and (v) from 36 to 30 for a wax technician training program.
36. Revise recordkeeping requirements to (i) require schools to maintain course descriptions for each student for five years after the student's completion of the curriculum, termination, or withdrawal and (ii) remove provisions requiring a school to provide a student with documentation of the student's hours and performances upon request for a period of one year after the school changes ownership.
37. Replace references to the Department of Labor and Industry (DOLI) with the Virginia Department of Workforce Development and Advancement (VDWDA).
38. Provide that mobile shops and salons must be stationary while providing services and may not operate where prohibited by local ordinance.
39. Adjust sanitation requirements based on current industry standards.
40. Revise the provisions regarding disinfection and storage of implements to (i) move the definition of "wet disinfection unit," (ii) provide that a wet disinfection unit must meet the standards established by the definition, (iii) update terms to reflect terminology used in the profession, (iv) add disposable razors to the list of single-use items that must be discarded after use on each individual client, and (v) discontinue requirement of sinks and bowls used for nail care to be cleaned and disinfected immediately after each use for a client.
41. Revise the provisions for general sanitation and safety requirements to (i) remove a duplicative requirement that the floor must be kept clean and free of materials and other items that may pose a hazard; (ii) remove a requirement that any window in the bathroom must have a screen; (iii) reduce the stringency of requirements for bathrooms for facilities newly occupied after January 1, 2017, in which the bathroom must be available for client use and must adhere to the sanitation requirements in the regulation; and (iv) remove a requirement that central areas for client use be neat and clean and have a waste receptacle.
42. Revise the provisions regarding articles, tools, and products to provide that (i) any multiuse article, tool, or product that cannot be disinfected by full immersion or cleaned according to manufacturer's instructions, such as natural hair brushes or neck dusters, are prohibited from use and (ii) any disposable material making contact with blood or other body fluid must be double-bagged, labeled as a biohazard, and disposed of in a closed receptacle.

43. Revise client health guidelines to provide that a nail drill or motorized instrument must only be used on the artificial nail surface.

44. Revise provisions regarding the board's authority to impose discipline to include all types of discipline that are possible if a regulant violates any of the prohibited acts.

45. Revise prohibited acts to (i) prohibit the inability to practice with skill or safety as a result of any mental or physical condition; (ii) clarify that the curriculum must be board-approved and that a licensee must comply with the board's requirements for assessment of a student's competence when awarding credit hours for a transfer student; (iii) add certificate holders, temporary license holders, and responsible management in the entities who must produce documents, books, or records to the board upon request; (iv) provide that failure to notify the board within 30 days of any final disciplinary action taken against a license, registration, certificate, or permit by any local, state, or national regulatory body is prohibited; (v) remove language that provides that a plea of *nolo contendere* is considered a conviction and that a certified record of conviction admissible as *prima facie* evidence of conviction or guilt; (vi) remove the prohibition on allowing an unlicensed individual to practice at a school; and (vii) specify that allowing an individual without a student instructor temporary license to practice as an instructor is prohibited.

**Issues:** The primary advantage of the proposed amendments to the public is that the board will continue to approve applicants and license professionals with safeguards in place to ensure proper competency and standards of conduct. Further, the board's requirements will have greater clarity and be easier for regulants and applicants to read and understand. Another anticipated advantage is that the regulatory change potentially increases the number of individuals who may qualify for licensure, particularly in the barbering profession, and, therefore, be available to members of the public to provide services. The primary advantage to the Commonwealth is the continued successful regulation of barbers and cosmetologists who meet the minimum entry standards. The proposed amendments strengthen the department's ability to investigate and discipline regulants who disregard the health, safety, and welfare of the public. One disadvantage may be to schools that currently offer instructor courses as a method to qualify for an instructor certificate, as these instructor courses will no longer qualify individuals for instructor certificates. However, it is anticipated that licensees will benefit from easier and less expensive methods to qualify for an instructor certificate.

**Department of Planning and Budget Economic Impact Analysis:**

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 Code of Virginia and Executive Order 19. The analysis presented represents DPB's best

estimate of the potential economic impacts as of the date of this analysis.<sup>1</sup>

Summary of the Proposed Amendments to Regulation. The Board for Barbers and Cosmetology (board) proposes numerous amendments to 18VAC41-20, Barbering and Cosmetology Regulations. The amendments concern requirements for barbers, cosmetologists, nail technicians, wax technicians, instructors, examiners, shops, schools, and salons.

Background. The following proposed amendments either reduce requirements or make them less restrictive:

Sections 20, 100, 120, and 130. Changes to the general requirements for a barber, master barber, cosmetologist, nail technician, or wax technician license; an instructor certificate; a shop or salon license; and a school license would require only the disclosure of felony convictions occurring within 10 years of the date of application, instead of the current 20 years.

Section 20, General requirements for a barber, master barber, cosmetologist, nail technician, or wax technician license. Reduce the amount of required experience, for applicants who received training outside of Virginia in a training program that is not substantially equivalent to Virginia training, from five years to three years. Revise the provisions to provide that applicants who have received training outside of the United States must have their degree translated, authenticated, and evaluated by an education evaluation service if credit is being sought for such education. Currently, the regulations do not allow for out of country training to be accepted when an applicant seeks to sit for the respective license examination.

Section 30, License by endorsement. Reduce the amount of work experience required in lieu of training from five to three years for applicants who completed a training program that is not substantially equivalent to Virginia's training requirements.

Section 60, Examination requirements and fees. Remove a provision that examination records will be maintained for a maximum of five years.

Section 80, Examination administration. Reduce the requirements for chief examiners. Chief examiners would now be required to have three, rather than five, or more years of active experience in the respective profession and one year, rather than three years, of active experience as an examiner.

Section 110, Student instructor temporary license. Provide that (i) licensed cosmetologists may supervise nail and waxing temporary license holders; (ii) licensed estheticians may supervise waxing temporary license holders; and (iii) licensed master barbers may supervise barber temporary license holders.

Section 140, Fees. Under the current regulation, once an instructor certificate is obtained, the agency treats it as a license upgrade, meaning that upon renewal, an instructor must only pay the instructor certificate renewal fee (\$150) but does not pay the fee for their first license renewal as a barber, master barber, cosmetologist, wax, or nail technician (\$105). The board proposes to reduce the instructor renewal fee to \$20, but

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also proposes to require payment of the underlying license renewal fee (\$105) which would make the total renewal fee \$125 (\$20 plus \$105). This would represent a \$25 savings to each instructor who renews a license. Likewise, the same approach is currently used for instructor certificate reinstatements in that an applicant pays only the \$300 instructor reinstatement fee but not the first license (\$210) reinstatement fee for the underlying license. The board proposes to reduce the \$300 fee to \$40 but also proposes to require the applicant pay for the reinstatement of the underlying license fee (\$210), reducing the total fee amount by \$50 per case (\$300 vs. \$250).

Section 180, Failure to renew. Under both the current regulation and proposed regulations, when a school fails to renew its license within 30 days following its expiration date it must satisfactorily pass an inspection. Under the proposed regulation, the inspection would only occur if the school license has not been renewed for more than 180 days. For both the current and proposed regulations, when an individual fails to renew a license within two years following the expiration date, reinstatement is no longer possible. Under the current regulation, individuals who were not granted their initial licensure through grandfathering would have to meet all current requirements, including current coursework requirements. Under the proposed regulation, such individuals who were previously licensed in Virginia for at least three years would just need to submit a new application and pass the exam, rather than the current requirement to show training that meets current entry requirements and have at least five years of experience.

Section 200, General requirements. Changes would reduce the minimum number of curricular clock hours, as follows: (i) barbers, from 1,100 to 750; (ii) master barbers, from 400 to 250; and (iii) dual barber/master barber, from 1,500 to 1,000.

Section 210, Curriculum requirements. The minimum curriculum requirements for barber, master barber, and dual barber/master barber training programs would be revised to align with the reduced minimum clock hours for each program in Section 200.

Section 220, Practical performance requirements. Changes would reduce the minimum number of required performances, as follows: (i) barber, from 370 to 332; (ii) master barbers, from 120 to 100; (iii) dual barber/master barber, from 490 to 432; (iv) nail technicians, from 275 to 255; and (v) wax technicians, from 36 to 30.

Section 270, Sanitation and safety standards for shops, salons, and schools. Under the current regulation, the bathroom must be maintained exclusively for client use or shared with other businesses in the same building. If the bathroom is shared, the bathroom must be available for client use and within 200 feet of the entrance. The proposed regulation just states that the bathroom must be available for client use.

The following proposed amendments either increase requirements or make them more restrictive:

Section 100, General requirements for an instructor certificate. Under the current regulation, applicants for the instructor certificate must complete one of three options: (i) pass a course in teaching techniques at the post-secondary educational level; (ii) complete an instructor training course approved by the Virginia Board for Barbers and Cosmetology under the supervision of a certified barber, master barber, cosmetologist, nail technician, or wax technician instructor in a barber, cosmetology, nail technician, or wax technician school, respectively; or (iii) pass an examination in barber, master barber, cosmetology, nail technician, or wax technician instruction, respectively, administered by the board or by a testing service acting on behalf of the board. The board proposes to remove the second option, completion of an approved instructor training course.

Section 120, General requirements for a shop or salon license. Provide that mobile shops and salons must provide a physical address where the shop or salon is permanently garaged.

Section 210, Curriculum requirements. The current regulation includes minimum number of hours per program, but does not specify the minimum number of hours required for training subjects. The proposed regulation specifies the minimum number of hours required for training subjects. A change would add a sample of a final transcript to the items each school submits with its application for licensure. Revisions would be made to the provisions pertaining to the student assessment a school may conduct to give a student credit toward required training hours to allow for schools to make the assessment based on (i) review of the student's transcript, (ii) documentation of hours and performances provided by the student, and (iii) completion of a competency examination. Currently, schools are required to review the student's transcript and conduct a board-approved competency examination.

Section 240, Records. A change would add course descriptions to the items that schools must maintain on the premises and be available for inspection for the period of a student's enrollment through five years after the student's completion of the curriculum, termination, or withdrawal.

Section 270, Sanitation and safety standards for shops, salons, and schools. A change would require mobile shops and salons to be stationary while providing services.

Estimated Benefits and Costs. Disclosures: Currently, individual professional licensure applicants, instructor certificate applicants, shop or salon license applicants, and school license applicants all must disclose felony convictions occurring within 20 years of the date of application. By limiting the disclosure requirements to just those felony convictions occurring within 10 years of the date of application, applicant time tracking down specific information about the convictions and Department of Professional and Occupational Regulation (DPOR) staff time reviewing the applications could be saved.

**Experience Requirements:** Currently, the regulation does not allow for out of country training to be accepted to sit for the respective professional license examination. The board proposes to allow such training if it can be shown to be substantially equivalent to the Virginia program by having the degree translated, authenticated, and evaluated by an education evaluation service. This is beneficial in that it may allow more foreign-trained professionals to qualify for licensure and work in the Commonwealth. Under the current regulation, individuals applying for an initial barber, master barber, cosmetologist, nail technician, or wax technician license who received training outside of Virginia in a training program that is not substantially equivalent to Virginia training must have at least five years of relevant work experience in order to sit for a board-approved examination. The board proposes to reduce this work experience requirement to three years. A person currently licensed to practice as a barber, master barber, cosmetologist, nail technician, or wax technician or who is a licensed instructor in the respective profession in any other state or jurisdiction of the United States can apply for Virginia licensure by endorsement. Applicants for licensure by endorsement who completed a training or apprenticeship program that is not substantially equivalent to Virginia's training may currently substitute five years of work experience for training. The board proposes to reduce that to three years of work experience. Reducing the number of years required experience for applicants who completed a training or apprenticeship program that is not substantially equivalent to Virginia's training is beneficial in that it would enable more individuals to become licensed and work in the Commonwealth. Under both the current and proposed regulations, practical examinations must be supervised by a chief examiner. The board proposes to reduce the requirements for chief examiners such that they would now be required to have three, rather than five, or more years of active experience in the respective profession and one year, rather than three years, of active experience as an examiner. This proposal would initially increase the number of individuals who qualify to be a chief examiner, and would allow individuals to qualify more quickly going forward.

**Records:** The proposal to remove the current requirement that examination records be maintained for five years reduces a small burden for the examination vendor. The proposal to add course descriptions to the items that schools must maintain on the premises and be available for inspection for the period of a student's enrollment through five years after the student's completion of the curriculum, termination, or withdrawal adds a small burden for schools who are not already doing this. According to DPOR, the agency already requests that schools do this, but not all have been compliant. This information is useful if a student seeks to get credit for courses taken at a previous school. To the extent that including this requirement in the regulation increases compliance, students who transfer may benefit by receiving additional credit, potentially reducing the time it takes to finish coursework required for licensure.

**Supervision:** The board proposes to specify that (i) licensed cosmetologists may supervise nail and waxing temporary license holders, (ii) licensed estheticians may supervise waxing temporary license holders, and (iii) licensed master barbers may supervise barber temporary license holders. According to DPOR, this clarifies current policy, but it may have some beneficial impact in that not all regulants are aware that such supervision is permitted.

**Fees:** Instructors would benefit through the proposed net reduction in renewal and reinstatement fees. In net, the renewal fee would be reduced to \$125 from \$150. The reinstatement fee would be reduced in net to \$250 from \$300.

**Instructor certification:** Under the current regulation, applicants for the instructor certificate must complete one of three options: (i) pass a course in teaching techniques at the post-secondary educational level; (ii) complete an instructor training course approved by the board under the supervision of a certified barber, master barber, cosmetologist, nail technician, or wax technician instructor in a barber, cosmetology, nail technician, or wax technician school, respectively; or (iii) pass an examination in barber, master barber, cosmetology, nail technician, or wax technician instruction respectively, administered by the board or by a testing service acting on behalf of the board. The board proposes to remove the second option, completion of an approved instructor training course. According to DPOR, data from 2022-2024 indicate that 12% (49 out of 410) of instructor certifications were granted via the board-approved training course. The agency states that such training courses are much more expensive than the other options, and believes that no individuals would prefer the expensive option once they learn about the other choices.

**Failure to renew:** Under both the current and proposed regulations, when a school fails to renew its license within 30 days following its expiration date, it must satisfactorily pass an inspection. Under the proposed regulation, the inspection would only occur if the school license has not been renewed for more than 180 days. This would be a substantial reduction in burden for such schools in that they would not need to pass an inspection unless additional time had elapsed. As also stated earlier, for both the current and proposed regulations, when an individual fails to renew his or her license within two years following the expiration date, reinstatement is no longer possible. Under the current regulation, individuals who were not granted their initial licensure through grandfathering would have to meet all current requirements, including current coursework requirements. Under the proposed regulation, such individuals who were previously licensed in Virginia for at least three years would just need to submit a new application and pass the exam, rather than the current requirement to show training that meets current entry requirements and have at least five years of experience. This would be a substantial reduction in burden for such individuals in that they would not need to take additional coursework to meet current requirements.

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Being able to pass the required examination should help provide assurance of competence.

**Curricula:** The proposal to reduce the required minimum clock hours of coursework from 1,100 to 750 for barbers, from 400 to 250 for master barbers, and from 1,500 to 1,000 for dual barber/master barbers could be beneficial in that it would enable these professionals to start the work associated with their new license sooner. Additionally, with fewer required instructional hours, school may charge less, reducing costs for students. No information is available to DPB to allow an assessment of any other potential effects. The current regulation includes the minimum number of hours per program, but does not specify the minimum number of hours required for training subjects. The proposed regulation specifies the minimum number of hours required for training subjects. This reduces flexibility for schools in choosing how much time to spend on each subject. On the other hand, according to DPOR, school officials often struggle with topic hour requirements, leading to year-long delays in board approval. The agency believes that the specified minimum hours for training subjects assist schools in curriculum development, expediting the process. The proposals to require minimum number of hours required for specified curriculum subjects for all professional school programs, and the reduction in total required hours to the barber and master barber curricula, would require all schools to resubmit curricula so that they may be reviewed for compliance with the revised curriculum standards. DPOR estimates that this would require one temporary employee who can review and process two school curricula daily. In total, the agency believes it would need the temporary employee for 20 weeks. According to DPOR, temporary employees usually earn approximately \$20 an hour. This would total \$16,000 for 20 weeks. Under both the current and proposed regulations, the application for each school must include a curriculum, including a course syllabus, a detailed course content outline, a sample of five lesson plans, a sample of evaluation methods to be used, etc. The board proposes to add a sample of a final transcript to the items that must be submitted with the school application. According to DPOR, this is to address a problem where schools fail to maintain and provide transcripts to students. The agency states that the change is intended to ensure that schools comply with the existing requirements in the regulation for schools to retain transcripts and provide them to students. Though the proposed requirement cannot guarantee that schools would comply with the existing requirements in the regulation for schools to retain transcripts and provide them to students, requiring a reasonable sample with the application would help ensure that schools incapable of producing such transcripts would not be approved. In both the current and proposed regulations, a licensed school may conduct an assessment of a transfer student's competence in the respective profession and, based on the assessment, give credit toward the hour requirements. Under the current regulation, the school must make the assessment based on a review of the student's transcript and the successful completion

of a board-approved competency examination administered by the school. The board proposes to add documentation of hours and performances provided to the student by the school to that which the new school must consider. This can be advantageous for the student in that it requires the new school to consider additional information that may argue for more transferred credit, but reduces flexibility for the school toward which information to consider.

**Practical performances:** The proposal to reduce the total number of required performances from 370 to 332 for barbers, from 120 to 100 for master barbers, from 490 to 432 for dual barber/master barbers, from 275 to 255 for nail technicians, and from 36 to 30 for wax technicians could be beneficial in that it would enable these professionals to start the work associated with their new license sooner. No information is available to DPB to allow an assessment of any other potential effects.

**Safety standards, mobile shops and salons:** For shops, salons, and schools, no longer requiring that the bathroom either be maintained exclusively for client use or if shared with other businesses in the same building be within 200 feet of the entrance, would potentially increase the number of potential units that these businesses could occupy, which may therefore reduce their costs. DPOR believes that some mobile shops and salons have provided services while the vehicle has been moving. This is not currently specifically prohibited in the regulation, but could be unsafe if sudden stops or traffic accidents occur. To the extent that requiring that mobile shops and salons be stationary while providing services in the regulation reduces incidences of services being conducted in moving vehicles, safety would be improved. The current regulation requires mobile salons and shops to provide a physical address, but not where they are permanently garaged. Requiring mobile salons and shops to disclose their permanent garaging address would allow the board to determine their location for inspection purposes. This could help ensure safety.

**Businesses and Other Entities Affected.** The proposed amendments affect the 679 barbers, 366 barber instructors, 2,037 master barbers, 767 barber shops, 59 barber schools, 4,663 cosmetology salons, 142 cosmetology schools, 39,491 cosmetologists, 2,419 cosmetology instructors, 9,422 nail technicians, 305 nail technician instructors, 723 nail technician salons, 48 nail technician schools, 1,532 wax technicians, 38 wax technician instructor, 158 waxing salons, and 26 waxing schools, as well as future applicants and clients.<sup>2</sup> The Code of Virginia requires DPB to assess whether an adverse impact may result from the proposed regulation.<sup>3</sup> An adverse impact is indicated if there is any increase in net cost or reduction in net benefit for any entity, even if the benefits exceed the costs for all entities combined.<sup>4</sup> Overall, the proposed regulation includes numerous increases in benefits and reductions in costs. Conversely, there are also some reductions in benefits or increases in costs, primarily stemming from reductions in flexibility. For example, the required minimum total clock hours of coursework for cosmetology, nail technician, and wax



technician programs stay the same under the proposed regulation, but minimum number of hours required for specific training subjects are newly introduced. This reduces flexibility for schools in choosing how much time to spend on each subject. Thus, some cosmetology, nail technician, and wax technician schools may be adversely affected.

Small Businesses<sup>5</sup> Affected.<sup>6</sup> Types and Estimated Number of Small Businesses Affected: According to DPOR, all firms such as schools, shops, and salons meet the definition of small business. As described above, some of the 142 cosmetology schools, 48 nail technician schools, and 26 waxing schools may be adversely affected.

Costs and Other Effects: As described above, there may be some reduced flexibility for some schools.

Alternative Method that Minimizes Adverse Impact: There are no clear alternative methods that both reduce adverse impact and meet the intended policy goals.

Localities<sup>7</sup> Affected.<sup>8</sup> The proposed amendments neither disproportionately affect particular localities nor introduce costs for local governments.

Projected Impact on Employment. Some proposed amendments may allow some professionals to become licensed and employed sooner. Some proposed reductions in requirements may encourage some out-of-state professionals or those trained abroad to come practice in the Commonwealth. Also, some individuals who have not been licensed for two years or more may be encouraged to return to practice by the proposed reduced requirements. Thus, there may be a small increase in employment.

Effects on the Use and Value of Private Property. As described above, several proposed amendments may moderately increase the supply of professionals available to hire. This may ease hiring for firms that employ barbers, cosmetologists, nail technicians, and wax technicians, moderately increasing their value. The proposed amendments do not affect real estate development costs.

<sup>1</sup> Section 2.2-4007.04 of the Code of Virginia requires that such economic impact analyses determine the public benefits and costs of the proposed amendments. Further the analysis should include but not be limited to: (1) the projected number of businesses or other entities to whom the proposed regulatory action would apply, (2) the identity of any localities and types of businesses or other entities particularly affected, (3) the projected number of persons and employment positions to be affected, (4) the projected costs to affected businesses or entities to implement or comply with the regulation, and (5) the impact on the use and value of private property.

<sup>2</sup> Data source: DPOR.

<sup>3</sup> Pursuant to § 2.2-4007.04 D: In the event this economic impact analysis reveals that the proposed regulation would have an adverse economic impact on businesses or would impose a significant adverse economic impact on a locality, business, or entity particularly affected, the Department of Planning and Budget shall advise the Joint Commission on Administrative Rules, the House Committee on Appropriations, and the Senate Committee on Finance. Statute does not define "adverse impact," state whether only Virginia entities should be considered, nor indicate whether an adverse impact results from regulatory requirements mandated by legislation.

<sup>4</sup> Statute does not define "adverse impact," state whether only Virginia entities should be considered, nor indicate whether an adverse impact results from regulatory requirements mandated by legislation. As a result, DPB has adopted a definition of adverse impact that assesses changes in net costs and benefits for each affected Virginia entity that directly results from discretionary changes to the regulation.

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

<sup>6</sup> If the proposed regulatory action may have an adverse effect on small businesses, § 2.2-4007.04 requires that such economic impact analyses include: (1) an identification and estimate of the number of small businesses subject to the proposed regulation, (2) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the proposed regulation, including the type of professional skills necessary for preparing required reports and other documents, (3) a statement of the probable effect of the proposed regulation on affected small businesses, and (4) a description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation. Additionally, pursuant to § 2.2-4007.1 of the Code of Virginia, if there is a finding that a proposed regulation may have an adverse impact on small business, the Joint Commission on Administrative Rules shall be notified.

<sup>7</sup> "Locality" can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulatory change are most likely to occur.

<sup>8</sup> Section 2.2-4007.04 defines "particularly affected" as bearing disproportionate material impact.

**Response to Economic Impact Analysis:** The Board for Barbers and Cosmetology concurs with the economic impact analysis prepared by the Department of Planning and Budget.

**Summary:**

*The proposed amendments (i) remove and amend definitions; (ii) revise entry requirements for licenses and certificates, including reducing minimum training requirements for individuals seeking licensure, allowing individuals who received training outside of the United States to seek credit for coursework, and reducing criminal history reporting requirements; (iii) update fee provisions; (iv) revise reinstatement provisions; (v) update requirements for schools, including curriculum requirements for barbering programs; and (vi) clarify standards of practice, including sanitation and safety standards for shops, salons, and schools.*

**18VAC41-20-10. Definitions.**

A. The following words and terms when used in this chapter shall have the following meanings, unless the context clearly indicates otherwise. All terms defined ascribed to them in Chapter 7 (§ 54.1-700 et seq.) of Title 54.1 of the Code of Virginia are incorporated in this chapter.

"Barber"

"Barbering"

"Barber instructor"

"Barbershop"

"Board"

"Cosmetologist"

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# Regulations

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"Cosmetology"

"Cosmetology instructor"

"Cosmetology salon"

"Master barber"

"Nail care"

"Nail salon"

"Nail school"

"Nail technician"

"Nail technician instructor"

"Physical (wax) depilatory"

"School of cosmetology"

"Wax technician"

"Waxing"

"Waxing salon"

"Waxing school"

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

"Apprenticeship program" means an approved cosmetology, barber, nail technician, or wax technician training program conducted by an approved registered apprenticeship sponsor.

"Barber school" means a place or establishment licensed by the board to accept and train students and that offers a barber, master barber, or dual barber/master barber curriculum approved by the board.

"Business entity" means a sole proprietorship, partnership, corporation, limited liability company, limited liability partnership, or any other form of organization permitted by law.

"Clock hour" means a minimum of 50 minutes of supervised or directed instruction and appropriate breaks.

"Credit hour" means a combination of the number of hours in class each week and the number of hours per week in a laboratory by which a school may measure coursework. One unit of credit equals one hour of classroom or online study, two hours of laboratory experience, or three hours of internship or practicum or a combination of the three times the number of weeks in the term.

"Direct supervision" means that (i) a Virginia licensed barber, cosmetologist, nail technician, or wax technician ~~shall be~~ is present in the barbershop, cosmetology salon, nail salon, or waxing salon at all times when services are being performed by a temporary permit holder or registered apprentice or (ii) a Virginia licensed and certified barber, cosmetologist, nail technician, or wax technician instructor or a student instructor

temporary license holder is present in the barber, cosmetology, nail technician, or wax technician school at all times when services are being performed by a student, student instructor, or temporary license holder.

"Endorsement" means a method of obtaining a license by a person who is currently licensed in another state.

"Each and every location" means, for the purposes of schools with multiple suites or classrooms, a single location is one that is enclosed under one roof and all classrooms or suites are within 500 feet of the main office.

"Firm" means any business entity recognized under the laws of the Commonwealth of Virginia.

"Licensee" means any person, sole proprietorship, partnership, corporation, limited liability company, limited liability partnership, or any other form of organization permitted by law individual or firm holding a license issued by the Board for Barbers and Cosmetology, as defined in § 54.1-700 of the Code of Virginia board.

"Post-secondary educational level" means an accredited college or university that is approved or accredited ~~by the Southern Association of Colleges and Schools Commission on Colleges or~~ by an accrediting agency that is recognized by the U.S. Secretary of Education.

"Reciprocity" means a conditional agreement between two or more states that will recognize one another's regulations and laws for equal privileges for mutual benefit.

"Reasonable hours" means the hours between 9 a.m. and 5 p.m.; however, if the licensee is generally not substantially open to the public during the same hours, "reasonable hours" means the business hours when the licensee is open to the public.

"Reinstatement" means having a license or certificate restored to effectiveness after the expiration date has passed.

"Renewal" means continuing the effectiveness of a license or certificate for another period of time.

"Responsible management" means the following individuals:

1. The sole proprietor of a sole proprietorship;
2. The partners of a general partnership;
3. The managing partners of a limited partnership;
4. The officers of a corporation;
5. The managers of a limited liability company;
6. The officers or directors of an association ~~or both~~; and
7. Individuals in other business entities recognized under the laws of the Commonwealth as having a fiduciary responsibility to the firm.

"Sole proprietor" means any individual, not a corporation, who is trading under ~~his~~ that individual's own name; or under an assumed or fictitious name pursuant to the provisions of §§ 59.1-69 through 59.1-76 of the Code of Virginia.

"Substantially equivalent exam" means an examination administered by the licensing entity ~~which~~ that covers Virginia's scope of practice for that profession.

"Substantially equivalent training" means at least 80% of the required hours in Virginia and curriculum content covering Virginia's scope of practice for that profession.

"Virginia state institution" ~~for the purposes of this chapter~~ means any institution approved by the Virginia Department of Education or the Virginia Department of Corrections.

"Wet disinfection unit" is a container large enough to hold an Environmental Protection Agency (EPA) registered disinfectant that is a bactericidal, virucidal, and fungicidal solution in which the objects to be disinfected are completely immersed.

**18VAC41-20-15. Gratuitous services.**

Any individual who engages in barbering, master barbering, cosmetology, nail care, or waxing without receiving compensation, reward, or obligation is considered to be performing gratuitous services and is exempt from the provisions of this chapter. Gratuitous services do not include services provided at no charge when goods are purchased.

**18VAC41-20-20. General requirements for a barber, master barber, cosmetologist, nail technician, or wax technician license.**

A. Any individual wishing to engage in barbering, cosmetology, nail care, or waxing shall obtain a license in compliance with § 54.1-703 of the Code of Virginia and ~~shall~~ must meet the following qualifications:

1. The applicant ~~shall~~ must be in good standing as a licensed barber, master barber, cosmetologist, nail technician, or wax technician in Virginia and all other jurisdictions where licensed, certified, or registered. The applicant ~~shall disclose to the board at the time of application for licensure, must provide a copy of any disciplinary action taken in Virginia and all other jurisdictions in connection with the applicant's practice as a barber, master barber, cosmetologist, nail technician, or wax technician to the board at the time of application for licensure.~~ This includes monetary penalties, fines, probation, suspensions, revocations, surrender of a license in connection with a disciplinary action, or voluntary termination of a license. ~~The applicant shall disclose to the board at the time of application for licensure if he has been previously licensed in Virginia as a barber, master barber, cosmetologist, nail technician, or wax technician.~~

Upon review of the applicant's prior disciplinary action, the board, in its discretion, may deny licensure to any applicant

wherein the board deems the applicant is unfit or unsuited to engage in barbering, cosmetology, nail care, or waxing. ~~The board will decide each case by taking into account the totality of the circumstances. Any plea of nolo contendere or comparable plea shall be considered a disciplinary action for the purposes of this section. The applicant shall provide a certified copy of a final order, decree, or case decision by a court, regulatory agency, or board with the lawful authority to issue such order, decree, or case decision, and such copy shall be admissible as prima facie evidence of such disciplinary action.~~

2. The applicant ~~shall~~ must disclose the applicant's physical address. A post office box ~~is not acceptable~~ may be provided as a secondary address.

3. The applicant ~~shall~~ must sign, as part of the application, a statement certifying that the applicant has read and understands the Virginia barber and cosmetology license laws and this chapter.

4. In accordance with § 54.1-204 of the Code of Virginia, each applicant ~~shall~~ must disclose the following information regarding criminal convictions in Virginia and all other jurisdictions:

- a. All misdemeanor convictions ~~involving moral turpitude, sexual offense, non-marijuana drug distribution, or physical injury~~ within two years of the date of the application involving moral turpitude, sexual offense, non-marijuana drug distribution, or physical injury; and
- b. All felony convictions within ~~20~~ 10 years of the date of application.

~~Any plea of nolo contendere shall be considered a conviction for purposes of this subsection. The record of a conviction received from a court shall be accepted as prima facie evidence of a conviction or finding of guilt. The board, in its discretion, may deny licensure to any applicant in accordance with § 54.1-204 of the Code of Virginia.~~

5. The applicant ~~shall~~ must provide evidence satisfactory to the board that the applicant has passed the board-approved examination, administered either by the board or by independent examiners.

**B. Eligibility to sit for board-approved examination.**

1. Training in the Commonwealth of Virginia. Any person completing ~~an~~ one of the following programs is eligible for examination:

- a. An approved barber, master barber, cosmetology, nail technician, or wax technician training program in a Virginia licensed barber, cosmetology, nail technician, or wax technician school, respectively, or a
- b. A Virginia public school's barber, master barber, cosmetology, nail technician, or wax technician program approved by the Virginia Department of Education shall be eligible for examination.

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c. A registered apprenticeship.

d. Training as a barber, master barber, cosmetologist, nail technician, or wax technician in any Virginia state institution.

2. Training outside of the Commonwealth of Virginia, ~~but within the United States and its territories.~~

a. Any person completing a barber, master barber, cosmetology, nail care, or waxing training or apprenticeship program that is substantially equivalent to the Virginia program but is outside of the Commonwealth of Virginia must submit to the board documentation of the substantially equivalent training to be eligible for examination. Applicants who have earned a degree from an institution outside the United States must have their degree translated, authenticated and evaluated by an education evaluation service if credit is sought for the education. The board in its discretion may decline to accept any evaluation submitted by an applicant.

b. Applicants who completed a training or apprenticeship program that is not substantially equivalent to Virginia's training, ~~including out of country training,~~ may substitute five must submit documentation acceptable to the board verifying three years of work experience for training. Applicants should provide their work history demonstrating ~~five~~ three years of experience as a licensed barber, master barber, cosmetologist, nail technician, or wax technician in any other state or jurisdiction of the United States on a form provided by the board.

3. Any barber, master barber, cosmetologist, nail technician, or wax technician applicant having a minimum of two years of experience in barbering, master barbering, cosmetology, nail care, or waxing in the United States Armed Forces and having provided documentation satisfactory to the board of that experience is eligible for the respective examination.

4. A Virginia licensed cosmetologist with a minimum of two years of work experience is eligible for the master barber examination; likewise, a Virginia licensed master barber with a minimum of two years of work experience is eligible for the cosmetology examination.

## 18VAC41-20-30. License by endorsement.

A. Upon proper application to the board, any person currently licensed to practice as a barber, master barber, cosmetologist, nail technician, or wax technician or who is a licensed instructor in the respective profession in any other state or jurisdiction of the United States and who has completed ~~both~~ a training or apprenticeship program and a written and practical examination that is substantially equivalent to ~~that the training and examination~~ required by this chapter, may be issued a barber, master barber, cosmetologist, nail technician, or wax technician license or the respective instructor certificate without an examination. The applicant must also meet the

requirements set forth in 18VAC41-20-20 A ~~and 18VAC41-20-100.~~

B. An applicant for licensure by endorsement who has completed an equivalent training or apprenticeship program and whose state only utilizes one licensing examination (written or practical) that is substantially equivalent to the examination required by this chapter may take the other examination (written or practical) in Virginia to qualify for licensure.

C. Applicants for licensure by endorsement who completed a training or apprenticeship program that is not substantially equivalent to Virginia's training but who otherwise meet all the requirements listed in subsection A of this section, may substitute ~~five~~ three years of work experience for training. Applicants ~~should~~ must provide ~~their~~ a work history demonstrating ~~five~~ three years of licensed experience in any other state or jurisdiction of the United States on a form provided by the board.

## 18VAC41-20-40. Apprenticeship training.

A. Licensed barbers, master barbers, cosmetologists, and nail technicians who train apprentices ~~shall~~ must comply with the standards for registered apprenticeship training established by the ~~Division of Apprenticeship Training of the Virginia Department of Labor and Industry and the Virginia Board for Barbers and Cosmetology.~~ Owners of barbershops, cosmetology salons, and nail salons who train apprentices shall comply with the standards for apprenticeship training established by the Division of Apprenticeship Training of the Virginia Department of Labor and Industry.

B. ~~Any person completing the Virginia apprenticeship program in barbering, master barbering Licensed barbershops, cosmetology, or salons, and nail care shall be eligible for examination salons where apprentices train must comply with the standards for registered apprenticeship training.~~

## 18VAC41-20-50. ~~Exceptions to training requirements. (Repealed.)~~

A. ~~Virginia licensed cosmetologists with a minimum of two years of work experience shall be eligible for the master barber examination; likewise, a Virginia licensed master barber with a minimum of two years of work experience shall be eligible for the cosmetology examination.~~

B. ~~Any barber, master barber, cosmetologist, nail technician, or wax technician applicant having been trained as a barber, master barber, cosmetologist, nail technician, or wax technician in any Virginia state institution shall be eligible for the respective examination.~~

C. ~~Any barber, master barber, cosmetologist, nail technician, or wax technician applicant having a minimum of two years of experience in barbering, master barbering, cosmetology, nail care, or waxing in the United States armed forces and having~~

~~provided documentation satisfactory to the board of that experience shall be eligible for the respective examination.~~

~~D. Any licensed barber or barber student enrolling in a master barber training program in a licensed barber school shall be given educational credit for the training and performances completed in a barbering program at a licensed barber school.~~

**18VAC41-20-60. Examination requirements and fees.**

A. Applicants for initial licensure ~~shall must~~ pass both ~~a the~~ practical examination and a written ~~portion of the~~ examination approved by the board. ~~The examinations may be administered by the board or by a designated testing service.~~

B. Any applicant who passes one part of the examination shall not be required to take that part again, provided both parts are passed within one year of the initial examination date.

~~C. Any candidate failing to appear as scheduled for examination shall forfeit the examination fee.~~

~~D. C.~~ The fee for examination or reexamination is subject to contracted charges to the board by an outside vendor. These contracts are competitively negotiated and bargained for in compliance with the Virginia Public Procurement Act (§ 2.2-4300 et seq. of the Code of Virginia). Fees may be adjusted and charged to the candidate in accordance with these contracts. The fee ~~shall will~~ not exceed \$225 per candidate.

~~E. D.~~ Any candidate failing to apply for initial licensure within five years of passing both ~~a the~~ practical examination and a written ~~portions of an~~ examination ~~shall will~~ be required to retake both portions. ~~Records of examinations shall be maintained for a maximum of five years.~~

E. Any applicant who does not pass a reexamination within one year of the initial examination date will be required to submit a new application.

**18VAC41-20-70. Reexamination requirements. (Repealed.)**

~~Any applicant who does not pass a reexamination within one year of the initial examination date shall be required to submit a new application and examination fee.~~

**18VAC41-20-80. Examination administration.**

A. The examinations ~~shall must~~ be administered by the board or the designated testing service. The practical examination ~~shall must~~ be supervised by a chief examiner.

B. Every barber, master barber, cosmetology, nail technician, or wax technician examiner ~~shall must~~ hold a current Virginia license in ~~his the~~ respective profession, have three or more years of active experience as a licensed professional, and be currently practicing in that profession. ~~Examiners shall attend training workshops sponsored by the board or by a testing service acting on behalf of the board.~~

C. No certified barber, master barber, cosmetology, nail technician, or wax technician instructor who is ~~(i)~~ currently

teaching or is, ~~(ii)~~ a school owner, or is ~~(iii)~~ an apprentice sponsor ~~shall may~~ be an examiner.

D. Each barber, master barber, cosmetology, nail technician, and wax technician chief examiner ~~shall must~~ ~~(i)~~ hold a current Virginia license in ~~his the~~ respective profession, ~~(ii)~~ have ~~five three~~ or more years of active experience in that profession, ~~(iii)~~ have ~~three years one year~~ of active experience as an examiner, and ~~(iv)~~ be currently practicing in ~~his the~~ respective profession. ~~Chief examiners shall attend training workshops sponsored by the board or by a testing service acting on behalf of the board~~ A licensed cosmetologist may serve as an examiner for any license type that is included in the cosmetology profession.

E. The applicant ~~shall must~~ follow all procedures established by the board with regard to conduct at the examination. Such procedures ~~shall~~ include written instructions communicated prior to the examination date and instructions communicated at the site, either written or oral, on the date of the examination. Failure to comply with all procedures established by the board and the testing service with regard to conduct at the examination may be grounds for denial of application.

F. Examiners and chief examiners must attend training workshops sponsored by the board or by a testing service acting on behalf of the board.

**18VAC41-20-100. General requirements for a ~~barber an instructor certificate, cosmetology instructor certificate, nail technician instructor certificate, or wax technician instructor certificate.~~**

A. Any individual wishing to engage in ~~barbering instruction, in barbering,~~ master barbering ~~instruction,~~ cosmetology ~~instruction,~~ nail care ~~instruction,~~ or waxing ~~instruction~~ ~~shall must~~ meet the following qualifications:

1. The applicant ~~shall must~~ be in good standing as a licensed barber, master barber, cosmetologist, nail technician, or wax technician, and instructor, respectively, in ~~Virginia and all other jurisdictions~~ every jurisdiction where licensed, certified, or registered. The applicant ~~shall disclose to the board at the time of application for licensure~~ must provide a copy to the board of any disciplinary action taken in Virginia and all other jurisdictions ~~in connection with the applicant's practice at the time of application for certification since being previously licensed as a barber, master barber, cosmetologist, nail technician, or wax technician, or in the practice of teaching any of those professions.~~ This includes monetary penalties, fines, probation, suspensions, revocations, surrender of a license or certification in connection with a disciplinary action, or voluntary termination of a license or certification. ~~The applicant shall disclose to the board at the time of application for licensure if the applicant has been previously licensed in Virginia as a barber instructor, master barber instructor, cosmetology instructor, nail technician instructor, or wax technician instructor.~~

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Upon review of the applicant's prior disciplinary action, the board, in its discretion, may deny license certification to any applicant ~~wherein~~ that the board deems the applicant is unfit or unsuited to engage in the instruction of barbering, cosmetology, nail care, or waxing. ~~The board will decide each case by taking into account the totality of the circumstances. Any plea of nolo contendere or comparable plea shall be considered a disciplinary action for the purposes of this section. The applicant shall provide a certified copy of a final order, decree, or case decision by a court, regulatory agency, or board with the lawful authority to issue such order, decree, or case decision, and such copy shall be admissible as prima facie evidence of such disciplinary action;~~

2. The applicant ~~shall~~ must hold and maintain a current Virginia barber, master barber, cosmetology, nail technician, or wax technician license, respectively;

3. The applicant ~~shall~~ must complete one of the following qualifications:

a. Pass a course in teaching techniques at the post-secondary educational level;

~~b. Complete an instructor training course approved by the Virginia Board for Barbers and Cosmetology under the supervision of a certified barber, master barber, cosmetologist, nail technician, or wax technician instructor in a barber, cosmetology, nail technician, or wax technician school, respectively; or~~

~~e. b.~~ Pass an instructor examination ~~in barber, master barber, cosmetology, nail technician, or wax technician instruction respectively~~, administered by the board or by a testing service acting on behalf of the board; and

4. In accordance with § 54.1-204 of the Code of Virginia, each applicant ~~shall~~ must disclose the following information regarding criminal convictions in Virginia and all other jurisdictions since being previously licensed as a barber, master barber, cosmetologist, wax technician and nail technician:

a. All misdemeanor convictions within two years of the date of application involving moral turpitude, sexual offense, non-marijuana drug distribution, or physical injury ~~within two years of the date of the application~~; and

b. All felony convictions within ~~20~~ 10 years of the date of application.

~~Any plea of nolo contendere shall be considered a conviction for purposes of this subsection. The record of a conviction received from a court shall be accepted as prima facie evidence of a conviction or finding of guilt. The board, in its discretion, may deny license certification to any applicant in accordance with § 54.1-204 of the Code of Virginia.~~

~~B. Instructors shall be required to maintain a barber, master barber, cosmetology, nail technician, or wax technician~~

~~license, respectively~~ Certified instructors may teach in any profession in which they hold the underlying license.

## **18VAC41-20-110. Student instructor temporary ~~permit~~ license.**

A. A licensed barber, master barber, cosmetologist, nail technician, or wax technician may be granted a 12-month student instructor temporary ~~permit~~ license to function under the direct supervision of a ~~barber instructor, master barber instructor, cosmetology instructor, nail technician instructor, or wax technician instructor~~ certified instructor in a licensed school. A licensed nail technician or wax technician may also be granted a student instructor permit to function under the direct supervision of a cosmetology instructor. No subsequent student instructor temporary license will be issued. Student instructors must pass an instructor examination administered by the board or by a testing service acting on behalf of the board.

~~B. The student instructor temporary permit shall remain in force for not more than 12 months after the date of issuance and shall be nontransferable and nonrenewable. Student instructors may teach in any profession in which they hold the underlying license. Failure to maintain a barber, master barber, cosmetology, nail technician, or wax technician license will disqualify an individual from holding a student instructor temporary license.~~

~~C. No applicant for examination shall be issued more than one~~ Licensed cosmetologists may also supervise nail and waxing student instructor temporary ~~permit~~ license holders. Licensed estheticians and master estheticians may also supervise waxing student instructor temporary license holders. Licensed master barbers may also supervise barber student instructor temporary license holders.

~~D. Failure to maintain a barber, master barber, cosmetology, nail technician, or wax technician license shall disqualify an individual from holding a~~ The student instructor temporary ~~permit~~ license holder must be associated with both a school and a direct supervisor.

~~E. Temporary ~~permits~~ shall licenses may~~ not be issued where grounds may exist to deny a license pursuant to § 54.1-204 of the Code of Virginia or 18VAC41-20-100.

## **18VAC41-20-120. General requirements for a shop or salon license.**

A. Any firm wishing to operate a barbershop, cosmetology salon, nail salon, or waxing salon ~~shall~~, including any mobile shop or salon, must obtain a shop or salon license in compliance with § 54.1-704.1 of the Code of Virginia and ~~shall~~ must meet the following qualifications in order to receive a license:

1. The applicant and all members of the responsible management ~~shall~~ must be in good standing as a licensed shop or salon in Virginia and all other jurisdictions where

licensed, certified, or registered. The applicant and all members of the responsible management ~~shall disclose to the board at the time of application for licensure~~ must provide a copy of any disciplinary action taken in Virginia and all other jurisdictions in connection with the applicant's operation of any barbershop, cosmetology salon, nail salon, or waxing salon or practice of the profession to the board at the time of application for licensure. This includes monetary penalties, fines, probation, suspensions, revocations, surrender of a license in connection with a disciplinary action, or voluntary termination of a license. ~~The applicant shall disclose to the board at the time of application for licensure if the applicant or any member of the responsible management has been previously licensed in Virginia as a barbershop, cosmetology salon, nail salon, or waxing salon.~~

Upon review of the applicant's and all members of the responsible management's prior disciplinary action, the board, in its discretion, may deny licensure to any applicant wherein it deems the applicant is unfit or unsuited to engage in the operation of a barbershop, cosmetology salon, nail salon, or waxing salon. ~~The board will decide each case by taking into account the totality of the circumstances. Any plea of nolo contendere or comparable plea shall be considered a disciplinary action for the purposes of this section. The applicant shall provide a certified copy of a final order, decree, or case decision by a court, regulatory agency, or board with the lawful authority to issue such order, decree, or case decision, and such copy shall be admissible as prima facie evidence of such disciplinary action.~~

2. The applicant ~~shall~~ must disclose the applicant's physical address. A post office box ~~is not acceptable~~ may be provided as secondary address. Mobile shops and salons must provide a physical address where the shop or salon is permanently garaged.

3. The applicant ~~shall~~ must sign, as part of the application, a statement certifying that the applicant has read and understands the Virginia barber and cosmetology license laws and this chapter.

4. In accordance with § 54.1-204 of the Code of Virginia, each applicant ~~shall~~ must disclose the following information about the firm and all members of the responsible management regarding criminal convictions in Virginia and all other jurisdictions:

- a. All misdemeanor convictions within two years of the date of application involving moral turpitude, sexual offense, non-marijuana drug distribution, or physical injury ~~within two years of the date of the application;~~ and
- b. All felony convictions within ~~20~~ 10 years of the date of application.

~~Any plea of nolo contendere shall be considered a conviction for purposes of this subsection. The record of a conviction received from a court shall be accepted as prima facie~~

~~evidence of a conviction or finding of guilt.~~ The board, in its discretion, may deny licensure to any applicant in accordance with § 54.1-204 of the Code of Virginia.

5. The applicant ~~shall~~ must disclose the firm's responsible management.

B. Shop or salon licenses are issued to firms as defined in this chapter and ~~shall will~~ not be transferable and shall bear the same name and address of the business. Any changes in the name or address of the shop or salon ~~shall~~ must be reported to the board in writing within 30 days of such changes. The board ~~shall will~~ not be responsible for the licensee's, certificate holder's, or permit holder's failure to receive notices, communications, and correspondence caused by the licensee's, certificate holder's, or permit holder's failure to promptly notify the board in writing of any change of name or address or for any other reason beyond the control of the board.

C. Whenever the legal business entity holding the license is dissolved or altered to form a new business entity, the original license becomes void ~~and shall be returned to the board within 30 days of the change. Additionally, the~~ The firm shall must notify the board, apply for a new license, within 30 days of the change in the business entity, and destroy the license. Such changes include:

1. Death of a sole proprietor;
2. Death or withdrawal of a general partner in a general partnership or the managing partner in a limited partnership; and
3. Conversion, formation, or dissolution of a corporation, a limited liability company, an association, or any other business entity recognized under the laws of the Commonwealth of Virginia.

D. Any change in the officers of a corporation, managers of a limited liability company, or officers or directors of an association ~~shall~~ must be reported to the board in writing within 30 days of the change.

E. The board or any of its agents ~~shall~~ must be allowed to inspect during reasonable hours any licensed shop or salon for compliance with provisions of Chapter 7 (§ 54.1-700 et seq.) of Title 54.1 of the Code of Virginia or this chapter. ~~For purposes of a board inspection, "reasonable hours" means the hours between 9 a.m. and 5 p.m.; however, if the licensee generally is not open to the public substantially during the same hours, "reasonable hours" shall mean the business hours when the licensee is open to the public.~~

## **18VAC41-20-130. General requirements for a school license.**

A. Any firm wishing to operate a barber, cosmetology, nail technician, or wax technician school ~~shall~~ must submit an application to the board at least 60 days prior to the date for which approval is sought, obtain a school license in

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compliance with § 54.1-704.2 of the Code of Virginia, and meet the following qualifications in order to receive a license:

1. The applicant and all members of the responsible management ~~shall must~~ be in good standing as a licensed school in Virginia and ~~all any~~ other jurisdiction where licensed, certified, or registered. The applicant and all members of the responsible management ~~shall disclose to the board at the time of application for licensure must~~ provide a copy of any disciplinary action taken in Virginia and all other jurisdictions ~~in connection with the applicant's operation of any barbering, cosmetology, nail, or waxing school or practice of the profession to the board at the time of application for licensure~~. This includes to monetary penalties, fines, probation, suspensions, revocations, surrender of a license in connection with a disciplinary action, or voluntary termination of a license. ~~The applicant shall disclose to the board at the time of application for licensure if the applicant or any member of the responsible management has been previously licensed in Virginia as a barbering, cosmetology, nail, or waxing school.~~

Upon review of the applicant's and all members of the responsible management's prior disciplinary action, the board, in its discretion, may deny licensure to any applicant ~~wherein that~~ the board deems the applicant is unfit or unsuited to engage in the operation of a barbering, cosmetology, nail, or waxing school. ~~The board will decide each case by taking into account the totality of the circumstances. Any plea of nolo contendere or comparable plea shall be considered a disciplinary action for the purposes of this section. The applicant shall provide a certified copy of a final order, decree, or case decision by a court, regulatory agency, or board with the lawful authority to issue such order, decree, or case decision, and such copy shall be admissible as prima facie evidence of such disciplinary action.~~

2. The applicant ~~shall must~~ disclose the applicant's physical address. A post office box ~~is not acceptable may be provided as secondary address~~.

3. The applicant ~~shall must~~ sign, as part of the application, a statement certifying that the applicant has read and understands the Virginia barber and cosmetology license laws and this chapter.

4. In accordance with § 54.1-204 of the Code of Virginia, each applicant ~~shall must~~ disclose the following information about the firm and all members of the responsible management regarding criminal convictions in Virginia and all other jurisdictions:

a. All misdemeanor convictions ~~within two years of the date of the application~~ involving moral turpitude, sexual offense, non-marijuana drug distribution, or physical injury ~~within two years of the date of the application~~; and

b. All felony convictions within ~~20~~ 10 years of the date of application.

~~Any plea of nolo contendere shall be considered a conviction for purposes of this subsection. The record of a conviction received from a court shall be accepted as prima facie evidence of a conviction or finding of guilt. The board, in its discretion, may deny licensure to any applicant in accordance with § 54.1-204 of the Code of Virginia.~~

5. The applicant ~~shall must~~ disclose the firm's responsible management.

B. Barber, cosmetology, nail technician, and wax technician school licenses are issued to firms as defined in this chapter; ~~shall and are not be transferable, and shall bear the same name and address as the school~~. Any changes in the name ~~or the~~ and address of record or principal place of business of the school ~~shall must~~ be reported to the board in writing within 30 days of such change. The board ~~shall will~~ not be responsible for the licensee's, ~~certificate holder's, or permit holder's~~ failure to receive notices, communications, and correspondence caused by the licensee's, ~~certificate holder's, or permit holder's~~ failure to promptly notify the board in writing of any change of name or address or for any other reason beyond the control of the board. The name of the school must indicate that it is an educational institution. All signs, or other advertisements, must reflect the name as indicated on the license issued by the board and contain language indicating it is an educational institution.

C. Whenever the legal business entity holding the license is dissolved or altered to form a new business entity, the original license becomes void ~~and shall be returned to the board within 30 days of the change~~. Additionally, ~~the~~ The firm ~~shall must~~ notify the board, apply for a new license within 30 days of the change in business entity, and destroy the license. Such changes include:

1. Death of a sole proprietor;
2. Death or withdrawal of a general partner in a general partnership or the managing partner in a limited partnership; and
3. Conversion, formation, or dissolution of a corporation, a limited liability company, an association, or any other business entity recognized under the laws of the Commonwealth of Virginia.

D. Within 30 days of ceasing to operate, whether through dissolution or alteration of the business entity, the school must provide a written report to the board detailing the performances and hours of each student who has not completed the program.

E. Any change in the officers of a corporation, managers of a limited liability company, or officers or directors of an association ~~shall must~~ be reported to the board in writing within 30 days of the change.



~~E. F.~~ Barber schools, cosmetology schools, nail schools, or waxing schools under the Virginia Department of Education shall be ~~exempted~~ are exempt from licensure requirements.

~~F. G.~~ The board or any of its agents shall be allowed to inspect during reasonable hours any licensed school for compliance with provisions of Chapter 7 (§ 54.1-700 et seq.) of Title 54.1

of the Code of Virginia or this chapter. ~~For purposes of a board inspection, "reasonable hours" means the hours between 9 a.m. and 5 p.m.; however, if the licensee generally is not open to the public substantially during the same hours, "reasonable hours" shall mean the business hours when the licensee is open to the public.~~

**18VAC41-20-140. Fees.**

The following fees apply. ~~All fees are nonrefundable and will not be prorated.~~

FEE TYPE	AMOUNT DUE September 1, 2022, through August 31, 2024	AMOUNT DUE September 1, 2024, and after	WHEN DUE
<b>Individuals:</b>			
Application	\$90	\$105	With application
License by Endorsement	\$90	\$105	With application
<b>Renewal:</b>			
Barber	\$90	\$105	With renewal card prior to expiration date
Master Barber	\$90	\$105	With renewal card prior to expiration date
Cosmetologist	\$90	\$105	With renewal card prior to expiration date
Nail Technician	\$90	\$105	With renewal card prior to expiration date
Wax Technician	\$90	\$105	With renewal card prior to expiration date
Reinstatement	\$180* *includes \$90 renewal fee and \$90 reinstatement fee	\$210* *includes \$105 renewal fee and \$105 reinstatement fee	With reinstatement application
<del>Instructors</del> <b>Instructor Certificate:</b>			
Application	\$110	\$125	With application
License by Endorsement	\$110	\$125	With application
Renewal	\$110	\$150 <del>\$20</del>	With renewal card prior to expiration date

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Reinstatement	\$220* *includes \$110 renewal fee and \$110 reinstatement fee	\$300* \$40* *includes \$150 \$20 renewal fee and \$150 \$20 reinstatement fee	With reinstatement application
Facilities:			
Application	\$165	\$190	With application
Renewal	\$165	\$190	With renewal card prior to expiration date
Reinstatement	\$330* *includes \$165 renewal fee and \$165 reinstatement fee	\$380* *includes \$190 renewal fee and \$190 reinstatement fee	With reinstatement application
Schools:			
Application	\$185	\$220	With application
Add Program	\$100	\$100	With application
Renewal	\$185	\$220	With renewal card prior to expiration date
Reinstatement	\$370* *includes \$185 renewal fee and \$185 reinstatement fee	\$440* *includes \$220 renewal fee and \$220 reinstatement fee	With reinstatement application

**18VAC41-20-150. Refunds. (Repealed.)**

All fees are nonrefundable and shall not be prorated.

**18VAC41-20-160. License renewal Renewal required.**

A license or certificate issued under this chapter ~~shall expire~~ expires two years from the last day of the month in which it was issued.

**18VAC41-20-170. Notice of renewal.**

The Department of Professional and Occupational Regulation will mail a renewal notice to the licensee or certificate holder outlining the procedures for renewal. Failure to receive this notice, however, ~~shall~~ does not relieve the licensee or certificate holder of the obligation to renew. If the licensee or certificate holder fails to receive the renewal notice, a copy of the old license or certificate may be submitted as evidence of intent to renew, along with the required fee.

**18VAC41-20-180. Failure to renew.**

A. When a licensed or certified an individual or business entity fails to renew its license or certificate within 30 days following ~~its~~ the expiration date, the licensee or certificate holder ~~shall apply for reinstatement of the license or certificate~~

~~by submitting to the Department of Professional and Occupational Regulation a reinstatement application and renewal fee and must pay the reinstatement fee.~~

B. When a licensed or certified an individual or business entity fails to renew its license or certification within two years following the expiration date, reinstatement is no longer possible. To resume practice:

1. The former licensee or certificate holder ~~shall~~ must apply for licensure or certification as a new applicant and ~~shall~~ must meet all current entry requirements for each respective license or certificate.
2. An individual ~~initially granted licensure under any of the following examination or training waiver provisions, known as grandfathering, shall submit a new application showing the individual met the requirements of the applicable examination or training waiver provision, demonstrate five previously licensed in Virginia for a minimum of three years of licensed experience, and pass the required examination:~~
  - a. ~~Any person who was exempted from examination for licensure as a barber, as such person was engaged in the practice of barbering on or before July 1, 1966, in any establishment or place of business within which the practice of barbering was carried on by only one barber, and such~~

~~person filed an application with the board on or before January 1, 1967 must submit a new application and pass the required examination.~~

~~b. Any person exempted from examination as a registered professional hair dresser, as such person was substantially engaged as a hairdresser in Virginia for at least nine months prior to June 29, 1962, and such person filed an application satisfactory to the board on or before July 1, 1963.~~

~~c. Any person exempted from training requirements for licensure as a nail technician, as such person had experience or training as a nail technician, and such person applied to the board for examination by October 1, 1991.~~

~~d. Any person exempted from examination as a wax technician pursuant to § 54.1-703.1 of the Code of Virginia.~~

C. The application for When a licensed school fails to renew its license within 30 days following the expiration date, the licensee must pay the reinstatement fee.

1. After 180 days, the school must submit a reinstatement for a school shall application and provide (i) the reasons for failing to renew prior to the expiration date and (ii) a notarized statement that all students currently enrolled or seeking to enroll at the school have been notified in writing that the school's license has expired. All of these materials shall be called the application package. Reinstatement will be considered by the board if the school consents to and satisfactorily passes an inspection of the school and if the school's records are maintained in accordance with 18VAC41-20-240 and 18VAC41-20-250 by the Department of Professional and Occupational Regulation. Pursuant to 18VAC41-20-130, upon receipt of the reinstatement fee, application package, and inspection results, the board may reinstate the school's license or require requalification or both.

2. If the reinstatement application package and reinstatement fee are not received by the board within six months following the expiration date of the school's license, the board will notify the testing service that prospective graduates of the unlicensed school are not acceptable candidates for the examination. Such notification will be sent to the school and must be displayed in a conspicuous manner by the school in an area that is accessible to the public. No student shall be disqualified from taking the examination because the school was not licensed for a portion of the time the student attended if the school license is reinstated by the board.

D. The date a renewal fee is received by the Department of Professional and Occupational Regulation, or its agent, will be used to determine whether the requirement for reinstatement of a license or certificate is applicable.

E. When a license or certificate is reinstated, the licensee or certificate holder ~~shall~~ will be assigned an expiration date two years from the date of the last day of the month of reinstatement.

F. A licensee or certificate holder that reinstates its license or certificate ~~shall~~ will be regarded as having been continuously licensed or certified without interruption. Therefore, a licensee or certificate holder ~~shall~~ will be subject to the authority of the board for activities performed prior to reinstatement.

G. A licensee or certificate holder that fails to reinstate its license or certificate ~~shall~~ will be regarded as unlicensed or uncertified from the expiration date of the license or certificate forward. Nothing in this chapter ~~shall divest~~ divests the board of its authority to discipline a licensee or certificate holder for a violation of the law or regulations during the period of time for which the individual was licensed or certified.

## 18VAC41-20-200. General requirements.

A barber, cosmetology, nail, or waxing school ~~shall~~ must:

1. Hold a school license for each and every location. Any suites or classrooms that are located in a different building or are further than 500 feet from the main office are considered a separate location, and require the school hold an additional license.
2. Hold a salon or shop license if the school receives compensation for services provided in its clinic.
3. Employ a staff of and ensure all training is conducted by under the direct supervision of a licensed and certified barber, master barber, cosmetology, nail technician, or wax technician instructors instructor, respectively.
  - a. Licensed and certified cosmetology instructors may also instruct in nail and waxing programs.
  - b. Licensed and certified esthetics instructors and master esthetics instructors may also instruct in waxing programs.
  - c. Licensed and certified barber and master barber instructors may instruct straight razor shaving on face and neck in a cosmetology school.
  - d. Any change in instructors must be reported to the board within 30 days of the change.
4. Develop individuals for ~~entry level~~ entry-level competency in barbering, master barbering, cosmetology, nail care, or waxing.
5. Submit its curricula for board approval. All changes to curricula must be resubmitted and approved by the board. The theory portions of the curriculum may be offered online. Practical instruction must be obtained in a traditional brick-and-mortar classroom setting. Schools must utilize technologies and practices that are effective in verifying the identity of distance-learning students who participate in class or coursework (e.g., a secure login and passcode) while protecting student privacy. Educational technologies must

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be capable of monitoring a student's time and activities. The school must utilize a measure of competency (e.g., an examination) of the information the student is taught online, which must be completed in a traditional brick-and-mortar classroom.

a. Barber curricula ~~shall~~ must be based on a minimum of ~~1,100~~ 750 clock hours and ~~shall~~ must include performances in accordance with 18VAC41-20-220.

b. Master barber curricula ~~shall~~ must be based on a minimum of ~~400~~ 250 clock hours and ~~shall~~ must include performances in accordance with 18VAC41-20-220.

c. Dual barber/master barber program curricula ~~shall~~ must be based on a minimum of ~~1,500~~ 1,000 clock hours and ~~shall~~ must include performances in accordance with 18VAC41-20-220.

d. Cosmetology curricula ~~shall~~ must be based on a minimum of 1,000 clock hours and ~~shall~~ must include performances in accordance with 18VAC41-20-220.

e. Nail technician curricula ~~shall~~ must be based on a minimum of 150 clock hours and ~~shall~~ must include performances in accordance with 18VAC41-20-220.

f. Wax technician curricula ~~shall~~ must be based on a minimum of 115 clock hours and ~~shall~~ must include performances in accordance with 18VAC41-20-220.

6. Inform the public that all services are performed by students if the school receives compensation for services provided in its clinic by posting a notice in the reception area of the shop or salon in plain view of the public.

7. Conduct classroom instruction in an area separate from the clinic area where practical instruction is conducted and services are provided.

~~8. Possess the necessary equipment and implements to teach the respective curriculum. If any such equipment or implement is not owned by the school, then a copy of all agreements associated with the use of such property by the school shall be provided to the board.~~

## **18VAC41-20-210. Curriculum requirements.**

A. Each barber, cosmetology, nail, and waxing school ~~shall~~ must submit with its application a curriculum, including a course syllabus, a detailed course content outline, a sample of five lesson plans, a sample of evaluation methods to be used, days and hours of instruction, program length, a sample of a final transcript, and a breakdown of hours and performances for all courses to be taught that will lead to licensure.

B. The outline for barbering shall include the following:

1. Orientation and business topics - minimum of 25 hours of instruction:

a. School policies;

b. Business and shop management; and

c. Professional ethics and personal hygiene.

2. State law; and regulations; ~~and professional ethics;~~ - minimum of 10 hours of instruction.

3. ~~Business and shop management;~~ 4. Shampooing, cutting, thinning, tapering the hair with razor, clippers, and shears - minimum of 270 hours of instruction:

a. Client consultation; ~~5. Personal hygiene;~~ 6. Cutting the hair with a razor, clippers, and shears; 7. Tapering the hair; ~~8. Thinning the hair;~~ 9. Shampooing the hair; 10. and

b. Styling hair with a hand hair dryer.

4. Shaving; ~~11. Trimming and trimming a moustache or beard;~~ 12. - minimum of 100 hours of instruction, to include client consultation.

5. Applying hair color; ~~13.~~ - minimum of 50 hours of instruction, to include client consultation.

6. Applied sciences - minimum of 100 hours of instruction:

a. Anatomy and physiology;

b. Skin structure and function;

c. Skin types;

d. Skin conditions;

e. Diseases and disorders of the skin;

f. Analyzing skin or scalp conditions; and

14. g. Giving scalp treatments;

~~15. Giving basic facial massage or treatment;~~

~~16. Sanitizing and maintaining implements and equipment; and~~

~~17. Honing and stropping a razor.~~

~~B.~~ Each 7. General sciences - minimum of 80 hours of instruction:

a. Bacteriology;

b. Microorganisms;

c. Infection control, sanitation, disinfection, and sterilization;

d. Occupational Safety and Health Administration (OSHA) requirements;

e. Safety Data Sheet (SDS);

f. General procedures and safety measures;

g. Cosmetic chemistry; and

h. Products and ingredients.

8. Facial hair and skin care services – minimum of 100 hours of instruction:

a. Client skin analysis and consultation;

b. Effleurage and related movements and manipulations of the face and body;

c. Cleansing procedures;

d. Masks;

- e. Extraction techniques;
- f. Machines, equipment, and electricity;
- g. Manual facials and treatments;
- h. Machine, electrical facials, and treatments; and
- i. General procedures and safety measures.

9. Understanding and maintaining implements and equipment (e.g., tools) - minimum of 15 hours of instruction.

~~C. The outline for a barber school seeking to add adding a master barber program shall submit with its application a curriculum, including a course syllabus, a detailed course content outline, a sample of five lesson plans, a sample of evaluation methods to be used, and a breakdown of hours and performances for all courses to be taught that will lead to licensure. The outline for master barbering shall must include the following:~~

- 1. ~~Styling the hair with a hand hair dryer;~~
- 2. ~~Thermal waving - minimum of 20 hours of instruction;~~
- 3. ~~2. Permanent waving with chemicals; 4. Relaxing and relaxing the hair with chemicals - minimum of 110 hours of instruction;~~
- 5. ~~3. Lightening or toning the hair - minimum of 100 hours of instruction;~~
- 6. ~~4. Hairpieces and wigs - minimum of 15 hours of instruction; and~~
- 7. ~~5. Waxing limited to the scalp - minimum of five hours of instruction.~~

~~C. Each school seeking to add a dual barber/master barber program shall submit with its application a curriculum, including a course syllabus, a detailed course content outline, a sample of five lesson plans, a sample of evaluation methods to be used, and a breakdown of hours and performances for all courses to be taught that will lead to licensure. D. The outline for a barber school adding a dual barber/master barber program shall must include the following:~~

- 1. Orientation and business topics - minimum of 25 hours of instruction:
  - a. School policies;
  - 2. State law, regulations, and professional ethics;
  - 3. b. Business and shop management; 4. Client consultation; 5. Personal hygiene; 6. Cutting; and
  - c. Professional ethics and personal hygiene.
- 2. State law and regulations - minimum of 10 hours of instruction.
- 3. Shampooing, cutting, thinning, tapering the hair with a razor, clippers, and shears; 7. Tapering the hair; 8. Thinning the hair; 9. Shampooing the hair; 10. - minimum of 270 hours of instruction:

- a. Client consultation; and
- b. Styling the hair with a hand hair dryer;

~~11. Thermal waving;~~

~~12. Permanent waving with chemicals;~~

~~13. Relaxing the hair;~~

~~14. 4. Shaving; 15. Trimming and trimming a moustache or beard; 16. - minimum of 100 hours of instruction, to include client consultation.~~

~~5. Applying hair color; 17. Lightening or toning the hair; 18. - minimum of 50 hours of instruction, to include client consultation.~~

~~6. Applied sciences - minimum of 100 hours of instruction:~~

- a. Anatomy and physiology;
- b. Skin structure and function;
- c. Skin types;
- d. Skin conditions;
- e. Diseases and disorders of the skin;
- f. Analyzing skin or scalp conditions; 19. and
- g. Giving scalp treatments;.

~~20. 7. General sciences - minimum of 80 hours of instruction:~~

- a. Bacteriology;
- b. Microorganisms;
- c. Infection control, sanitation, disinfection, and sterilization;
- d. Occupational Safety and Health Administration (OSHA) requirements;
- e. Safety Data Sheet (SDS);
- f. General procedures and safety measures;
- g. Cosmetic chemistry; and
- h. Products and ingredients.

~~8. Facial hair and skin care services - minimum of 100 hours of instruction:~~

- a. Client skin analysis and consultation;
- b. Effleurage and related movements and manipulations of the face and body;
- c. Cleansing procedures;
- d. Masks;
- e. Extraction techniques;
- f. Machines, equipment, and electricity;
- g. Manual facials and treatments;
- h. Machine, electrical facials, and treatments; and
- i. General procedures and safety measures.

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9. Understanding and maintaining implements and equipment (e.g., tools) - minimum of 15 hours of instruction.

10. Thermal waving - minimum of 20 hours of instruction.

11. Permanent waving and relaxing the hair with chemicals - minimum of 110 hours of instruction.

12. Lightening or toning the hair - minimum of 100 hours of instruction.

13. Hairpieces and wigs - minimum of 15 hours of instruction.

14. Waxing limited to the scalp; ~~21. Giving basic facial massage or treatment; 22. Hair pieces; 23. Sanitizing and maintaining implements and equipment; and 24. Honing and stropping a razor.~~ D. Each cosmetology school shall submit with its application a curriculum, including a course syllabus, a detailed course content outline, a sample of five lesson plans, a sample of evaluation methods to be used, and a breakdown of hours and performances for all courses to be taught that will lead to licensure - minimum of five hours of instruction.

E. The outline for cosmetology ~~shall~~ must include the following:

1. Orientation and business topics - minimum of 45 hours of instruction:

- a. School policies;
- b. Management;
- c. Sales, inventory, and retailing;
- d. Taxes and payroll;
- e. Insurance;
- f. Client records and confidentiality; and
- g. Professional ethics and practices.

2. Laws and regulations - minimum of 10 hours of instruction.

3. General sciences - minimum of 55 hours of instruction:

- a. Principles and practices of infection control;
- b. Safety Data Sheet (SDS); and
- c. Chemical usage and safety.

4. Applied sciences - minimum of 40 hours of instruction: ~~Anatomy,~~ to include anatomy, physiology, and histology.

5. Shampooing, rinsing, and scalp treatments for all hair types, including textured hair - minimum of 25 hours of instruction:

- a. Client consultation and analysis; and
- b. Procedures, manipulations, and treatments.

6. Hair styling for all hair types, including textured hair - minimum of 65 hours of instruction:

- a. Fingerwaving, molding, and pin curling;

b. Roller curling, combing, and brushing; and

c. Heat curling, waving, and pressing.

7. Hair cutting for all hair types, including textured hair - minimum of 125 hours of instruction:

- a. Fundamentals, materials, and equipment; and
- b. Procedures.

8. Permanent waving and chemical relaxing for all hair types, including textured hair - minimum of 115 hours of instruction:

- a. Chemistry;
- b. Supplies and equipment; and
- c. Procedures and practical application.

9. Hair coloring and bleaching for all hair types, including textured hair - minimum of 160 hours of instruction:

- a. Basic color theory;
- b. Supplies and equipment; and
- c. Procedures and practical application.

10. Wigs, hair pieces, and related theory - minimum of 15 hours of instruction:

- a. Types; and
- b. Procedures.

11. Straight razor use and shaving - minimum of 20 hours of instruction.

12. Manicuring and pedicuring - minimum of 75 hours of instruction:

- a. Nail theory, nail structure, and composition;
- b. Nail procedures, including manicuring, pedicuring, and nail extensions; and
- c. Electric filing.

13. Skin care - minimum of 160 hours of instruction:

- a. Client skin analysis and consultation;
- b. Effleurage and related movements and manipulations of the face and body;
- c. Cleansing procedures;
- d. Masks;
- e. Extraction techniques;
- f. Machines, equipment, and electricity;
- g. Manual facials and treatments;
- h. Machine, electrical facials, and treatments; and
- i. General procedures and safety measures.

14. Makeup - minimum of 35 hours of instruction:

- a. Setup, supplies, and implements;
- b. Color theory;
- c. Consultation;

- d. General and special occasion application;
- e. Camouflage;
- f. Application of false lashes and lash extensions;
- g. Lash and brow tinting;
- h. Lash perming;
- i. Lightening of the hair on the body except scalp; and
- j. General procedures and safety measures.

15. Body and other treatments - minimum of 20 hours of instruction:

- a. Body treatments;
- b. Aromatherapy; and
- c. General procedures and safety measures.

16. Hair removal - minimum of 35 hours of instruction:

- a. Client consultation and analysis;
- b. Waxing;
- c. Mechanical hair removal;
- d. Tweezing and threading; and
- e. Chemical hair removal.

~~E. Each nail school shall submit with its application a curriculum, including a course syllabus, a detailed course content outline, a sample of five lesson plans, a sample of evaluation methods to be used, and a breakdown of hours and performances for all courses to be taught that will lead to licensure.~~ F. The outline for nail care shall must include the following:

1. Orientation - minimum of five hours of instruction:
  - a. School policies; and
  - b. State law, regulations, and professional ethics;
2. Sterilization, sanitation, bacteriology, and safety; - minimum of 35 hours of instruction.
3. Anatomy and physiology; - minimum of 15 hours of instruction.
4. Diseases and disorders of the nail; - minimum of 10 hours of instruction.
5. Nail procedures (i.e., manicuring, pedicuring, and nail extensions); ~~and~~ - minimum of 75 hours of instruction.
6. Nail theory and nail structure and composition - minimum of 10 hours of instruction.

~~F. Each waxing school shall submit with its application a curriculum, including a course syllabus, a detailed course content outline, a sample of five lesson plans, a sample of evaluation methods to be used, and a breakdown of hours and performances for all courses to be taught that will lead to licensure.~~ G. The outline for waxing shall must include the following:

1. Orientation - minimum of 10 hours of instruction:

- a. School policies;
- b. State law, regulations, and professional ethics; ~~and~~
- c. Personal hygiene;
- d. Salon management; and
- e. Care of equipment.

2. Skin care theory, structure, composition, and treatment - minimum of 30 hours of instruction:

- a. Analysis;
- b. Anatomy and physiology;
- c. Diseases and disorders of the skin;
- d. Health sterilization, sanitation, bacteriology, and safety, including infectious disease control measures; and
- e. Temporary removal of hair.

~~3. Skin theory, skin structure, and composition.~~

~~4. 3. Client consultation - minimum of 10 hours of instruction:~~

- a. Health conditions;
- b. Skin analysis;
- c. Treatments;
- d. Client expectations; and
- e. Health forms and questionnaires.

~~5. 4. Waxing procedures for brow, lip, facial, legs, arms, underarm, chest, back, and bikini areas - minimum of 35 hours of instruction:~~

- a. Fundamentals;
- b. Safety rules; and
- c. Procedures.

~~6. 5. Wax treatments - minimum of 30 hours of instruction:~~

- a. Analysis;
- b. Disorders and diseases;
- c. Manipulations; and
- d. Treatments.

~~7. Salon management:~~

- ~~a. Business ethics; and~~
- ~~b. Care of equipment.~~

~~G. H.~~ A licensed school with an approved barber, master barber, dual barber/master barber, cosmetology, nail technician, or wax technician program may conduct an assessment of a transfer student's competence in the respective profession and, based on the assessment, give credit toward the hours requirements specified in the respective subsection of this section and 18VAC41-20-220.

The school shall must make the assessment based on a review of the student's transcript, documentation of hours and performances provided to the student by the school from where the student is transferring, and the successful completion of a ~~board approved~~ competency examination administered by the

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school. The school may also request a copy of a catalog or bulletin giving the full course description when making the evaluation. The number of credit hours awarded ~~shall~~ must not exceed the actual hours of instruction verified on the transcript or the number of hours specified in the board-approved curriculum for a specific topic.

**18VAC41-20-220. Hours of instruction and performances**  
**Practical performance requirements.**

~~A. Curriculum and performance requirements shall be offered over a minimum of 1,100 clock hours for barbering, 400 clock hours for master barbering, 1,500 clock hours for dual barber/master barber program, 1,000 hours for cosmetology, 150 clock hours for nail care, and 115 clock hours for waxing.~~

~~B. A.~~ The curriculum requirements for barbering must include the following minimum performances:

Hair and scalp treatments	10
<u>Straight razor shaving on face and neck</u>	<u>12</u>
Hair services	<del>320</del> <u>285</u>
Hair coloring (including tinting, temporary rinses, and semi-permanent color)	<del>35</del> <u>20</u>
Basic facials	5
TOTAL	<del>370</del> <u>332</u>

~~C. B.~~ The curriculum requirements for master barbering must include the following minimum performances:

Bleaching and frosting	<del>40</del> <u>20</u>
Cold permanent waving or chemical relaxing	<del>25</del> <u>30</u>
<u>Hair shaping</u>	50
Wig care, styling, placing on model	<del>5</del> <u>15</u>
Finger waving and thermal waving	30
<u>Waxing limited to the scalp</u>	<u>5</u>
TOTAL	<del>120</del> <u>100</u>

~~D. C.~~ The curriculum requirements for dual barber/master barber program must include the following minimum performances:

Hair and scalp treatments	10
Hair <del>styling</del> services	<del>320</del> <u>285</u>
<u>Straight razor shaving on face and neck</u>	<u>12</u>
Bleaching and frosting	<del>40</del> <u>20</u>

Hair coloring (including tinting, temporary rinses, and semi-permanent color)	<del>35</del> <u>20</u>
Cold permanent waving or chemical relaxing	<del>25</del> <u>30</u>
<u>Hair shaping</u>	50
Wig care, styling, placing on model	<del>5</del> <u>15</u>
Finger waving and thermal waving	30
Basic facials <del>and waxings</del>	5
<u>Waxing limited to the scalp</u>	<u>5</u>
TOTAL	<del>490</del> <u>432</u>

~~E. D.~~ The curriculum requirements for cosmetology must include the following minimum performances:

Shampooing, rinsing, and scalp treatments, for all hair types, including textured hair	20
Hair styling, for all hair types, including textured hair	60
Hair cutting, for all hair types, including textured hair	60
Permanent waving-chemical relaxing, for all hair types, including textured hair	60
Hair coloring and bleaching, for all hair types, including textured hair	50
Wigs, hair pieces, and related theory	5
Straight razor shaving on face and neck	12
Manicuring and pedicuring	15 procedures
Individual sculptured nails and nail tips	30
Body and other treatments	5
Makeup	20
Skin care	15
Hair removal	15
TOTAL	367

~~F. E.~~ The curriculum requirements for nail care must include the following minimum performances:

Manicures	<del>30</del> <u>25</u>
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Pedicures	<del>45</del> <u>20</u>
Individual sculptured nails and nail tips	<del>200</del> <u>170</u>
Individual removals	<del>40</del> <u>20</u>
<del>Individual nail wraps</del> <u>UV/LED gel nails</u>	20
TOTAL	<del>275</del> <u>255</u>

~~G. F.~~ The curriculum requirements for waxing must include the following minimum performances:

Arms	<del>4</del> <u>2</u>
Back	<del>2</del> <u>1</u>
Bikini area	<del>6</del> <u>4</u>
Brows	12
Chest	1
Facial (i.e., face, chin, and cheek and lip)	6
Leg	<del>3</del> <u>2</u>
Underarm	2
TOTAL	<del>36</del> <u>30</u>

**18VAC41-20-240. Records.**

A. Schools ~~shall~~ must maintain on the premises of each school and available for inspection by the board or any of its agents the following records for the period of a student's enrollment through five years after the student's completion of the curriculum, termination, or withdrawal:

1. Enrollment application containing student's signature and a two-inch by two-inch color head and shoulders photograph;
2. Daily record of attendance containing student's signature;
3. Student clock hours containing student's signature and method of calculation;
4. Practical performance completion sheets containing student's signature;
5. Final transcript; ~~and~~
6. Course descriptions; and
7. All other relevant documents that account for a student's accrued clock hours and practical applications.

B. Schools ~~shall~~ must produce to the board or any of its agents within 10 days of the request any document, book, or record concerning any student; or for which the licensee is required to maintain records; for inspection and copying by the board or its agents. The board may extend such timeframe upon a

showing of extenuating circumstances prohibiting delivery within such 10-day period.

C. Schools ~~shall~~ must, within 21 days upon receipt of a written request from a student, provide documentation of hours and performances completed by the student as required to be maintained by subsection A of this section.

D. Prior to a school changing ownership or a school closing, the school is required to provide to current students documentation of hours and performances completed.

~~E. For a period of one year after a school changes ownership, the school shall provide, within 21 days upon receipt of a written request from a student, documentation of hours and performances completed by a current student.~~

**18VAC41-20-250. Reporting.**

~~A. Schools shall~~ Each school must provide, in a manner, format, and frequency prescribed by the board, a roster of all current students and a roster of students who attended in the preceding six months prior to the reporting deadline student rosters to the board quarterly, no later than January 15, April 15, July 15, and October 15 of each year.

1. Each school must provide a roster of all enrolled students and a roster of students who attended in the preceding six months prior to the reporting deadline.
2. Students who are enrolled but have not begun classes must be included in the report.

~~B. Within 30 days of ceasing to operate, whether through dissolution or alteration of the business entity, the school shall provide a written report to the board on performances and hours of each of its students who have not completed the program Rosters must be submitted via a secure link provided by the board on the board-supplied document, which will include the student's full name, date of birth, program type, date enrolled, the total number of hours to-date, and the date completed, terminated, or withdrawn.~~

C. Schools with no students enrolled but with the intention of operating must submit a report stating that information.

D. Schools with no students enrolled that no longer wish to operate should terminate the license in accordance with this chapter.

**18VAC41-20-260. Display of license.**

A. Each shop, salon, or school ~~shall~~ must ensure that all current licenses, certificates, or permits issued by the board ~~shall be~~ are displayed in plain view of the public either in the reception area or at individual work stations of the shop, salon, or school. Duplicate licenses, certificates, or permits ~~shall~~ must be posted in a ~~like~~ similar manner in every shop, salon, or school location where the regulant provides services.

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B. Each shop, salon, or school ~~shall~~ must ensure that no employee, licensee, student, or apprentice performs any service beyond the scope of practice for the applicable license.

C. All licensees, certificate holders, and permit holders ~~shall~~ must operate under the name in which the license, certificate, or permit is issued.

D. Unless also licensed as a cosmetologist, a barber or master barber is required to hold a separate nail technician or wax technician license if performing nail care or waxing.

E. ~~All Proof of apprenticeship cards registration~~ issued by the applicable agency of the Virginia Department of ~~Labor Workforce Development and Industry (DOLI)~~ shall ~~shall~~ must be displayed in plain view of the public either in the reception area or at individual work stations of the shop or salon. The apprentice sponsor ~~shall~~ must require each apprentice to wear a badge clearly indicating ~~his~~ status as a ~~DOLI VDWD~~ VDWDA registered apprentice.

## **18VAC41-20-270. Sanitation and safety standards for shops, salons, and schools.**

### A. Sanitation and safety standards.

1. Any shop, salon, or school, or facility where barber, master barber, cosmetology, or nail or waxing wax services are delivered to the public must be clean and sanitary at all times.

2. Mobile shops and salons must be stationary while providing services, and may not operate where prohibited by local ordinance.

3. Compliance with these rules does not confer compliance with other requirements set forth by federal, state, and local laws, codes, ordinances, and regulations as they apply to business operation, physical construction and maintenance, safety, and public health.

4. Licensees shall must take sufficient measures to prevent the transmission of communicable and infectious diseases and comply with the sanitation standards identified in this section and must ensure that all employees likewise comply.

### B. Disinfection and storage of implements.

1. A Each barber, master barber, cosmetologist, nail technician, and wax technician must have a wet disinfection unit is a container large enough to hold a disinfectant solution in which the objects to be disinfected are completely immersed at the individual's station and must meet the standards in the definition of wet disinfection requirements.

A wet disinfection unit must have a cover to prevent contamination of the solution. The solution must be an Environmental Protection Agency (EPA) registered disinfectant that is bactericidal, virucidal, and fungicidal. Disinfectant solutions shall and any disinfection solutions must be used according to manufacturer's directions.

2. Disinfection of multiuse ~~items~~ implements constructed of hard, nonporous materials such as metal, glass, or plastic that the manufacturer designed for use on more than one client, including clippers, scissors, combs, and nippers is to be carried out in the following manner prior to servicing a client:

a. Remove all foreign matter from the object, utilizing a brush if needed. Drill bits are to be soaked in acetone and scrubbed with a wire brush to remove all foreign matter;

b. Wash thoroughly with hot water and soap;

c. Rinse thoroughly with clean water and dry thoroughly with a clean paper towel;

d. Fully immerse implements into wet disinfectant solution for a minimum of 10 minutes; and

e. After immersion, rinse articles, dry thoroughly with a clean paper towel, and store in a clean, pre-disinfected, and dry cabinet, drawer, or ~~nonairtight~~ sealed covered container, or leave instruments in ~~an EPA-registered a wet disinfection storage solution unit~~ used according to manufacturer's directions.

3. Single-use items designed by the manufacturer for use on no more than one client should be discarded immediately after use on each individual client, including powder puffs, lip color, cheek color, sponges, styptic pencils, ~~or~~ nail care implements, or disposable razors. The disinfection and reuse of these items is not permitted and the use of single-use items on more than one client is prohibited.

4. For the purpose of recharging, rechargeable clippers may be stored in an area other than in a closed cabinet or container. This area ~~shall~~ must be clean and the cutting edges of any clippers are to be disinfected.

5. Electrical clipper blades ~~shall~~ must be disinfected before and after each use. If the clipper blade cannot be removed, the use of a spray or foam used according to the manufacturer's instructions will be acceptable, provided that the disinfectant is an EPA-registered disinfectant that is bactericidal, virucidal, and fungicidal, and that the entire handle is also disinfected by wiping with the disinfectant solution.

6. All wax pots ~~shall~~ must be cleaned and disinfected with an EPA-registered disinfectant that is bactericidal, virucidal, and fungicidal and with no sticks left standing in the wax at any time. The area immediately surrounding the wax pot ~~shall~~ must be clean and free of clutter, waste materials, spills, and any other items that may pose a hazard.

~~7. Each barber, master barber, cosmetologist, nail technician, and wax technician must have a wet disinfection unit at his station.~~

~~8. Sinks, bowls, 7. Foot~~ tubs, whirlpool units, air-jetted basins, pipe-less units, and non-whirlpool basins used in the performance of nail care ~~shall~~ must be maintained in

accordance with manufacturer's recommendations. They shall must be cleaned and disinfected immediately after each client in the following manner:

- a. Drain all water and remove all debris;
- b. Clean the surfaces and walls with soap or detergent to remove all visible debris, oils, and product residue and then rinse with water;
- c. Disinfect ~~by spraying or wiping the surface~~ with an EPA-registered disinfectant that is bactericidal, virucidal, and fungicidal in accordance with manufacturer directions for pedicure units; and
- d. Wipe dry with a clean towel.

## C. General sanitation and safety requirements.

1. Service chairs, wash basins, shampoo sinks, workstations and workstands, and back bars shall as necessitated by the services performed, must be clean;
2. The floor surface in all work areas must be of a washable surface other than carpet. ~~The floor must be kept clean and free of hair, nail clippings, dropped articles, spills, clutter, trash, electrical cords, other waste materials, and any other items that may pose a hazard;~~
3. All furniture, fixtures, walls, floors, windows, and ceilings shall must be clean and in good repair and free of water seepage and dirt. Any mats shall must be secured or shall must lie flat;
4. A fully functional bathroom in the same building with a working toilet and sink must be available for clients. There must be hot and cold running water. Fixtures must be in good condition. The bathroom must be lighted and sufficiently ventilated. ~~If there is a window, it must have a screen.~~ There must be soap and clean single-use towels or hand air-drying device for the client's use. Laundering of towels is allowed, space permitting. The bathroom must not be used as a work area or for the open storage of chemicals. For facilities newly occupied after January 1, 2017, the bathroom shall must be maintained exclusively available for client use ~~or shared with other businesses in the same building. If the bathroom is shared, the bathroom shall be available for client use and within 200 feet of the entrance~~ and must adhere to all sanitation requirements of this chapter;
5. ~~General areas for client use must be neat and clean with a waste receptacle for common trash;~~
6. 5. Electrical cords shall must be placed to prevent entanglement by the client or licensee, and electrical outlets shall must be covered by plates;
7. 6. All sharp tools, implements, and heat-producing appliances shall must be in safe working order at all times, safely stored, and placed so as to prevent any accidental injury to the client or licensee;

~~8.~~ 7. The salon area shall must be sufficiently ventilated to exhaust hazardous or objectionable airborne chemicals, and to allow the free flow of air; and

~~9.~~ 8. Adequate lighting shall must be provided.

## D. Articles, tools, and products.

1. Clean towels, robes, or other linens shall must be used for each patron. Clean towels, robes, or other linens shall must be stored in a clean, pre-disinfected, and dry cabinet, drawer, or nonairtight covered container. Soiled towels, robes, or other linens shall must be stored in a container enclosed on all sides including the top, except if stored in a separate laundry room;
2. Whenever a haircloth is used, a clean towel or neck strip shall must be placed around the neck of the patron to prevent the haircloth from touching the skin;
3. Soiled implements must be removed from the tops of work stations immediately after use;
4. Any multiuse article, tool, or product that cannot be disinfected by full immersion as specified in subdivision B 2 of this section or cleaned according to manufacturer's recommendation, including natural hairbrushes or neck dusters, is prohibited from use;
5. Lotions, ointments, creams, and powders shall must be accurately labeled and kept in closed containers. A clean spatula, other clean tools, or clean disposable gloves shall must be used to remove bulk substances such as creams or ointments from jars. Sterile cotton or sponges shall must be used to apply creams, lotions, and powders. Cosmetic containers shall must be covered after each use;
5. ~~6.~~ For nail care, if a sanitary container is provided for a client, the sanitary container shall must be labeled and implements shall must be used solely for that specific client. Disinfection shall must be carried out in accordance with subdivisions B 1 and B 2 of this section;
6. 7. No substance other than a sterile styptic powder or sterile liquid astringent approved for homeostasis and applied with a sterile single-use applicator shall must be used to check bleeding; and
7. 8. Any disposable material making contact with blood or other body fluid shall must be double-bagged, labeled as a biohazard, and disposed of in a sealed plastic bag and removed from the shop, salon, school, or facility in accordance with the guidelines of the Virginia Department of Health closed receptacle.

## E. Chemical storage and emergency information.

1. Shops, salons, schools, and facilities shall must have in the immediate working area a binder with all Safety Data Sheets (SDS) provided by manufacturers for any chemical products used;

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2. Shop, salons, schools, and facilities ~~shall~~ must have a blood spill clean-up kit in the work area that contains at minimum latex gloves, two 12-inch by 12-inch towels, one disposable trash bag, bleach, one empty spray bottle, and one mask with face shield or any Occupational Safety and Health Administration (OSHA) approved blood spill clean-up kit;

3. Flammable chemicals ~~shall~~ must be labeled and stored in a nonflammable storage cabinet or a properly ventilated room; and

4. Chemicals that could interact in a hazardous manner (e.g., oxidizers, catalysts, and solvents) ~~shall~~ must be labeled and separated in storage.

## F. Client health guidelines.

1. All employees providing client services ~~shall~~ must cleanse their hands with a soap product prior to providing services to each client. Licensees shall require that clients for nail care services ~~shall~~ must cleanse their hands immediately prior to the requested nail care service;

2. An artificial nail ~~shall~~ must only be applied to a healthy natural nail;

3. A nail drill or motorized instrument ~~shall~~ must be used ~~only on the free edge of the nail~~ artificial nail surface only;

4. No shop, salon, school, or facility providing cosmetology or nail care services ~~shall~~ will have on the premises cosmetic products containing hazardous substances that have been banned by the U.S. Food and Drug Administration (FDA) for use in cosmetic products;

5. No product ~~shall~~ will be used in a manner that is disapproved by the FDA; and

6. All regulated services must be performed in a facility that is in compliance with current local building and zoning codes.

G. In addition to any requirements set forth in this section, all licensees and temporary ~~permit~~ license holders ~~shall~~ must adhere to regulations and guidelines established by the Virginia Department of Health and the Occupational Safety and Health Compliance Division of the Virginia Department of Labor and Industry.

H. All shops, salons, schools, and facilities ~~shall~~ must immediately report the results of any inspection of the shop, salon, or school by the Virginia Department of Health as required by § 54.1-705 of the Code of Virginia.

I. All shops, salons, schools, and facilities ~~shall~~ must maintain a self-inspection form on file to be updated on an annual basis, and kept for five years, so that it may be requested and reviewed by the board at its discretion.

## **18VAC41-20-280. Grounds for license or certificate revocation ~~or~~, suspension, or probation; denial of application, renewal, or reinstatement; or imposition of a monetary penalty.**

The board may, in considering the totality of the circumstances, ~~fine any licensee, certificate holder, or permit holder; suspend or revoke or refuse to issue, renew, or reinstate any license; or certificate, or permit; or deny any application; impose a monetary penalty; place a license or certificate on probation with such terms and conditions and for such time as the board may designate; suspend a license or certificate for a stated period of time; or revoke a license or certificate issued under the provisions of Chapter 7 (§ 54.1-700 et seq.) of Title 54.1 of the Code of Virginia and this chapter if it finds that the licensee, certificate holder, ~~permit~~ temporary license holder, or applicant:~~

1. Is incompetent; or negligent in practice; or ~~incapable mentally or physically~~ unable, as a result of any mental or physical condition, as those terms are generally understood in the profession, to skillfully and safely (i) practice as a barber, master barber, cosmetologist, nail technician, or wax technician; or ~~to~~ (ii) operate a shop, salon, or school;

2. Is convicted of fraud or deceit in the practice or teaching of barbering, master barbering, cosmetology, nail care, or waxing ~~or~~, fails to teach the board-approved curriculum as provided for in this chapter, or fails to comply with 18VAC41-20-210 H when making an assessment of credit hours awarded;

3. Attempts to obtain; or has obtained, renewed, or reinstated a license, certificate, or temporary license by false or fraudulent representation;

4. Violates ~~or~~, induces others to violate, or cooperates with others in violating; any of the provisions of this chapter or Chapter 7 (§ 54.1-700 et seq.) of Title 54.1 of the Code of Virginia or any local ordinance or regulation governing standards of health and sanitation of the establishment in which any barber, master barber, cosmetologist, nail technician, or wax technician may practice or offer to practice;

5. Offers, gives, or promises anything of value or benefit to any federal, state, or local employee for the purpose of influencing that employee to circumvent, in the performance of his duties, any federal, state, or local law, regulation, or ordinance governing barbering, master barbering, cosmetology, nail care, or waxing as defined in § 54.1-700 of the Code of Virginia;

6. Fails to respond to the board or any of its agents or provides false, misleading, or incomplete information to an inquiry by the board or any of its agents;

7. Fails or refuses to allow the board or any of its agents to inspect during reasonable hours any licensed shop, salon, or

school for compliance with provisions of Chapter 7 (§ 54.1-700 et seq.) or this chapter;

8. Fails to produce, upon request or demand of the board or any of its agents, any document, book, record, or copy thereof in a licensee's, certificate holder's, temporary license holder's, applicant's, or owner's responsible management's possession or maintained in accordance with ~~these regulations~~ this chapter;

9. Fails to notify the board of a change of name or address in writing within 30 days of the change for each and every license, certificate, or ~~permit~~ temporary license;

10. Makes any misrepresentation or publishes or causes to be published any advertisement that is false, deceptive, or misleading;

11. Fails to notify the board in writing within 30 days of ~~the suspension, revocation, or surrender of a license, certificate, or permit in connection with a final action or disciplinary action in any jurisdiction or of taken against any license, registration, certificate, or permit that has been the subject of disciplinary action~~ temporary license in any jurisdiction by a local, state or national regulatory body;

12. Has been convicted or found guilty, regardless of the manner of adjudication in Virginia or any other jurisdiction of the United States, of a misdemeanor involving moral turpitude, sexual offense, non-marijuana drug distribution, or physical injury or any felony, there being no appeal pending therefrom or the time for appeal having elapsed. Review of convictions shall be subject to the requirements of § 54.1-204 of the Code of Virginia. ~~Any plea of nolo contendere shall be considered a conviction for purposes of this subdivision. The record of a conviction certified or authenticated in such form as to be admissible in evidence under the laws of the jurisdiction where convicted shall be admissible as prima facie evidence of such conviction or guilt.~~

13. Fails to inform the board in writing within 30 days of pleading guilty or nolo contendere or being convicted or found guilty regardless of adjudication of any convictions as stated in subdivision 12 of this section;

14. Allows, as responsible management of a shop, ~~or~~ salon, ~~or school~~, a person who has not obtained a license or a temporary permit license to practice as a barber, master barber, cosmetologist, nail technician, or wax technician unless the person is duly enrolled as a registered apprentice;

15. Allows, as responsible management of a school, a person who has not obtained an instructor certificate or a student instructor temporary ~~permit~~ license to practice as a barber, master barber, cosmetologist, nail technician, or wax technician instructor;

16. Fails to take sufficient measures to prevent transmission of communicable or infectious diseases or fails to comply with sanitary requirements provided for in this chapter or

any local, state, or federal law or regulation governing the standards of health and sanitation for the practices of barbering, master barbering, cosmetology, nail care, or waxing, or the operation of barbershops, cosmetology salons, nail salons, or waxing salons; or

17. Fails to comply with all procedures established by the board and the testing service with regard to conduct at any board examination.

VA.R. Doc. No. R24-7708; Filed March 28, 2025, 9:25 a.m.

## Proposed Regulation

Title of Regulation: **18VAC41-70. Esthetics Regulations (amending 18VAC41-70-10 through 18VAC41-70-40, 18VAC41-70-60, 18VAC41-70-80, 18VAC41-70-90, 18VAC41-70-100, 18VAC41-70-120, 18VAC41-70-140 through 18VAC41-70-200, 18VAC41-70-230 through 18VAC41-70-280; adding 18VAC41-70-15, 18VAC41-70-105; repealing 18VAC41-70-50, 18VAC41-70-110, 18VAC41-70-130, 18VAC41-70-210).**

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

### Public Hearing Information:

June 3, 2025 - 10 a.m. - Department of Professional and Occupational Regulation, 9960 Mayland Drive, Board Room One, Suite 200, Richmond, VA 23233.

Public Comment Deadline: June 20, 2025.

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

Basis: Section 54.1-201 of the Code of Virginia authorizes the Board for Barbers and Cosmetology to promulgate regulations necessary to ensure continued competency and prevent deceptive or misleading practices by practitioners and to effectively administer the regulatory system.

Purpose: The performance of esthetics or master esthetics services by those who lack sufficient expertise poses a risk to the public health, safety, and welfare, including the potential for infection or injury. The board protects the public welfare, in part, by establishing through regulation (i) minimum qualifications of applicants for certification or licensure, provided that all qualifications are necessary to ensure either competence or integrity to engage in the profession or occupation; (ii) minimum standards to ensure continued competency and to prevent deceptive or misleading practices by practitioners; and (iii) requirements to effectively administer the regulatory system administered by the board. The proposed amendments to the regulation include the elimination of provisions that the board does not deem necessary to protect the public health, safety, and welfare, or to effectively administer the licensure program.

Substance: The proposed amendments:

1. Revise, reorganize, and add definitions.

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2. Revise provisions regarding disclosure of prior regulatory discipline for esthetician or master esthetician license applicants to (i) clarify that an applicant must only provide a copy of prior disciplinary actions taken in all jurisdictions and remove unnecessary and duplicative language; (ii) add probation to the types of disciplinary actions that must be reported; (iii) remove an unnecessary requirement that an applicant disclose whether the applicant previously held a license in Virginia as a esthetician or master esthetician; (iv) remove duplicative language providing that the board will decide cases by taking into account the totality of the circumstances; and (v) remove unnecessary language that states that a plea of nolo contendere is considered a disciplinary action and that a copy of the prior disciplinary action is considered prima facie evidence of such disciplinary action.

3. Allow applicants to provide a post office box address as a secondary address to a physical address and provide that mobile spas must provide a physical address where the spa is permanently garaged.

4. Revise the provisions regarding disclosure of prior criminal history for esthetician, master esthetician, spa license, school license, and esthetics instructor certificate applicants to (i) clarify the misdemeanor reporting requirements; (ii) require the disclosure of felony convictions occurring within 10 years, rather than 20 years, of the date of application; and (iii) remove unnecessary language providing that a plea of nolo contendere is considered a conviction and that the record of a conviction will be accepted as prima facie evidence of a conviction.

5. Revise the provisions regarding eligibility to sit for the board-approved esthetician or master esthetician examination to (i) significantly reorganize the provisions, including relocating to the section a provision located in another section that an individual completing a registered apprenticeship is eligible to sit for the license examination; (ii) provide that applicants who have received training outside of the United States must have their degree translated, authenticated, and evaluated by an education evaluation service if credit is being sought for such education; and (iii) add that applicants who completed a training program not substantially equivalent to Virginia's training may submit documentation demonstrating three years of experience as a licensed esthetician or master esthetician in any other state or jurisdiction of the United States, which formerly required a certificate, diploma, or other documentation and six months of experience.

6. Allow for individuals who have completed an apprenticeship program that is substantially equivalent to that required by the regulation to qualify for licensure by endorsement; add provisions enabling individuals endorsing from other states who have completed either a written or practical examination that is substantially equivalent to the Virginia examination to take the other examination in Virginia; add provisions allowing individuals endorsing from other states who completed a training program that is not substantially equivalent to Virginia's training requirements to

substitute three years of work experience for training; and add a provision for licensed instructors.

7. Remove a provision that allows those completing a registered apprenticeship to sit for the license examination. This provision will be relocated to 18VAC41-70-20. The proposed amendment provides that licensed spas where apprentices train must comply with standards for apprenticeship training.

8. Revise the examination requirements and fees section to (i) clarify that the license examination consists of both a practical and a written portion as opposed to separate examinations, (ii) remove an unnecessary provision that failing to appear for a scheduled examination results in forfeit of the examination fee, (iii) remove an unnecessary provision that the examination is administered by the board or a designated testing services, (iv) add a provision from 18VAC41-70-50 that requires any applicant who does not pass a reexamination within one year of the initial examination date to submit a new application, and (v) remove an unnecessary provision that examination records will be maintained for a maximum of five years.

9. Repeal and replace the requirements regarding examination requirements and fees section.

10. Combine training requirements for examiners and chief examiners, as the requirements for completing a board-sponsored or board-approved training are the same for examiners and chief examiners.

11. Clarify that mobile spas must obtain a spa license.

12. Revise the provisions regarding the disclosure of prior regulatory discipline for spa license and school license applicants to (i) clarify that an applicant and responsible management must only provide a copy of prior disciplinary actions taken in all jurisdictions and remove unnecessary and duplicative language; (ii) add probation to the types of disciplinary actions that must be reported; (iii) remove an unnecessary requirement that an applicant disclose whether the applicant or a member of the firm's responsible management previously held a license in Virginia as an esthetics spa or an esthetics school, respectively; (iv) remove duplicative language providing that the board will decide each case by taking into account the totality of circumstances; and (v) remove unnecessary language that states a plea of nolo contendere is considered a disciplinary action and that a copy of the prior disciplinary action is considered prima facie evidence of such disciplinary action.

13. Revise the provisions regarding change of business entity to require that a licensed firm notify the board within 30 days of a change of business entity (e.g., formation of a new firm, dissolution of an existing firm) and destroy the license. Currently, a firm is required to return the license to the board within 30 days of a change of business entity.

14. Remove the unnecessary provision requiring a school license bear the same name and address of the business as this

is an administrative function and not a requirement for the licensee.

15. Revise the provisions regarding change of business entity to require that a licensed firm notify the board within 30 days of a change of business entity (e.g. formation of a new firm, dissolution of an existing firm) and destroy the license. Currently, a firm is required to return the license to the board within 30 days of a change of business entity.

16. Relocate a provision that requires any school ceasing to operate to provide a written report to the board detailing performances and hours of each student who has not completed their program.

17. Merge applicable provisions regarding certification of instructors of master esthetics.

18. Revise the provisions regarding disclosure of prior regulatory discipline for esthetics instructor certificate applicants to (i) clarify that an applicant must only provide a copy of prior disciplinary actions taken in all jurisdictions and remove unnecessary and duplicative language; (ii) add probation to the types of disciplinary actions that must be reported; (iii) remove an unnecessary requirement that an applicant disclose whether the applicant has been previously certified in Virginia as an esthetician or master esthetician; (iv) remove duplicative language that the board will decide each case by taking into account the totality of circumstances; and (v) remove the unnecessary language that states a plea of *nolo contendere* is considered a disciplinary action and that the copy of the prior disciplinary action is considered *prima facie* evidence of such disciplinary action.

19. Combine provisions that require an esthetics instructor certificate applicant hold and maintain a license in their profession to qualify for certification.

20. Revise training qualifications for instructors to require that an esthetics instructor certificate applicant either (i) pass a teaching course in teaching techniques at the post-secondary education level or (ii) pass an instructor examination to qualify for an instructor certificate. A provision allowing for an applicant to qualify based on completing a board-approved instructor training course is removed.

21. Add language that provides certified instructors may teach in any profession for which they hold the underlying license.

22. Add a new section, 18VAC41-70-105 that allows a licensed esthetician or master esthetician to be granted a 12-month temporary student instructor permit while under the direct supervision of a certified instructor.

23. Incorporate provisions that specify that fees are nonrefundable and will not be prorated and change the fee structure for an Instructor Certificate to reduce fees for the renewal of an instructor certificate.

24. Add instructor certificates and certifications as a type of credential that is subject to a renewal notice from the board.

25. Remove the requirement that a licensee must submit a reinstatement application and require just the payment of the reinstatement fee.

26. Revise the reinstatement provisions for individual licensees to require that an individual that fails to reinstate a license or certificate within two years of the expiration date must either (i) apply for licensure or certification as a new applicant and meet current entry requirements or (ii) if the individual was previously licensed in Virginia for a minimum of three years, submit a new application and pass the required examination.

27. Revise provisions for reinstatement of school licenses to provide that a school must submit a reinstatement application and have an inspection to reinstate a license if the expired license has not been renewed for more than 180 days.

28. Revise reinstatement provisions to set the expiration date for a reinstated license to two years from the last day of the month of reinstatement rather than two years from the previous expiration date of the license.

29. Incorporate previous board guidance for licensing school locations by providing that suites or classrooms that are located in a different building or are further than 500 feet from the main office are considered a separate location and must hold an additional license.

30. Revise the provisions regarding school staff to (i) clarify that schools must employ and ensure all training is conducted under the direct supervision of licensed and certified esthetics instructors or master esthetics instructors; (ii) clarify that licensed and certified esthetics and master esthetics instructors may also teach a waxing program; (iii) clarify that licensed and certified master esthetics instructors may also instruct an esthetics program; and (iv) add a provision to require that any change in instructors be reported to the board within 30 days of the change.

31. Reflect current requirements that an esthetics school submit, with a school application, the days and hours of instruction and the program length.

32. Add a requirement that schools include a sample final transcript with a school application.

33. Remove duplicative provisions regarding the minimum length of an esthetics program and master esthetics program.

34. Revise the provisions pertaining to the student assessment a school may conduct to give a student credit toward required training hours to allow for schools to make the assessment based on (i) review of the student's transcript, (ii) documentation of hours and performances provided by the student, or (iii) completion of a competency examination. Currently, schools are required to review the student's transcript and conduct a board-approved competency examination.

35. Remove the curriculum requirements for an instructor program as this will no longer be a method to qualify for an instructor certificate.

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36. Repeal the general school equipment requirements, which are overly burdensome and unnecessary.
37. Remove requirements that a school (i) maintain records of competency examinations used to award credit for five years after the student's completion of the curriculum, termination, or withdrawal and (ii) provide student with documentation of the student's hours and performances upon request for a period of one year after the school changes ownership.
38. Reflect the board's current guidance on submission of school rosters.
39. Replace references to the Department of Labor and Industry (DOLI) with the Virginia Department of Workforce Development and Advancement (VDWDA).
40. Adjust sanitation requirements based on current industry standards and terminology.
41. Provide that mobile spas must be stationary while providing services and may not operate where prohibited by local ordinance.
42. Revise provisions regarding disinfection and storage implements to (i) remove the definition of "wet disinfection unit," which has been added to the definitions section; (ii) provide that a wet disinfection unit must meet the standards established in the definition; (iii) update terms to reflect terminology and tools used in the profession; (iv) remove provisions that are not applicable to the practice of esthetics; (v) add single-use items that should be discarded immediately after each use for a client; and (vi) remove duplicative provisions.
43. Revise provisions for general sanitation and safety requirements to (i) remove a duplicative requirement that the floor must be kept clean and free of materials and other items that may pose a hazard; (ii) reduce the stringency of requirements for bathrooms for facilities newly occupied after January 1, 2017, in which a bathroom must be available for client use and adhere to the sanitation requirements in the chapter; and (iii) remove an unnecessary requirement that central areas for client use be neat and clean and have a waste receptacle.
44. Revise provisions regarding articles, tools, and products to provide that any multiuse article, tool, or product that cannot be disinfected by full immersion or cleaned according to manufacturer instructions, such as natural hairbrushes or neck dusters, are prohibited from use.
45. Revise the requirements for blood exposure procedures.
46. Replace the term "temporary permit" with "temporary license" throughout 18VAC41-70-280.
47. Revise provisions regarding the board's authority to impose discipline to include all types of discipline that are possible if a regulant violates any of the prohibited acts.
48. Prohibit the inability to practice with skill or safety as a result of any mental or physical condition.

49. Revise the prohibited acts regarding failure to teach the curriculum to include master esthetics and failure to produce documents, books, or records to include responsible managers.
50. Provide that failure to notify the board within 30 days of any final disciplinary action taken against a license, registration, certificate, or permit by any local, state, or national regulatory body is prohibited.
51. Remove language that a plea of nolo contendere is considered a conviction and that a certified record of conviction admissible as prima facie evidence of conviction or guilt.
52. Specify that allowing an individual without a student instructor temporary license to practice as an instructor is prohibited.

Issues: The primary advantage of the proposed amendments to the public is that the board will continue to approve applicants and license professionals with safeguards in place to ensure proper competency and standards of conduct. An anticipated advantage is that the regulatory change potentially increases the number of individuals who may qualify for licensure and may, therefore, be available to members of the public to provide services. The primary advantage to the Commonwealth will be the continued successful regulation of estheticians and master estheticians who meet the minimum entry standards. One disadvantage may be to schools that currently offer instructor courses as a method to qualify for an instructor certificate, as acceptance of instructor courses will no longer qualify individuals for instructor certificates. However, it is anticipated that licensees will benefit from easier and less expensive methods to qualify for an instructor certificate.

Department of Planning and Budget Economic Impact Analysis:

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 Code of Virginia and Executive Order 19. The analysis presented represents DPB's best estimate of the potential economic impacts as of the date of this analysis.<sup>1</sup>

Summary of the Proposed Amendments to Regulation. The Board for Barbers and Cosmetology (board) proposes to (i) no longer require completion of an instructor training program to engage in esthetics or master esthetics instruction; (ii) reduce certified instructor renewal and reinstatement fees; (iii) reduce barriers to enter the profession for individuals with training outside of Virginia; (iv) reduce the experience requirements to become a chief examiner; (v) reduce the look back period for disclosure of prior felony convictions; and (vi) make several administrative requirements less stringent.

Background. This regulation applies to those who (i) engage, or offer to engage in, esthetics or master esthetics; (ii) operate a spa; and (iii) operate a school of esthetics or master esthetics;



the regulation requires that such individuals, firms, entities or corporations obtain the appropriate licensure or certification. The board states that to comply with Executive Directive Number One (2022), it reviewed discretionary requirements imposed on regulated parties. The proposed amendments to the regulation discussed below reflect the board's consideration in eliminating current substantive requirements that the board does not deem necessary to protect the public health, safety, and welfare, or to effectively administer the licensure program.

**Estimated Benefits and Costs.** No longer requiring completion of an instructor training program to engage in esthetics or master esthetics instruction. Currently, there are two pathways to engage in esthetics or master esthetics instruction: (i) to complete a post-secondary (community college or a university) education class or (ii) to complete a board-approved instructor training course and pass a board-approved examination in esthetics instruction. According to the Department of Professional and Occupational Regulation (DPOR), the average cost to complete a teaching adult learner's course in Virginia is \$139, which is offered at Virginia universities and community colleges. Completion of this course would satisfy the first pathway for instructors, which does not require passage of the board-approved exam. In contrast, under the second pathway the average cost to receive instructor training through board-approved training programs is \$6,510 per student and requires passing the board-approved exam and paying the associated \$99 fee. Thus, it appears that direct costs to qualify through the first pathway are much lower than the second pathway. Probably driven by the significant cost difference, the majority of applicants (96%) choose the post-secondary education route (49 individuals/year) relative to provider training route (three individuals/year). In this action, the board proposes to eliminate the requirement to complete the instructor training course under the second pathway, such that an applicant would qualify to be an instructor solely based on the exam result. Approximately three individuals per year are approved for an instructor certification through the second pathway. Assuming all three applicants can pass the test without taking training, approximately \$19,530/year ( $\$6,510 \times 3$ ) in total direct savings, as well as other savings in terms of time and effort to complete training, would be expected. However, some of the affected applicants may need training to pass the exam. Such applicants in need of training may still be willing to pay for training voluntarily. Alternatively, such applicants may choose to follow the first pathway instead. There is no information available to ascertain how the affected (approximately three per annum) potential applicants may respond to the proposed change. The potential savings to the affected three applicants would also represent a revenue loss to the training providers up to approximately \$19,530/year. There are currently 32 approved instructor classroom programs for esthetics that would be potentially affected by this change. DPOR asserts that all of these schools offer additional courses and would therefore be unlikely to cease operations because of this change. Additionally, to the extent that some applicants

choose the first pathway, Virginia universities and community colleges would see a combined increase in their revenues of up to \$417/year ( $\$139 \times 3$ ).

**Reduced certified instructor renewal and reinstatement fees.** Under the current regulation, once an instructor certificate is obtained, an instructor must only pay the instructor renewal fee (\$150) but does not have to also pay the underlying license renewal fee (\$105). The board proposes to reduce the instructor renewal fee to \$20 but also proposes to require payment of the underlying license renewal fee (\$105), which would make the total renewal fee \$125 (\$20 plus \$105). This would represent a \$25 savings to each instructor who renews their license. Based on an estimated 126 instructor license renewals per year, the total renewal fee savings are expected to be \$3,150/year ( $\$25 \times 126$ ). Likewise, the same approach is currently used for instructor license reinstatements in that an applicant pays only the \$300 instructor reinstatement fee but not the \$210 reinstatement fee for their underlying license. The board proposes to reduce the \$300 instructor fee to \$40 but also proposes to require the applicant to pay the underlying license reinstatement fee (\$210), which would reduce the total fee amount by \$50 per case ( $\$300$  vs.  $\$250$ ). For the estimated seven reinstatements per year, the total fee reduction amounts to \$350/year. On the other hand, the combined impact of the fee changes represents a \$3,500 ( $\$3,150$  plus  $\$350$ ) reduction in DPOR fee revenues.

**Individuals with training outside of Virginia.** Under the current regulation, individuals who have received training outside Virginia must have training that is substantially equivalent to Virginia's training standards in order to gain Commonwealth licensure. Those lacking Virginia's required training hours must complete additional training. In addition to the training, such candidates must demonstrate six months of work experience to sit for the initial license examination. The proposal departs from the current practice in two ways: (i) those with substantially equivalent training outside the Commonwealth would no longer have to show six months of work experience and (ii) those who do not have substantially equivalent training would also be eligible to take the licensing exam provided they have three years of experience in other states or jurisdictions in the United States. Essentially, the proposed changes under this category would allow more international and domestic individuals to enter the esthetics profession in the Commonwealth.

**Reduced experience requirement to become a chief examiner.** The regulation requires that the practice part of the license exam must be supervised by a chief examiner. Currently, a chief examiner must have five years of experience in the esthetics profession and three years of experience as an examiner. The board proposes to reduce the experience requirements by requiring three years of experience in the profession and one year experience as an examiner. This change would allow an examiner to be a chief examiner more quickly and possibly earn higher wages.

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Reduced look back period for disclosure of prior felony convictions. Currently, applicants for licensure or certification, including responsible management for spas and schools, must disclose all felony convictions within the past 20 years of the date of application. The board proposes to reduce this look back period to 10 years prior to the date of application. With this change more individuals who may have been discouraged to apply based on criminal history may enter the profession. No data exist to determine how many applicants may be affected.

Reduced administrative requirements. The board proposes to make several administrative requirements less stringent. One of the changes would require notification rather than a need to return the firm's license (spas or schools) to the board whenever the legal business entity holding the license changes (e.g. dissolution of a corporation). As a result of the change, firm licensees will no longer have to return a license (i.e. mail or deliver in person) to the board when its legal business entity changes and can simply notify the board and destroy the license instead. Licensees will still need to obtain a new license for the new business entity in order to engage in the regulated activity. Another proposed change for re-licensure of individuals with expired licenses would allow an individual who has been licensed for a minimum of three years to submit a new application and pass the license examination if the individual had failed to reinstate a license after it has been expired for two years. Currently, only individuals who had initially qualified for licensure under a grandfathering provision (i.e., exemption from examination or training requirement) can regain licensure if they have five years of licensed experience and pass the license examination. This change would allow all individuals with expired licenses who have been licensed for at least three years to become licensed again without the need to take required training. Similarly, the proposal would revise the provisions in the section regarding reinstatement of school licenses to provide that a school with an expired license would be required to submit a reinstatement application if the license has been expired for more than 180 days rather than 30 days. The change would allow schools with a license that is expired for more than 30 days, but less than 180 days, to be reinstated. Additionally, during this 180-day time frame, schools will be allowed to reinstate without requiring an inspection, which would eliminate a potential delay. The board proposes to replace the current prohibition on providing a post office box address as an address of record with a provision that allows a post office box to be provided to the board as a secondary address. This change would allow for notices and correspondence from the board to be sent to a post office box instead of a physical address.

Businesses and Other Entities Affected. As of January 1, 2025, there were 5,317 estheticians, 131 esthetics instructors, 2,288 master estheticians, 324 master esthetics instructors, 70 esthetics schools, and 957 esthetics spas.<sup>2</sup> No affected entity appears to be disproportionately affected compared to its peers. The Code of Virginia requires DPB to assess whether an

adverse impact may result from the proposed regulation.<sup>3</sup> An adverse impact is indicated if there is any increase in net cost or reduction in net benefit for any entity, even if the benefits exceed the costs for all entities combined.<sup>4</sup> As noted above, the proposal to no longer require completion of an instructor training program to engage in esthetics or master esthetics instruction would likely reduce the revenues of board-approved training providers by up to a combined amount of \$19,530 per year. Thus, an adverse impact on training providers is indicated.

Small Businesses<sup>5</sup> Affected.<sup>6</sup> As all approved training schools are considered small businesses by the board, the negative revenue impact due to no longer requiring completion of an instructor training program to engage in esthetics or master esthetics instruction would apply to small businesses.

Types and Estimated Number of Small Businesses Affected. There are approximately 32 board-approved training schools. However, only a few of them would be negatively affected given the small number of applicants.

Costs and Other Effects. The costs and other effects on approved training schools is the same as discussed above.

Alternative Method that Minimizes Adverse Impact. There are no clear alternative methods that both reduce adverse impact and meet the intended policy goals.

Localities<sup>7</sup> Affected.<sup>8</sup> The proposed amendments do not introduce costs for localities nor do they disproportionately any locality more than others.

Projected Impact on Employment. Some of the proposed changes would reduce revenues of training schools, which could reduce their demand for labor. However, some of the other changes would reduce barriers to entry into the profession. The net impact on total employment is not clear but likely to be small.

Effects on the Use and Value of Private Property. Similarly, some of the proposed changes would reduce revenues of some of the effected entities but some other changes would likely provide savings in fees or administrative costs. Thus, the impact on the asset values of affected businesses is not clear but likely to be small. No impact on real estate development costs is expected.

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<sup>1</sup> Section 2.2-4007.04 of the Code of Virginia requires that such economic impact analyses determine the public benefits and costs of the proposed amendments. Further the analysis should include but not be limited to: (1) the projected number of businesses or other entities to whom the proposed regulatory action would apply, (2) the identity of any localities and types of businesses or other entities particularly affected, (3) the projected number of persons and employment positions to be affected, (4) the projected costs to affected businesses or entities to implement or comply with the regulation, and (5) the impact on the use and value of private property.

<sup>2</sup> Data source: DPOR.

<sup>3</sup> Pursuant to § 2.2-4007.04 D: In the event this economic impact analysis reveals that the proposed regulation would have an adverse economic impact on businesses or would impose a significant adverse economic impact on a locality, business, or entity particularly affected, the Department of Planning and Budget shall advise the Joint Commission on Administrative Rules, the House Committee on Appropriations, and the Senate Committee on Finance.

Statute does not define "adverse impact," state whether only Virginia entities should be considered, nor indicate whether an adverse impact results from regulatory requirements mandated by legislation.

<sup>4</sup> Statute does not define "adverse impact," state whether only Virginia entities should be considered, nor indicate whether an adverse impact results from regulatory requirements mandated by legislation. As a result, DPB has adopted a definition of adverse impact that assesses changes in net costs and benefits for each affected Virginia entity that directly results from discretionary changes to the regulation.

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

<sup>6</sup> If the proposed regulatory action may have an adverse effect on small businesses, § 2.2-4007.04 requires that such economic impact analyses include: (1) an identification and estimate of the number of small businesses subject to the proposed regulation, (2) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the proposed regulation, including the type of professional skills necessary for preparing required reports and other documents, (3) a statement of the probable effect of the proposed regulation on affected small businesses, and (4) a description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation. Additionally, pursuant to § 2.2-4007.1 of the Code of Virginia, if there is a finding that a proposed regulation may have an adverse impact on small business, the Joint Commission on Administrative Rules shall be notified.

<sup>7</sup> "Locality" can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulatory change are most likely to occur.

<sup>8</sup> Section 2.2-4007.04 defines "particularly affected" as bearing disproportionate material impact.

**Agency Response to Economic Impact Analysis:** The Board for Barbers and Cosmetology concurs with the economic impact analysis prepared by the Department of Planning and Budget.

**Summary:**

*The proposed amendments (i) remove the required completion of an instructor training program to engage in esthetics or master esthetics instruction; (ii) reduce certified instructor renewal and reinstatement fees; (iii) reduce barriers to enter the esthetics profession for individuals with training outside of Virginia; (iv) reduce the experience requirements to become a chief examiner; (v) reduce the look-back period for disclosure of prior felony convictions; (vi) revise fee provisions; (vii) revise reinstatement provisions; (viii) update standards of practice, including sanitation and safety standards for spas and schools; and (ix) make several administrative requirements less stringent.*

**18VAC41-70-10. Definitions.**

**A.** The following words and terms when used in this chapter shall have the following meanings unless the context clearly indicates otherwise. All terms defined in Chapter 7 (§ 54.1-700 et seq.) of Title 54.1 of the Code of Virginia are incorporated in this chapter, ascribed to them in § 54.1-700 of the Code of Virginia:

"Board"

"Esthetician"

"Esthetics"

"Esthetics instructor"

"Esthetics spa"

"Master esthetician"

"School of esthetics"

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

"Apprenticeship program" means an approved esthetics or master esthetics training program conducted by an approved registered apprenticeship sponsor.

"Business entity" means a sole proprietorship, partnership, corporation, limited liability company, limited liability partnership, or any other form of organization permitted by law.

"Clock hour" means a minimum of 50 minutes of supervised or directed instruction and appropriate breaks.

"Credit hour" means a combination of the number of hours in class each week and the number of hours per week in a laboratory by which a school may measure its course work. One unit of credit equals one hour of classroom or online study, two hours of laboratory experience, or three hours of internship or practicum or a combination of the three times the number of weeks in the term. ~~Emerging delivery methodologies may necessitate a unit of undergraduate credit to be measured in nontime base methods. These courses shall use the demonstration of competency, proficiency, or fulfillment of learning outcomes to ensure these courses are equivalent to traditionally delivered courses.~~

"Direct supervision" means that (i) a Virginia licensed esthetician or master esthetician ~~shall be~~ is present in the esthetics spa or esthetics school at all times when services are being performed by a temporary license holder or ~~student~~ registered apprentice or (ii) a Virginia licensed and certified esthetician or master esthetician instructor or a student instructor temporary license holder is present in the esthetics school at all times when services are being performed by a student, student instructor, or temporary license holder.

"Endorsement" means a method of obtaining a license by a person who is currently licensed in another state or jurisdiction.

"Each and every location" means, for the purposes of schools with multiple suites or classrooms, a single location is one that is enclosed under one roof and where all classrooms and suites are within 500 feet of the main office.

"Firm" means any business entity recognized under the laws of the Commonwealth of Virginia.

~~"Licensee" means any sole proprietorship, partnership, corporation, limited liability company, limited liability~~

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partnership, or any other form of organization permitted by law individual or firm holding a license issued by the Board for Barbers and Cosmetology, as defined in § 54.1-700 of the Code of Virginia board.

"Post-secondary educational level" means an accredited college or university that is approved or accredited by the Southern Association of Colleges and Schools Commission on Colleges or by an accrediting agency that is recognized by the U.S. Secretary of Education.

"Reasonable hours" means the hours between 9 a.m. and 5 p.m.; however, if the licensee is generally not substantially open to the public during the same hours, "reasonable hours" means the business hours when the licensee is open to the public.

"Reinstatement" means having a license restored to effectiveness after the expiration date has passed.

"Renewal" means continuing the effectiveness of a license or certificate for another period of time.

"Responsible management" means the following individuals:

1. The sole proprietor of a sole proprietorship;
2. The partners of a general partnership;
3. The managing partners of a limited partnership;
4. The officers of a corporation;
5. The managers of a limited liability company;
6. The officers or directors of an association ~~or both~~; and
7. Individuals in other business entities recognized under the laws of the Commonwealth as having a fiduciary responsibility to the firm.

"Sole proprietor" means any individual, not a corporation, who is trading under his that individual's own name or under an assumed or fictitious name pursuant to the provisions of §§ 59.1-69 through 59.1-76 of the Code of Virginia.

"Substantially equivalent exam" means an examination administered by the licensing entity that covers Virginia's scope of practice for that profession.

"Substantially equivalent training" means at least 80% of the hours required in Virginia and curriculum content covering Virginia's scope of practice for that profession.

~~"Virginia state institution" for the purposes of this chapter~~ means any institution approved by the Virginia Department of Education.

"Wet disinfection unit" is a container large enough to hold an Environmental Protection Agency (EPA) registered disinfectant that is a bactericidal, virucidal, and fungicidal solution in which the objects to be disinfected are completely immersed.

## **18VAC41-70-15. Gratuitous services.**

Any individual who engages in esthetics or master esthetics without receiving compensation, reward, or obligation is considered to be performing gratuitous services and is exempt from the provisions of this chapter. Gratuitous services do not include services provided at no charge when goods are purchased.

## **18VAC41-70-20. General requirements for an esthetician license or master esthetician license.**

A. Any individual wishing to engage in esthetics or master esthetics ~~shall~~ must obtain a license in compliance with § 54.1-703 of the Code of Virginia and meet the following qualifications:

1. The applicant ~~shall~~ must be in good standing as a licensed esthetician or master esthetician in Virginia and all other jurisdictions where licensed, certified, or registered. The applicant ~~shall disclose to the board at the time of application for licensure~~ must provide a copy of any disciplinary action taken in Virginia and all other jurisdictions ~~in connection with the applicant's practice as an esthetician to the board at the time of application for licensure.~~ This includes monetary penalties, fines, probation, suspensions, revocations, surrender of a license in connection with a disciplinary action, or voluntary termination of a license. ~~The applicant shall disclose to the board at the time of application for licensure whether he has been previously licensed in Virginia as an esthetician or master esthetician.~~

Upon review of an applicant's prior disciplinary action, the board, in its discretion, may deny licensure to any applicant ~~wherein who~~ it deems ~~the applicant is~~ unfit or unsuited to engage in esthetics or master esthetics. ~~The board will decide each case by taking into account the totality of the circumstances. Any plea of nolo contendere or comparable plea shall be considered a disciplinary action for the purposes of this section. The applicant shall provide a certified copy of a final order, decree, or case decision by a court, regulatory agency, or board with the lawful authority to issue such order, decree, or case decision, and such copy shall be admissible as prima facie evidence of such disciplinary action.~~

2. The applicant ~~shall~~ must disclose the applicant's physical address. A post office box ~~is not acceptable~~ may be provided as a secondary address.

3. The applicant ~~shall~~ must sign, as part of the application, a statement certifying that the applicant has read and understands the Virginia esthetics license laws and this chapter.

4. In accordance with § 54.1-204 of the Code of Virginia, each applicant ~~shall~~ must disclose the following information regarding criminal convictions in Virginia and all other jurisdictions:

- a. All misdemeanor convictions ~~involving moral turpitude, sexual offense, non-marijuana drug distribution, or physical injury~~ within two years of the date of the application involving moral turpitude, sexual offense, non-marijuana drug distribution, or physical injury; and
- b. All felony convictions within ~~20~~ 10 years of the date of application.

Any plea of nolo contendere shall be considered a conviction for purposes of this subsection. The record of a conviction received from a court shall be accepted as prima facie evidence of a conviction or finding of guilt. The board, in its discretion, may deny licensure to any applicant in accordance with § 54.1-204 of the Code of Virginia.

5. The applicant ~~shall~~ must provide evidence satisfactory to the board that the applicant has passed the board-approved examination requirement administered either by the board or by independent examiners.

**B. Eligibility to sit for board-approved examination.**

1. Training in the Commonwealth of Virginia. Any person completing ~~an approved esthetics training program or a master esthetics training program in a Virginia licensed esthetics school~~ shall be one of the following programs is eligible for the applicable examination:

- a. An approved esthetics or master esthetics training program in a Virginia licensed esthetics or master esthetics school; or
- b. A registered apprenticeship.

2. Training outside of the Commonwealth of Virginia.

- a. Any person completing esthetics training or an apprenticeship program that is substantially equivalent to the Virginia program but is outside of the Commonwealth of Virginia must submit to the board documentation of the successful completion of training to be eligible for examination. If less than the required hours of esthetics training was completed, an Applicants who have earned a degree from an institution outside the United States must have the degree translated, authenticated, and evaluated by an education evaluation service if the applicant is seeking credit for the education. The board, in its discretion, may decline to accept any evaluation submitted by an applicant.
- b. An applicant who has completed a training or apprenticeship program that is not substantially equivalent to Virginia's training must submit a certificate, diploma, or other documentation acceptable to the board verifying the completion of a substantially equivalent esthetics course and documentation of six months three years of work experience. An applicant should provide a work history demonstrating three years of experience as ~~an~~ a licensed esthetician in order to be eligible for the or master esthetician examination in any other state or jurisdiction of the United States on a form provided by the board.

**18VAC41-70-30. License by endorsement.**

A. Upon proper application to the board, any person currently licensed to practice as an esthetician or master esthetician or who is a licensed instructor in the respective profession in any other state or jurisdiction of the United States and who has completed both a training or apprenticeship program and a written examination and a practical examination that are substantially equivalent to those ~~the training and examination~~ required by this chapter may be issued an esthetician or master esthetician license or the respective instructor certificate without an examination. The applicant must also meet the requirements set forth in 18VAC41-70-20 A.

B. Applicants for licensure by endorsement who have completed an equivalent training or apprenticeship program and whose state only utilizes one licensing examination (written or practical) that is substantially equivalent to that required by this chapter may take the other examination (written or practical) in Virginia to qualify for licensure.

C. Applicants for licensure by endorsement who have completed a training or apprenticeship program that is not substantially equivalent to Virginia's training but otherwise meet all the requirements listed in subsection A of this section may substitute three years of work experience for training. Applicants must provide a work history demonstrating three years of licensed experience in any other state or jurisdiction of the United States on a form provided by the board.

**18VAC41-70-35. Apprenticeship training.**

~~A. Licensed estheticians and master estheticians who train apprentices shall must comply with the standards for apprenticeship training established by the Division of Registered Apprenticeship of the Virginia Department of Labor and Industry and the Virginia Board for Barbers and Cosmetology. Owners of esthetics spas who train apprentices shall comply with the standards for apprenticeship training established by the Division of Registered Apprenticeship of the Virginia Department of Labor and Industry.~~

B. Any person completing the Virginia apprenticeship program in esthetics or master esthetics shall be eligible for examination Licensed spas where apprentices train must comply with the standards for registered apprenticeship training.

**18VAC41-70-40. Examination requirements and fees.**

A. Applicants for initial licensure shall must pass both a the practical and written examination and a practical portion of the examination approved by the board. The examinations may be administered by the board or by a designated testing service.

B. Any applicant who passes one part of the examination shall will not be required to take that part again, provided both parts are passed within one year of the initial examination date.

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~~C. Any candidate failing to appear as scheduled for examination shall forfeit the examination fee.~~

~~D. C.~~ The fee for examination or reexamination is subject to contracted charges to the board by an outside vendor. These contracts are competitively negotiated and bargained for in compliance with the Virginia Public Procurement Act (§ 2.2-4300 et seq. of the Code of Virginia). Fees may be adjusted and charged to the candidate in accordance with these contracts. The fee ~~shall will~~ not exceed \$225 per candidate.

~~E. D.~~ Any candidate failing to apply for initial licensure within five years of passing both a the practical and written portions of the examination and a practical examination shall will be required to retake both portions. ~~Records of examinations shall be maintained for a maximum of five years.~~

E. Any applicant who does not pass a reexamination within one year of the initial examination date will be required to submit a new application.

## **18VAC41-70-50. Reexamination requirements. (Repealed.)**

~~Any applicant who does not pass a reexamination within one year of the initial examination date shall be required to submit a new application and examination fee.~~

## **18VAC41-70-60. Examination administration.**

A. The examination shall must be administered by the board or the designated testing service. The practical examination shall must be supervised by a chief examiner.

B. Every esthetics or master esthetics examiner shall must hold a current Virginia license in his the respective profession, have three or more years of active experience as a licensed professional, and be currently practicing in that profession. ~~Examiners shall attend training workshops sponsored by the board or by a testing service acting on behalf of the board.~~

C. No certified esthetics or master esthetics instructor who (i) is currently teaching, (ii) is a school owner, or (iii) is an apprentice sponsor shall may be an examiner.

D. Each esthetics or master esthetics chief examiner shall must (i) hold a current Virginia license in his the respective profession, (ii) have ~~five~~ three or more years of active experience in that profession, (iii) have ~~three years~~ one year of active experience as an examiner, and (iv) be currently practicing in his the respective profession. ~~Chief examiners shall attend training workshops sponsored by the board or by a testing service acting on behalf of the board.~~

E. The applicant shall must follow all procedures established by the board with regard to conduct at the examination. Such procedures ~~shall~~ include written instructions communicated prior to the examination date and instructions communicated at the site, ~~either written or oral~~, on the date of the examination. Failure to comply with all procedures established by the board and the testing service with regard to conduct at the examination may be grounds for denial of application.

F. Examiners and chief examiners must attend training workshops sponsored by the board or by a testing service acting on behalf of the board.

## **18VAC41-70-80. General requirements for spa license.**

A. Any firm wishing to operate an esthetics spa ~~shall~~, including any mobile spa, must obtain a spa license in compliance with § 54.1-704.1 of the Code of Virginia, and ~~shall must~~ meet the following qualifications in order to receive a license:

1. The applicant, and all members of the responsible management, ~~shall must~~ be in good standing as a licensed spa in Virginia and all other jurisdictions where licensed, certified, or registered. The applicant and all members of the responsible management ~~shall disclose to the board at the time of application for licensure, must provide a copy of any disciplinary action taken in Virginia and all other jurisdictions in connection with the applicant's operation of any esthetics spa or practice of the profession to the board at the time of application for licensure.~~ This includes monetary penalties, fines, probation, suspensions, revocations, surrender of a license in connection with a disciplinary action, ~~or~~ and voluntary termination of a license. ~~The applicant shall disclose to the board at the time of application for licensure if the applicant or any member of responsible management has been previously licensed in Virginia as an esthetics spa.~~

Upon review of the applicant's and all members of the responsible management's prior disciplinary action, the board, in its discretion, may deny licensure to any applicant ~~wherein that~~ it deems ~~the applicant is~~ unfit or unsuited to engage in the operation of an esthetics spa. ~~The board will decide each case by taking into account the totality of the circumstances. Any plea of nolo contendere or comparable plea shall be considered a disciplinary action for the purposes of this section. The applicant shall provide a certified copy of a final order, decree, or case decision by a court, regulatory agency, or board with the lawful authority to issue such order, decree, or case decision, and such copy shall be admissible as prima facie evidence of such disciplinary action.~~

2. The applicant shall must disclose the applicant's physical address. A post office box ~~is not acceptable~~ may be provided as a secondary address. Mobile spas must provide a physical address where the spa is permanently garaged.

3. The applicant shall must sign, as part of the application, a statement certifying that the applicant has read and understands the Virginia esthetics license laws and this chapter.

4. In accordance with § 54.1-204 of the Code of Virginia, each applicant shall must disclose the following information about the firm and all members of the responsible

management regarding criminal convictions in Virginia and all other jurisdictions:

- a. All misdemeanor convictions within two years of the date of application involving moral turpitude, sexual offense, non-marijuana drug distribution, or physical injury ~~within two years of the date of the application~~; and
- b. All felony convictions within ~~20~~ 10 years of the date of application.

~~Any plea of nolo contendere shall be considered a conviction for purposes of this subsection. The record of a conviction received from a court shall be accepted as prima facie evidence of a conviction or finding of guilt.~~ The board, in its discretion, may deny licensure to any applicant in accordance with § 54.1-204 of the Code of Virginia.

5. The applicant ~~shall~~ must disclose the firm's responsible management.

B. Spa licenses are issued to firms ~~as defined in this chapter and shall will~~ not be transferable ~~and shall bear the same name and address of the business.~~ Any changes in the name or address of the spa ~~shall must~~ be reported to the board in writing within 30 days of such changes. The board ~~shall will~~ not be responsible for the licensee's, ~~certificate holder's, or permit holder's~~ failure to receive notices, communications, and correspondence caused by the licensee's, ~~certificate holder's, or permit holder's~~ failure to promptly notify the board in writing of any change of name or address or for any other reason beyond the control of the board.

C. Whenever the legal business entity holding the license is dissolved or altered to form a new business entity, the original license becomes void ~~and shall be returned to the board within 30 days of the change.~~ Additionally, the firm shall must notify the board, apply for a new license, within 30 days of the change in the business entity, and destroy the license. Such changes include:

- 1. Death of a sole proprietor;
- 2. Death or withdrawal of a general partner in a general partnership or the managing partner in a limited partnership; and
- 3. Conversion, formation, or dissolution of a corporation, a limited liability company, association, or any other business entity recognized under the laws of the Commonwealth of Virginia.

D. Any change in the officers of a corporation, managers of a limited liability company, or officers or directors of an association ~~shall must~~ be reported to the board in writing within 30 days of the change.

E. The board or any of its agents ~~shall must~~ be allowed to inspect during reasonable hours any licensed spa for compliance with provisions of Chapter 7 (§ 54.1-700 et seq.) of Title 54.1 of the Code of Virginia or this chapter. ~~For~~

purposes of a board inspection, "reasonable hours" means the hours between 9 a.m. and 5 p.m.; however, if the licensee generally is not open to the public substantially during the same hours, "reasonable hours" shall mean the business hours ~~when the licensee is open to the public.~~

**18VAC41-70-90. General requirements for a school license.**

A. Any firm wishing to operate an esthetics school ~~shall must~~ submit an application to the board at least 60 days prior to the date for which approval is sought, obtain a school license in compliance with § 54.1-704.2 of the Code of Virginia, and meet the following qualifications in order to receive a license:

- 1. The applicant and all members of the responsible management ~~shall must~~ be in good standing as a licensed esthetics school in Virginia and all other jurisdictions where licensed, certified, or registered. The applicant and all members of the responsible management ~~shall disclose to the board at the time of application for licensure, must provide a copy of any disciplinary action taken in Virginia and all other jurisdictions in connection with the applicant's operation of any esthetics school or practice of the profession to the board at the time of application for licensure.~~ This includes monetary penalties, fines, probation, suspensions, revocations, surrender of a license in connection with a disciplinary action, ~~or~~ and voluntary termination of a license. ~~The applicant shall disclose to the board at the time of application for licensure if the applicant or any member of the responsible management has been previously licensed in Virginia as an esthetics school.~~

Upon review of the applicant's and all members of the responsible management's prior disciplinary action, the board, in its discretion, may deny licensure to any applicant ~~wherein that it deems the applicant is unfit or unsuited to engage in the operation of an esthetics school. The board will decide each case by taking into account the totality of the circumstances.~~ Any plea of nolo contendere or comparable plea shall be considered a disciplinary action for the purposes of this section. The applicant shall provide a certified copy of a final order, decree, or case decision by a court, regulatory agency, or board with the lawful authority to issue such order, decree, or case decision, and such copy shall be admissible as prima facie evidence of such disciplinary action.

- 2. The applicant ~~shall must~~ disclose the applicant's physical address. A post office box ~~is not acceptable~~ may be provided as a secondary address.
- 3. The applicant ~~shall must~~ sign, as part of the application, a statement certifying that the applicant has read and understands the Virginia esthetics license laws and this chapter.
- 4. In accordance with § 54.1-204 of the Code of Virginia, each applicant ~~shall must~~ disclose the following information about the firm and all members of the responsible

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management regarding criminal convictions in Virginia and all other jurisdictions:

- a. All misdemeanor convictions within two years of the date of application involving moral turpitude, sexual offense, non-marijuana drug distribution, or physical injury ~~within two years of the date of the application~~; and
- b. All felony convictions within ~~20~~ 10 years of the date of application.

~~Any plea of nolo contendere shall be considered a conviction for purposes of this subsection. The record of a conviction received from a court shall be accepted as prima facie evidence of a conviction or finding of guilt.~~ The board, in its discretion, may deny licensure to any applicant in accordance with § 54.1-204 of the Code of Virginia.

5. The applicant ~~shall~~ must disclose the firm's responsible management.

B. Esthetics school licenses are issued to firms ~~as defined in this chapter and shall~~ are not be transferable and shall bear the same name and address as the school. Any changes in the name or the address of record or principal place of business of the school ~~shall~~ must be reported to the board in writing within 30 days of such change. The board ~~shall~~ will not be responsible for the licensee's, certificate holder's, or permit holder's failure to receive notices, communications, and correspondence caused by the licensee's, certificate holder's, or permit holder's failure to promptly notify the board in writing of any change of name or address or for any other reason beyond the control of the board. The name of the school must indicate that it is an educational institution. All signs or other advertisements must reflect the name as indicated on the license issued by the board and contain language indicating it is an educational institution.

C. Whenever the legal business entity holding the license is dissolved or altered to form a new business entity, the original license becomes void ~~and shall be returned to the board within 30 days of the change.~~ Additionally, the ~~The~~ firm shall must notify the board, apply for a new license within 30 days of the change in business entity, and destroy the license. Such changes include:

1. Death of a sole proprietor;
2. Death or withdrawal of a general partner in a general partnership or the managing partner in a limited partnership; and
3. Conversion, formation, or dissolution of a corporation, a limited liability company, an association, or any other business entity recognized under the laws of the Commonwealth of Virginia.

D. Within 30 days of ceasing to operate, whether through dissolution or alteration of the business entity, the school must provide a written report to the board detailing the performances and hours of each student who has not completed the program.

E. Any change in the officers of a corporation, managers of a limited liability company, or officers or directors of an association ~~shall~~ must be reported to the board in writing within 30 days of the change.

~~E.~~ F. Esthetics schools under the Virginia Department of Education ~~shall be exempted~~ are exempt from licensure requirements.

F. G. The board or any of its agents ~~shall~~ must be allowed to inspect during reasonable hours any licensed school for compliance with provisions of Chapter 7 (§ 54.1-700 et seq.) of Title 54.1 of the Code of Virginia or this chapter. ~~For purposes of a board inspection, "reasonable hours" means the hours between 9 a.m. and 5 p.m.; however, if the licensee generally is not open to the public substantially during the same hours, "reasonable hours" shall mean the business hours when the licensee is open to the public.~~

## **18VAC41-70-100. General requirements for an esthetics and master esthetics instructor certificate.**

A. Any individual wishing to engage in esthetics or master esthetics instruction ~~shall~~ must meet the following qualifications:

1. The applicant ~~shall~~ must be in good standing as a licensed esthetician, master esthetician, or instructor, respectively, in Virginia and all other jurisdictions where licensed, certified, or registered. The applicant ~~shall disclose to the board at the time of application for licensure~~ must provide a copy of any disciplinary action taken in Virginia and all other jurisdictions in connection with the applicant's practice since being previously licensed as an esthetician or master esthetician to the board at the time of application for certification. This includes monetary penalties, fines, probation, suspensions, revocations, surrender of a license or certification in connection with a disciplinary action, or voluntary termination of a license or certification. ~~The applicant shall disclose to the board at the time of application for licensure whether he has been previously licensed in Virginia as an esthetician or master esthetician.~~

Upon review of the applicant's prior disciplinary action, the board, in its discretion, may deny licensure certification to any applicant ~~wherein it that the board deems the applicant is unfit or unsuited to engage in the instruction of esthetics or master esthetics.~~ The board will decide each case by taking into account the totality of the circumstances. Any plea of nolo contendere or comparable plea shall be considered a disciplinary action for the purposes of this section. The applicant shall provide a certified copy of a final order, decree, or case decision by a court, regulatory agency, or board with the lawful authority to issue such order, decree, or case decision, and such copy shall be admissible as prima facie evidence of such disciplinary action;



2. The applicant ~~shall~~ must hold and maintain a current Virginia ~~esthetics~~ esthetician or master esthetician license, respectively;

3. The applicant ~~shall~~ must complete one of the following qualifications:

- a. Pass a course in teaching techniques at the ~~postsecondary~~ post-secondary educational level; or
- b. ~~Complete Pass~~ an instructor ~~training course approved by the Virginia Board for Barbers and Cosmetology under the supervision of a certified esthetics instructor or master esthetics instructor in an esthetics school and pass an examination in esthetics instruction administered by the board or by a testing service acting on behalf of the board; and~~

4. In accordance with § 54.1-204 of the Code of Virginia, each applicant ~~shall~~ must disclose the following information regarding criminal convictions in Virginia and all other jurisdictions since being previously licensed as an esthetician or master esthetician:

- a. All misdemeanor convictions within two years of the date of the application involving moral turpitude, sexual offense, non-marijuana drug distribution, or physical injury within two years of the date of the application; and
- b. All felony convictions within ~~20~~ 10 years of the date of application.

~~Any plea of nolo contendere shall be considered a conviction for purposes of this subsection. The record of a conviction received from a court shall be accepted as prima facie evidence of a conviction or finding of guilt. The board, in its discretion, may deny licensure certification to any applicant in accordance with § 54.1-204 of the Code of Virginia.~~

~~B. Instructors shall be required to maintain a Virginia esthetician license~~ Certified instructors may teach in any profession in which they hold the underlying license.

**18VAC41-70-105. Student instructor temporary license.**

A. A licensed esthetician or master esthetician may be granted a 12-month student instructor temporary license to function under the direct supervision of a certified instructor in a licensed school. No subsequent student instructor temporary license will be issued. A student instructor must pass an instructor examination administered by the board or by a testing service acting on behalf of the board.

B. A student instructor may teach in any profession in which the student instructor holds the underlying license. Failure to maintain an esthetician or master esthetician license will disqualify an individual from holding a student instructor temporary license.

C. Licensed estheticians and master estheticians may also supervise waxing student instructor temporary license holders.

Licensed master estheticians may also supervise esthetician student instructor temporary license holders.

D. The student instructor temporary license holder must be associated with both a school and a direct supervisor.

E. Temporary licenses may not be issued where grounds may exist to deny a license pursuant to § 54.1-204 of the Code of Virginia or 18VAC41-70-100.

**18VAC41-70-110. General requirements for a master esthetics instructor certificate. (Repealed.)**

~~A. Any individual wishing to engage in master esthetics instruction shall meet the following qualifications:~~

- 1. ~~The applicant shall be in good standing as a licensed master esthetician in Virginia and all other jurisdictions where licensed. The applicant shall disclose to the board at the time of application for licensure any disciplinary action taken in Virginia and all other jurisdictions in connection with the applicant's practice as a master esthetician. This includes monetary penalties, fines, suspensions, revocations, surrender of a license in connection with a disciplinary action, or voluntary termination of a license. The applicant shall disclose to the board at the time of application for licensure if the applicant has been previously licensed in Virginia as an esthetician or master esthetician.~~

~~Upon review of the applicant's prior disciplinary action, the board, in its discretion, may deny licensure to any applicant wherein it deems the applicant is unfit or unsuited to engage in esthetics or master esthetics. The board will decide each case by taking into account the totality of the circumstances. Any plea of nolo contendere or comparable plea shall be considered a disciplinary action for the purposes of this section. The applicant shall provide a certified copy of a final order, decree, or case decision by a court, regulatory agency, or board with the lawful authority to issue such order, decree, or case decision, and such copy shall be admissible as prima facie evidence of such disciplinary action;~~

~~2. The applicant shall hold a current Virginia master esthetician license;~~

~~3. The applicant shall complete one of the following qualifications:~~

- a. ~~Pass a course in teaching techniques at the postsecondary educational level; or~~
- b. ~~Complete an instructor training course approved by the Virginia Board for Barbers and Cosmetology under the supervision of a certified esthetics instructor or master esthetics instructor in an esthetics school and pass an examination in esthetics instruction administered by the board or by a testing service acting on behalf of the board; and~~

~~4. In accordance with § 54.1-204 of the Code of Virginia, each applicant shall disclose the following information~~

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~~regarding criminal convictions in Virginia and all other jurisdictions:~~

- ~~a. All misdemeanor convictions involving moral turpitude, sexual offense, non-marijuana drug distribution, or physical injury within two years of the date of the application; and~~
- ~~b. All felony convictions within 20 years of the date of application.~~

~~Any plea of nolo contendere shall be considered a conviction for purposes of this subsection. The record of a conviction received from a court shall be accepted as prima facie evidence of a conviction or finding of guilt. The board, in its discretion, may deny licensure to any applicant in accordance with § 54.1-204 of the Code of Virginia.~~

~~B. Instructors shall be required to maintain a Virginia master esthetician license.~~

## 18VAC41-70-120. Fees.

The following fees apply: All fees are nonrefundable and will not be prorated.

FEE TYPE	AMOUNT DUE September 1, 2022, through and August 31, 2024	AMOUNT DUE September 1, 2024, and after	WHEN DUE
<b>Individuals:</b>			
Application	\$90	\$105	With application
License by Endorsement	\$90	\$105	With application
Renewal	\$90	\$105	With renewal card prior to expiration date
Reinstatement	\$180* *includes \$90 renewal fee and \$90 reinstatement fee	\$210* *includes \$105 renewal fee and \$105 reinstatement fee	With reinstatement application
<b><del>Instructors</del> Instructor Certificate:</b>			
Application	\$110	\$125	With application
License by Endorsement	\$110	\$125	With application
Renewal	\$110	\$150 <u>\$20</u>	With renewal card prior to expiration date

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Reinstatement	\$220* <del>*includes \$110 renewal fee and \$110 reinstatement fee</del>	\$300* \$40* <del>*includes \$150 \$20 renewal fee and \$150 \$20 reinstatement fee</del>	With reinstatement application
Spas:			
Application	\$165	\$190	With application
Renewal	\$165	\$190	With renewal card prior to expiration date
Reinstatement	\$330* <del>*includes \$165 renewal fee and \$165 reinstatement fee</del>	\$380* <del>*includes \$190 renewal fee and \$190 reinstatement fee</del>	With reinstatement application
Schools:			
Application	\$185	\$220	With application
Renewal	\$185	\$220	With renewal card prior to expiration date
Reinstatement	\$370* <del>*includes \$185 renewal fee and \$185 reinstatement fee</del>	\$440* <del>*includes \$220 renewal fee and \$220 reinstatement fee</del>	With reinstatement application

**18VAC41-70-130. Refunds. (Repealed.)**

~~All fees are nonrefundable and shall not be prorated.~~

**18VAC41-70-140. License renewal required.**

A license or certificate issued under this chapter ~~shall~~ will expire two years from the last day of the month in which it was issued.

**18VAC41-70-150. Notice of renewal.**

The Department of Professional and Occupational Regulation will mail a renewal notice to the licensee or certificate holder outlining the procedures for renewal. Failure to receive this notice, however, ~~shall~~ does not relieve the licensee or certificate holder of the obligation to renew. If the licensee or certificate holder fails to receive the renewal notice, a copy of

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the old license or certificate may be submitted as evidence of intent to renew, along with the required fee.

## **18VAC41-70-160. Failure to renew.**

A. ~~When a licensee an individual or business entity fails to renew its license or certificate within 30 days following its the expiration date, the licensee shall apply for reinstatement of the license by submitting to the Department of Professional and Occupational Regulation a reinstatement application and renewal fee and or certificate holder must pay the reinstatement fee.~~

B. ~~When a licensee an individual or business entity fails to renew its license or certification within two years following the expiration date, reinstatement is no longer possible. To resume practice:~~

1. ~~The former licensee or certificate holder shall must apply for licensure or certification as a new applicant and shall must meet all current entry requirements for each respective license or certificate. Individuals applying for licensure under this section shall be eligible to apply for a temporary license from the board under 18VAC41-70-70.~~

2. ~~An individual initially granted licensure under an examination exemption, known as grandfathering, pursuant to § 54.1-703.3 of the Code of Virginia shall submit a new application showing the individual met the requirements of the applicable examination waiver provision, demonstrate five years of previously licensed experience, in Virginia for a minimum of three years must submit a new application and pass the required examination.~~

C. ~~The application for reinstatement for If a licensed school shall fails to renew its license within 30 days following the expiration date, the licensee must pay the reinstatement fee.~~

1. After 180 days, the school must submit a reinstatement application and must provide (i) the reasons for failing to renew prior to the expiration date and (ii) a notarized statement that all students currently enrolled or seeking to enroll at the school have been notified in writing that the school's license has expired. All of these materials shall be called the application package. Reinstatement After 180 days, reinstatement will be considered by the board if the school consents to and satisfactorily passes an inspection of the school and if the school's records are maintained in accordance with 18VAC41-70-230 and 18VAC41-70-240. Upon Pursuant to 18VAC41-70-90, upon receipt of the reinstatement fee, application package, and inspection results, the board may reinstate the school's license, or require requalification, or both.

2. If the reinstatement application package and reinstatement fee are not received by the board within six months following the expiration date of the school's license, the board will notify the testing service that prospective graduates of the unlicensed school are not acceptable

candidates for the examination. Such notification will be sent to the school and must be displayed in a conspicuous manner by the school in an area that is accessible to the public. No student ~~shall will~~ be disqualified from taking the examination because the school was not licensed for a portion of the time the student attended if the school license is reinstated by the board.

D. The date a renewal fee is received by the Department of Professional and Occupational Regulation, or its agent, will be used to determine whether the requirement for reinstatement of a license is applicable and an additional fee is required.

E. When a license or certificate is reinstated, the licensee ~~shall have the same license number and shall or certificate holder will~~ be assigned an expiration date two years from the ~~previous expiration date of the license~~ last day of the month of reinstatement.

F. A licensee or certificate holder that reinstates its license ~~shall or certificate will~~ be regarded as having been continuously licensed without interruption. Therefore, a licensee ~~shall or certificate holder will~~ be subject to the authority of the board for activities performed prior to reinstatement.

G. A licensee or certificate holder that fails to reinstate its license ~~shall or certificate will~~ be regarded as unlicensed or uncertified from the expiration date of the license or certificate forward. Nothing in this chapter ~~shall will~~ divest the board of its authority to discipline a licensee or certificate holder for a violation of the law or regulations during the period of time for which the individual or business entity was licensed or certified.

## **18VAC41-70-180. General requirements.**

An esthetics school ~~shall must~~:

1. Hold a school license for each and every location. Any suites or classrooms that are located in a different building or are further than 500 feet from the main office are considered a separate location and require the school hold an additional license.

2. Hold a spa license if the school receives compensation for services provided in its clinic.

3. ~~For esthetics courses, employ a staff Employ and ensure all training is conducted under the direct supervision of licensed and certified esthetics instructors or licensed and certified master esthetics instructors, respectively.~~

a. Licensed and certified esthetics instructors and master esthetics instructors may also instruct a waxing program.

b. Licensed and certified master esthetics instructors may also instruct an esthetics program.

c. Any change in instructors must be reported to the board within 30 days of the change.

~~4. For master esthetics courses, employ a staff of licensed and certified master esthetics instructors.~~

~~5. 4. Develop individuals for entry-level competency in esthetics and master esthetics.~~

~~6. 5. Submit its curricula for board approval. Esthetician curricula shall must be based on a minimum of 600 clock or equivalent credit hours and shall must include performances in accordance with 18VAC41-70-190 B. Master esthetician curricula shall must be based on a minimum of 600 clock or equivalent credit hours and shall must include performances in accordance with 18VAC41-70-190 C. All changes to curricula must be resubmitted and approved by the board. The theory portions of the curriculum may be offered online. Practical instruction must be obtained in a traditional brick-and-mortar classroom setting. Schools must utilize technologies and practices that are effective in verifying the identity of distance-learning students who participate in class or coursework (e.g., a secure login and passcode) while protecting student privacy. Educational technologies must be capable of monitoring a student's time and activities. There must be a measure of competency (e.g., an examination) of the information the student is taught online, which must be completed in a traditional brick-and-mortar classroom.~~

~~7. 6. Inform the public that all services are performed by students if the school receives compensation for services provided in its clinic by posting a notice in the reception area of the spa in plain view of the public.~~

~~8. 7. Conduct classroom instruction in an area separate from the clinic area where practical instruction is conducted and services are provided.~~

~~9. Complete practical instruction in the school's clinic area.~~

**18VAC41-70-190. Curriculum and hours of instruction requirements.**

A. Each esthetics school shall must submit with its application a curriculum, including a course syllabus, a detailed course content outline, a sample of five lessons lesson plans, a sample of evaluation methods to be used, days and hours of instruction, program length, a sample of a final transcript, and a breakdown of hours or credit hours and performances for all courses to be taught that will lead to licensure or certification. ~~In addition, if a school awards credit in accordance with subsection D of this section, the school shall submit copies of the assessment policy, method of evaluation of transcripts and the examination to be used in making the assessment.~~

B. The outline for esthetics curriculum and hours of instruction in this technology shall consist of 600 hours or equivalent credit hours and shall must include the following:

1. Orientation and business topics - minimum of 25 hours of instruction.

- a. School policies;
- b. Management;
- c. Sales, inventory, and retailing;
- d. Taxes and payroll;
- e. Insurance;
- f. Client records and confidentiality; and
- g. Professional ethics and practices.

2. Laws and regulations - minimum of 10 hours of instruction.

3. General sciences - minimum of 80 hours of instruction.

- a. Bacteriology;
- b. Microorganisms;
- c. Infection control, disinfection, and sterilization;
- d. Occupational Safety and Health Administration (OSHA) requirements;
- e. Material Safety Data Sheet (~~MSDS~~) (SDS);
- f. General procedures and safety measures;
- g. Cosmetic chemistry;
- h. Products and ingredients; and
- i. Nutrition.

4. Applied sciences - minimum of 95 hours of instruction.

- a. Anatomy and physiology;
- b. Skin structure and function;
- c. Skin types;
- d. Skin conditions; and
- e. Diseases and disorders of the skin.

5. Skin care - minimum of 255 hours of instruction.

- a. Health screening;
- b. Skin analysis and consultation;
- c. Effleurage and related movements and manipulations of the face and body;
- d. Cleansings procedures;
- e. Masks;
- f. Extraction techniques;
- g. Machines, equipment, and electricity;
- h. Manual facials and treatments;
- i. Machine, electrical facials, and treatments; and
- j. General procedures and safety measures.

6. Makeup - minimum of 65 hours of instruction.

- a. Setup, supplies, and implements;
- b. Color theory;
- c. Consultation;
- d. General and special occasion application;
- e. Camouflage;

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- f. Application of false lashes and lash extensions;
  - g. Lash tinting;
  - h. Lash perming;
  - i. ~~Lightning~~ Lightening of the hair on body, except scalp; and
  - j. General procedures and safety measures.
7. Body and other treatments - minimum of 20 hours of instruction.
- a. Body treatments;
  - b. Body wraps;
  - c. Body masks;
  - d. Body scrubs;
  - e. Aromatherapy; and
  - f. General procedures and safety measures.
8. Hair removal - minimum of 50 hours of instruction.
- a. Types of hair removal;
  - b. Wax types;
  - c. Tweezing;
  - d. Chemical hair removal;
  - e. Mechanical hair removal; and
  - f. General procedures and safety measures.
- C. The outline for master esthetics curriculum and hours of instruction in this technology shall consist of 600 hours or equivalent credit hours and shall must include the following:
1. Orientation, advanced business subjects, and infection control - minimum of 45 hours of instruction.
- a. School policies and procedures;
  - b. Professional ethics and practices;
  - c. Ethics and professional conduct;
  - d. Insurance and liability issues;
  - e. Confidentiality and Health Insurance Portability and Accountability Act of 1996 Privacy Rule (HIPAA);
  - f. Client records and documentation;
  - g. Microbiology and bacteriology;
  - h. Infection control, disinfection, and sterilization;
  - i. Occupational Safety and Health Administration (OSHA), U.S. Food and Drug Administration (FDA); ~~and Material~~
  - j. ~~k.~~ l. Safety Data Sheet (~~MSDS~~) (SDS); and
  - ~~j.~~ k. Personal protective equipment.
2. State laws, rules, and regulations - minimum of 10 hours of instruction.
3. Advanced anatomy and physiology - minimum of 65 hours of instruction.
- a. Advanced anatomy and physiology;
  - b. Advanced skin structure and functions;
  - c. Advanced skin typing and conditions;
  - d. Advanced disease and disorders;
  - e. Advanced cosmetic ingredients;
  - f. Pharmacology; and
  - g. Advanced homecare.
4. Advanced skin care and advanced modalities - minimum of 90 hours of instruction.
- a. Introduction to microdermabrasion and dermaplaning;
  - b. Indications and contraindications for crystal microdermabrasion;
  - c. General procedures and safety measures for crystal microdermabrasion;
  - d. Indications and contraindications for crystal-free microdermabrasion and dermaplaning;
  - e. General procedures and safety measures for crystal-free microdermabrasion and dermaplaning;
  - f. Equipment safety: crystal and crystal-free microdermabrasion and dermaplaning;
  - g. Waste disposal, Occupational Safety and Health Administration (OSHA);
  - h. Introduction to microdermabrasion techniques and proper protocols;
  - i. Machine parts, operation, protocols, care, waste disposal, and safety;
  - j. Practical application and consultation for crystal microdermabrasion;
  - k. Practical application and consultation for crystal-free microdermabrasion and dermaplaning; and
  - l. Pretreatment and posttreatment for microdermabrasion.
5. Advanced procedures and chemical exfoliation - minimum of 270 hours of instruction.
- a. Advanced skin analysis and consultation and health screening and documentation;
  - b. Advanced procedures, light treatments, light-emitting diode (LED), intense pulsed light (IPL) device (~~IPL~~);
  - c. Advanced manual, machine, and electric treatments, microcurrent, and ultrasound;
  - d. Introduction to chemical exfoliation and peels of the epidermis;
  - e. Fundamentals of skin care associated with chemical exfoliation and peels and wound healing;
  - f. Pretreatment and posttreatment for chemical exfoliation and peels;
  - g. Assessing suitability and predicting chemical exfoliation efficacy;
  - h. General practical application and consultation protocols;

- i. Practical application and consultation for enzymes, herbal exfoliations, and vitamin-based peels;
  - j. Indications and contraindications for enzymes, herbal exfoliations, and vitamin-based peels;
  - k. General procedures and safety measures for enzymes, herbal exfoliations, and vitamin-based peels;
  - l. Pretreatments and posttreatments for enzymes, herbal exfoliations, and vitamin-based peels;
  - m. Practical application and consultation for alpha hydroxy peels;
  - n. Indications and contraindications for alpha hydroxy peels;
  - o. General procedures and safety measures for alpha hydroxy peels;
  - p. Pretreatment and posttreatment for alpha hydroxy peels;
  - q. Practical application and consultation for beta hydroxy peels;
  - r. Indications and contraindications for beta hydroxy peels;
  - s. General procedures and safety measures for beta hydroxy peels;
  - t. Pretreatment and posttreatment for beta hydroxy peels;
  - u. Practical application and consultation for Jessner and Modified Jessner peels;
  - v. Indications and contraindications for Jessner and Modified Jessner peels;
  - w. General procedures and safety measures for Jessner and Modified Jessner peels;
  - x. Pretreatment and posttreatment for Jessner and Modified Jessner peels;
  - y. Practical application and consultation for trichloroacetic acid peels;
  - z. Indications and contraindications for trichloroacetic acid peels;
  - aa. General procedures and safety measures for trichloroacetic acid peels; and
  - bb. Pretreatment and posttreatment for trichloroacetic acid peels.
6. Lymphatic drainage - minimum of 120 hours of instruction.
- a. Introduction to lymphatic drainage;
  - b. Tissues and organs of the lymphatic system;
  - c. Functions of the lymphatic system;
  - d. Immunity;
  - e. Etiology of edema;
  - f. Indications and contraindications for lymphatic drainage;
  - g. Lymphatic drainage manipulations and movements;
  - h. Face and neck treatment sequence;
  - i. Lymphatic drainage on the trunk and upper extremities;
  - j. Lymphatic drainage on the trunk and lower extremities;
  - k. Cellulite;
  - l. Using lymphatic drainage with other treatments; and
  - m. Machine-aided lymphatic drainage.
- D. A licensed esthetics school with an approved esthetics program may conduct an assessment of a transfer student's competence in esthetics and, based on the assessment, give credit toward the requirements specified in subsection B of this section and 18VAC41-70-200 A. A licensed esthetics school with an approved master esthetics program may conduct an assessment of a transfer student's competence in master esthetics and, based on the assessment, give credit toward the requirements specified in subsection C of this section and 18VAC41-70-200 B.
- The school ~~shall~~ must make the assessment based on a review of the student's transcript, documentation of hours and performances provided to the student by the school, and the successful completion of a ~~board-approved~~ competency examination administered by the school. The school may also request a copy of a catalog or bulletin giving the full course description when making the evaluation. The number of credit hours awarded ~~shall~~ must not exceed the actual hours of instruction verified on the transcript or the number of hours specified in the board-approved curriculum for a specific topic.
- ~~E. The instructor curriculum and hours of instruction shall consist of 400 hours or equivalent credit hours and shall include the following:~~
- ~~1. Orientation;~~
  - ~~2. Curriculum;~~
  - ~~3. Course outline and development;~~
  - ~~4. Lesson planning;~~
  - ~~5. Classroom management;~~
  - ~~6. Teaching techniques;~~
  - ~~7. Methods of instruction;~~
  - ~~8. Learning styles;~~
  - ~~9. Learning disabilities;~~
  - ~~10. Teaching aids;~~
  - ~~11. Developing, administering, and grading examinations;~~
  - ~~12. School administration;~~
  - ~~13. Recordkeeping;~~
  - ~~14. Laws and regulations;~~
  - ~~15. Presentation of theoretical subjects;~~

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- ~~16. Presentation of practical subjects;~~
- ~~17. Supervision of clinic floor; and~~
- ~~18. Practicum teaching.~~

## 18VAC41-70-200. Practical performance requirements.

A. The curriculum for estheticians ~~shall~~ must include the following minimum practical performances:

Consultations, cleansings and analysis of face and body	35
Manual facials and treatments	65
Machine or electrical facials and treatments	50
Body treatments and back treatments	20
Makeup	25
Hair Removal	25
TOTAL	220

B. The curriculum for master estheticians ~~shall~~ must include the following minimum performances:

Advanced treatments	40
Microdermabrasion	50
Chemical exfoliation	75
Lymphatic drainage treatments	50
TOTAL	215

## 18VAC41-70-210. School equipment. (Repealed.)

~~A. For an esthetics course, an esthetics school must have at least one treatment table, one magnifier lamp, one steamer, one adjustable stool, and one table for instruments and products for each two students enrolled in the class.~~

~~B. For each procedure taught in the esthetics curriculum, the esthetics school must have at least one set of the applicable equipment for each three students enrolled in the class.~~

~~C. For a master esthetics course, an esthetics school must have at least one treatment table, one woods lamp, one adjustable stool, and one table for instruments and products for each two students enrolled in the class.~~

~~D. For each procedure taught in the master esthetics curriculum, the esthetics school must have at least one set of the applicable equipment for each six students enrolled in the class.~~

## 18VAC41-70-230. Records.

A. Schools ~~shall~~ must maintain on the premises of each school and available for inspection by the board or any of its agents the following records for the period of a student's enrollment through

five years after the student's completion of the curriculum, termination, or withdrawal:

1. Enrollment application containing the student's signature and a two-inch by two-inch color head and shoulders photograph of the student;<sub>2</sub>
2. Daily record of attendance containing the student's signature;<sub>2</sub>
3. Student clock hours containing the student's signature and method of calculation;<sub>2</sub>
4. Practical performance completion sheets containing the student's signature;<sub>2</sub>
5. Final transcript;<sub>2</sub>
- ~~6. Competency examinations used to award credit;~~
- ~~7. 6. Course descriptions;<sub>2</sub> and~~
- ~~8. 7. All other relevant documents that account for a student's accrued clock hours and practical applications.~~

B. Schools ~~shall~~ must produce to the board or any of its agents, within 10 days of the request, any document, book, or record concerning any student, or for which the licensee is required to maintain records, for inspection and copying by the board or its agents. The board may extend such timeframe upon a showing of extenuating circumstances prohibiting delivery within such 10-day period.

C. Schools ~~shall~~ must, within 21 days upon receipt of a written request from a student, provide documentation of hours and performances completed by the student as required to be maintained by subsection A of this section.

D. Prior to a school changing ownership or a school closing, the school is required to provide to current students documentation of hours and performances completed.

~~E. For a period of one year after a school changes ownership, the school shall provide, within 21 days upon receipt of a written request from a student, documentation of hours and performances completed by a current student.~~

## 18VAC41-70-240. Reporting.

~~A. Schools shall~~ Each school must provide, in a manner, format, and frequency prescribed by the board, a roster of all current students and a roster of students who attended in the preceding six months prior to the reporting deadline student rosters to the board quarterly, no later than January 15, April 15, July 15, and October 15 of every year.

1. Each must provide a roster of all enrolled students and a roster of students who attended in the preceding six months prior to the reporting deadline.
2. Students who are enrolled but have not begun classes must be included in the report.

~~B. Within 30 days of ceasing to operate, whether through dissolution or alteration of the business entity, the school shall provide a written report to the board on performances and~~



~~hours of each of its students who has not completed the program~~ Rosters must be submitted via a secure link provided by the board on the board-supplied document, which will include the student's full name, date of birth, program type, date enrolled, the total number of hours to date, and the date completed, terminated, or withdrawn.

C. Schools with no students enrolled, but with the intention of operating, must submit a report to that effect.

D. Schools with no students enrolled that no longer wish to operate should terminate the license in accordance with this chapter.

### **18VAC41-70-250. Scope of practice.**

A. Each licensed spa or school ~~shall~~ must ensure that no licensee or student performs any service beyond the scope of practice for the esthetician or master esthetician license.

B. For chemical exfoliation of the epidermis by a licensed master esthetician, the standards for use of an exfoliator or concentration of acids ~~shall~~ will be:

1. Jessner and Modified Jessner solution;
2. Trichloroacetic acid less than 20%;
3. Nonprescriptive alpha hydroxyl acids;
4. Nonprescriptive beta hydroxyl acids;
5. Nonprescriptive, commercially available products used in accordance with manufacturer's written instructions;
6. Vitamin-based acids;
7. Enzymes; or
8. Herbal exfoliators.

### **18VAC41-70-260. Display of license.**

A. Each licensed spa or school ~~shall~~ must ensure that all current licenses and temporary licenses issued by the board ~~shall be~~ are displayed in plain view of the public either in the reception area or at individual work stations of the spa or school. Duplicate licenses or temporary licenses ~~shall~~ must be posted in a ~~like~~ similar manner in every spa or school location where the licensee or temporary license holder provides services.

B. All licensees and temporary license holders ~~shall~~ must operate under the name in which the license or temporary license is issued.

C. ~~All Proof of apprenticeship cards~~ registration issued by the ~~applicable agency of the Virginia Department of Labor and Industry (DOLI)~~ shall ~~Workforce Development Advancement (VDWDA)~~ must be displayed in plain view of the public either in the reception area or at individual work stations of the ~~shop or salon~~ spa. The apprentice sponsor ~~shall~~ must require each apprentice to wear a badge clearly indicating ~~his~~ status as a ~~DOLI~~ VDWDA registered apprentice.

### **18VAC41-70-270. Sanitation and safety standards for spas and schools.**

A. Sanitation and safety standards.

1. Any spa or school where esthetics services are delivered to the public must be clean and sanitary at all times.

2. Mobile spas must be stationary while providing services and may not operate where prohibited by local ordinance.

~~2.~~ 3. Compliance with these rules does not confer compliance with other requirements set forth by federal, state, and local laws, codes, ordinances, and regulations as they apply to business operation, physical construction and maintenance, safety, and public health.

~~3.~~ 4. Licensees ~~shall~~ must take sufficient measures to prevent the transmission of communicable and infectious diseases and comply with the sanitation standards identified in this section and ~~shall~~ must ensure that all employees likewise comply.

B. Disinfection and storage of implements.

1. ~~A~~ Each esthetician and master esthetician must have a wet disinfection unit available for use and must meet the standards in the definition of wet disinfection requirements is a container large enough to hold a disinfectant solution in which the objects to be disinfected are completely immersed. A wet disinfection unit must have a cover to prevent contamination ~~of the solution. The solution must be a U.S. Environmental Protection Agency (EPA) registered disinfectant that is bactericidal, virucidal, and fungicidal.~~ Disinfectant solutions shall any disinfection solutions must be used according to manufacturer's directions manufacturer instructions.

2. Disinfection of multiuse ~~items~~ implements constructed of hard, nonporous materials such as metal, glass, or plastic; that the manufacturer designed for use on more than one client; is to be carried out in the following manner prior to servicing a client:

- a. Remove all foreign matter from the object, utilizing a brush if needed. ~~Drill bits are to be soaked in acetone and scrubbed with a wire brush to remove all foreign matter;~~
- b. Wash thoroughly with hot water and soap;
- c. Rinse thoroughly with clean water and dry thoroughly with a clean paper towel;
- d. Fully immerse implements into wet disinfectant solution for a minimum of 10 minutes; and
- e. After immersion, rinse articles, dry thoroughly with a clean paper towel, and store in a clean, pre-disinfected, and dry cabinet, drawer, or ~~nonairtight sealed~~ sealed covered container, or leave instruments in an ~~EPA-registered a wet disinfection storage solution unit~~ used according to manufacturer's directions.

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3. Single-use items designed by the manufacturer for use on no more than one client should be discarded immediately after use on each individual client, including powder puffs, lip color, cheek color, sponges, styptic pencils, ~~or nail wood implements, chamois, skin care implements, or disposable razors.~~ The disinfection and reuse of these items is not permitted and the use of single-use items on more than one client is prohibited.

4. For the purpose of recharging, rechargeable tools or implements may be stored in an area other than in a closed cabinet or container. This area ~~shall~~ must be clean.

~~5. All materials including cosmetic and nail brushes, sponges, chamois, spatulas, and galvanic electrodes must be cleaned with warm water and soap or detergent to remove all foreign matter. Implements should then be rinsed, thoroughly dried with a clean paper towel, and completely immersed in an EPA-registered disinfectant that is bactericidal, virucidal, and fungicidal. Such implements shall be soaked for 10 minutes or more, removed, rinsed, dried thoroughly, and stored in a pre-disinfected and dry drawer, cabinet, or nonairtight covered container, or left in an EPA-registered disinfection storage solution used according to manufacturer's directions.~~

~~6.~~ 5. All wax pots ~~shall~~ must be cleaned and disinfected with an EPA-registered disinfectant that is bactericidal, virucidal, and fungicidal with no sticks left standing in the wax at any time. The area immediately surrounding the wax pot ~~shall~~ must be clean and free of clutter, waste materials, spills, and any other items that may pose a hazard.

~~7. Each esthetician must have a wet disinfection unit at his station.~~

~~8. Nail brushes; nippers; finger bowls; disinfectable or washable buffers; disinfectable or washable files, which must also be scrubbed with a brush to remove all foreign matter; and other instruments must be washed in soap and water, rinsed, dried thoroughly with a clean paper towel, and then completely immersed in an EPA-registered disinfectant that is bactericidal, virucidal, and fungicidal for 10 minutes after each use. After disinfection they must be rinsed, dried thoroughly with a clean paper towel, and placed in a dry, pre-disinfected, nonairtight covered receptacle, cabinet, or drawer, or left in an EPA-registered disinfectant storage system used according to manufacturer's directions.~~

~~9.~~ 6. Sinks, bowls, tubs, whirlpool units, air-jetted basins, pipe-less units, and non-whirlpool basins ~~used~~ in necessitated by the performance of ~~nail skin~~ skin care ~~shall~~ must be maintained in accordance with manufacturer's recommendations. They ~~shall~~ must be cleaned and disinfected immediately after each client in the following manner:

a. Drain all water and remove all debris;

b. Clean the surfaces and walls with soap or detergent to remove all visible debris, oils, and product residues and then rinse with water;

c. Disinfect by spraying or wiping the surface with an EPA-registered disinfectant that is bactericidal, virucidal, and fungicidal in accordance with manufacturer directions; and

d. Wipe dry with a clean towel.

C. General sanitation and safety requirements.

1. Service chairs, workstations and workstands, and back bars ~~shall~~ must be clean;

2. The floor surface in all work areas must be of a washable surface other than carpet. ~~The floor must be kept clean and free of debris, nail clippings, dropped articles, spills, clutter, trash, electrical cords, other waste materials, and other items that may pose a hazard;~~

3. All furniture, fixtures, walls, floors, windows, and ceilings ~~shall~~ must be in good repair and free of water seepage and dirt. All mats ~~shall~~ must be secured or ~~shall~~ lie flat;

4. A fully functional bathroom with a working toilet and sink must be available for clients. There must be hot and cold running water. Fixtures must be in good condition. The bathroom must be lighted and sufficiently ventilated. There must be soap and clean single-use towels or a hand air-drying device for the client's use. For facilities newly occupied after January 1, 2017, the bathroom ~~shall~~ must be ~~maintained exclusively available for client use or shared with other businesses in the same building. If the bathroom is shared, the bathroom shall be available for client use and within 200 feet of the entrance and must adhere to all sanitation requirements of this chapter;~~

~~5. General areas for client use must be neat and clean with a waste receptacle for common trash;~~

~~6.~~ 5. Electrical cords ~~shall~~ must be placed to prevent entanglement by the client or licensee and electrical outlets ~~shall~~ must be covered by plates;

~~7.~~ 6. All sharp tools, implements, and heat-producing appliances ~~shall~~ must be in safe working order at all times, safely stored, and placed so as to prevent any accidental injury to the client or licensee;

~~8.~~ 7. The spa area ~~shall~~ must be sufficiently ventilated to exhaust hazardous or objectionable airborne chemicals and to allow the free flow of air; and

~~9.~~ 8. Adequate lighting ~~shall~~ must be provided.

D. Articles, tools, and products.

1. Any multiuse article, tool, or product that cannot be cleansed or disinfected is prohibited from use;

2. Soiled implements must be removed from the tops of work stations immediately after use;

3. Clean spatulas, other clean tools, or clean disposable gloves shall must be used to remove bulk substances from containers;

4. Any multiuse article, tool, or product that cannot be disinfected by full immersion as specified in 18VAC41-70-270 B 2 or cleaned according to manufacturer's recommendation, including natural hairbrushes or neck dusters, is prohibited from use;

~~4.~~ 5. Lotions, ointments, creams, and powders shall must be accurately labeled and kept in closed containers. A clean spatula shall must be used to remove creams or other products from jars. Sterile cotton or sponges shall must be used to apply creams, lotions, and powders. Cosmetic containers shall must be covered after each use;

~~5.~~ 6. All appliances shall must be safely stored;

~~6.~~ 7. Presanitized tools and implements, linens, and equipment shall must be stored for use in a sanitary enclosed cabinet or covered receptacle;

~~7.~~ 8. Clean towels, robes, or other linens shall must be used for each patron. Clean towels, robes, or other linens shall must be stored in a clean predisinfected and dry cabinet, drawer, or nonairtight covered container. Soiled towels, robes, or other linens shall must be stored in a container enclosed on all sides, including the top, except if stored in a separate laundry room;

~~8.~~ 9. No substance other than a sterile styptic powder or sterile liquid astringent approved for homeostasis and applied with a sterile single-use applicator shall may be used to check bleeding; and

~~9.~~ 10. Any disposable material making contact with blood or other body fluid shall must be double-bagged, labeled as a biohazard, and disposed of in a sealed plastic bag and removed from the spa or school in accordance with the guidelines of the Virginia Department of Health and OSHA (Occupational Safety and Health Administration) closed receptacle.

#### E. Chemical storage and emergency information.

1. Spas and schools shall must have in the immediate working area a binder with all Safety Data Sheets (SDS) provided by manufacturers for any chemical products used;

2. Spas and schools shall must have a blood spill clean-up kit in the work area that contains, at a minimum, latex gloves, two 12-inch by 12-inch towels, one disposable trash bag, bleach, one empty spray bottle, and one mask with face shield or any OSHA-approved Occupational Safety and Health Administration (OSHA) approved blood spill clean-up kit;

3. Flammable chemicals shall must be labeled and stored in a nonflammable storage cabinet or a properly ventilated room; and

4. Chemicals that could interact in a hazardous manner (e.g., oxidizers, catalysts, and solvents) shall must be labeled and separated in storage.

#### F. Client health guidelines.

1. All employees providing client services shall must cleanse their hands with a soap product prior to providing services to each client;

2. All employees providing client services shall must wear gloves while providing services when exposure to bloodborne pathogens is possible;

3. No spa or school providing esthetics services shall will have on the premises esthetics products containing hazardous substances that have been banned by the U.S. Food and Drug Administration (FDA) for use in esthetics products;

4. No product shall will be used in a manner that is disapproved by the FDA; and

5. Esthetics spas must be in compliance with current building and zoning codes.

G. In addition to the requirements set forth in this section, all licensees and temporary license holders shall must adhere to regulations and guidelines established by the Virginia Department of Health and the Occupational and Safety Division of the Virginia Department of Labor and Industry.

H. All spas and schools shall must immediately report the results of any inspection of the spa or school by the Virginia Department of Health as required by § 54.1-705 of the Code of Virginia.

I. All spas and schools shall must conduct a self-inspection on an annual basis and maintain a self-inspection form on file for five years so that it may be requested and reviewed by the board at its discretion.

**18VAC41-70-280. Grounds for license or certificate revocation, ~~probation, or suspension, or probation;~~ denial of application, renewal or reinstatement; or imposition of a monetary penalty.**

The board may, in considering the totality of the circumstances, ~~fine any licensee, certificate holder, or temporary license holder; suspend, place on probation, revoke, or refuse to issue, renew, or reinstate any a license, or certificate, or temporary license; or deny any application~~ impose a monetary penalty; place a license or certificate on probation with such terms and conditions and for such time as it may designate; suspend a license or certificate for a stated period of time; or revoke a license or certificate issued under the provisions of Chapter 7 (§ 54.1-700 et seq.) of Title 54.1 of the Code of Virginia and this chapter if the board finds that the

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licensee, certificate holder, ~~permit~~ temporary license holder, or applicant:

1. Is incompetent, negligent, or ~~incapable mentally or physically~~ unable, as a result of any mental or physical condition, as those terms are generally understood in the profession, to skillfully and safely (i) practice as an esthetician or (ii) operate a spa or school;
2. Is convicted of fraud or deceit in the practice or teaching of esthetics or master esthetics, fails to teach in accordance with the board-approved curriculum as provided for in this chapter, or fails to comply with 18VAC41-70-190 D when making an assessment of credit hours awarded;
3. Attempts to obtain, or has obtained, renewed, or reinstated a license, certificate, or temporary license by false or fraudulent representation;
4. Violates, induces others to violate, or cooperates with others in violating any of the provisions of this chapter or Chapter 7 (§ 54.1-700 et seq.) of Title 54.1 of the Code of Virginia or any local ordinance or regulation governing standards of health and sanitation of the establishment in which any esthetician may practice or offer to practice;
5. Offers, gives, or promises anything of value or benefit to any federal, state, or local employee for the purpose of influencing that employee to circumvent, in the performance of ~~his~~ the employee's duties, any federal, state, or local law, regulation, or ordinance governing esthetics or master esthetics;
6. Fails to respond to the board or any of its agents or provides false, misleading, or incomplete information to an inquiry by the board or any of ~~its~~ the board's agents;
7. Fails or refuses to allow the board or any of its agents to inspect during reasonable hours any licensed spa or school for compliance with provisions of Chapter 7 (§ 54.1-700 et seq.) of Title 54.1 of the Code of Virginia or this chapter;
8. Fails to produce, upon request or demand of the board or any of its agents, any document, book, record, or copy thereof in a licensee's, certificate holder's, temporary license holder's, applicant's, or ~~owner's~~ responsible management's possession or maintained in accordance with this chapter;
9. Fails to notify the board of a change of name or address in writing within 30 days of the change for each and every license, certificate, or temporary license;
10. Makes any misrepresentation or publishes or causes to be published any advertisement that is false, deceptive, or misleading;
11. Fails to notify the board in writing within 30 days of ~~the suspension, revocation, or surrender of a license or temporary license in connection with a~~ any final or disciplinary action taken against a license, registration, certificate, or temporary license in any jurisdiction or of any

~~license or temporary license that has been the subject of disciplinary action in any jurisdiction by a local, state, or national regulatory body~~;

12. Has been convicted or found guilty, regardless of the manner of adjudication, in Virginia or any other jurisdiction of the United States of a misdemeanor involving moral turpitude, sexual offense, non-marijuana drug distribution, or physical injury or any felony, there being no appeal pending therefrom or the time for appeal having elapsed. Review of convictions shall be subject to the requirements of § 54.1-204 of the Code of Virginia. ~~Any plea of nolo contendere shall be considered a conviction for purposes of this subdivision. The record of a conviction certified or authenticated in such form as to be admissible in evidence under the laws of the jurisdiction where convicted shall be admissible as prima facie evidence of such conviction or guilt~~;
13. Fails to inform the board in writing within 30 days of pleading guilty or nolo contendere or being convicted or found guilty regardless of adjudication of convictions as stated in subdivision 12 of this section;
14. Allows, as responsible management of a spa ~~or school~~, a person who has not obtained a license or a temporary ~~permit~~ license to practice, unless the person is duly enrolled as a registered apprentice;
15. Allows, as responsible management of a school, a person who has not obtained an instructor certificate or student instructor temporary license to practice as an esthetics or a master esthetics instructor;
16. Fails to take sufficient measures to prevent transmission of communicable or infectious diseases or fails to comply with sanitary requirements provided for in this chapter or any local, state, or federal law or regulation governing the standards of health and sanitation for the practices of esthetics or master esthetics or the operation of esthetics spas; or
17. Fails to comply with all procedures established by the board and the testing service with regard to conduct at any board examination.

VA.R. Doc. No. R24-7715; Filed March 31, 2025, 9:08 a.m.

## BOARD FOR HEARING AID SPECIALISTS AND OPTICIANS

### Proposed Regulation

Title of Regulation: 18VAC80-30. Opticians Regulations (amending 18VAC80-30-10, 18VAC80-30-20, 18VAC80-30-30, 18VAC80-30-50 through 18VAC80-30-180; adding 18VAC80-30-190; repealing 18VAC80-30-40).

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

Public Hearing Information:

June 3, 2025 - 10:30 a.m. - Department of Professional and Occupational Regulation, 9960 Mayland Drive, Suite 200, Board Room One, Richmond, VA 23233.

Public Comment Deadline: June 20, 2025.

Agency Contact: Kelley Smith, Executive Director, Board for Hearing Aid Specialists and Opticians, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8590, FAX (866) 245-9693, or email [hasopt@dpor.virginia.gov](mailto:hasopt@dpor.virginia.gov).

Basis: Section 54.1-201 of the Code of Virginia authorizes the Board for Hearing Aid Specialists and Opticians to promulgate regulations necessary to ensure continued competency and prevent deceptive or misleading practices by practitioners and to effectively administer the regulatory system.

Purpose: The board protects the public welfare, in part, by establishing through regulation (i) the minimum qualifications of applicants for licensure, provided that all qualifications are necessary to ensure either competence or integrity to engage in the profession or occupation; (ii) minimum standards to ensure continued competency and to prevent deceptive or misleading practices by practitioners; and (iii) requirements to effectively administer the regulatory system administered by the board. In addition, the proposed amendments modernize standards for lenses, frames, and contact lenses to reflect current industry practices, ensuring the health, safety, and welfare of the public.

Substance: The proposed amendments:

1. Add, revise, and remove definitions.
2. Remove an unnecessary provision related to emancipated minors.
3. Require disclosure of prior regulatory discipline and revise provisions relating to the disclosure of prior criminal history to reduce the stringency of the current criminal history disclosure requirement.
4. Allow for the use of a post office box as a secondary address.
5. Reflect licensure by endorsement for opticians licensed in another state.
6. Clarify that individuals licensed as an optician in another jurisdiction must be in good standing and must prove that the requirements and standards under which the license was issued are substantially equivalent to those in the regulation.
7. Repeal a section that requires out-of-state licensees covered by the licensure exemption in subdivision 5 of § 54.1-1506 of the Code of Virginia to register with the board.
8. Clarify agency practice regarding the charging and payment of examination fees.
9. Remove an unnecessary requirement regarding examination administration.
10. Consolidate provisions regarding the timeframe for an applicant to pass the written and practical optician examinations and update the requirements for reexamination.
11. Remove unnecessary language defining "contact lens endorsed optician."
12. Revise provisions related to contact lens endorsement examination to (i) remove unnecessary provisions related to

reexamination and (ii) clarify provisions related to the timeframe to pass the examination.

13. Revise provisions related to the sending of renewal notices for licenses and remove a provision that requires a licensee to return the existing license with the required renewal fee if the licensee does not receive a renewal notice from the board.

14. Clarify provisions related to the reinstatement of licenses and revise reinstatement provisions to provide that individuals must continue to meet entry requirements for good standing, disclosure of prior discipline, and disclosure of prior criminal history, instead of requiring individuals to meet all initial entry requirements.

15. Align standards for lenses and frames with current business practices.

16. Update the standards for contact lens fitting to require that a topographer must be used to fit contact lenses.

17. Replace a requirement that a notarized duplicate of a license be posted in branch offices with a less restrictive requirement that a clear and legible copy of the license be posted.

18. Revise provisions related to reporting changes of name or address by (i) extending the timeframe for reporting from 30 to 60 days and (ii) allowing for changes to be submitted to the board via methods other than mail.

19. Remove a prohibited act regarding the use of nonprescribed controlled substances and significantly revise the prohibited act regarding criminal convictions to make the provision less stringent.

20. Clarify that courses are intended to be used for individuals to meet requirements for reinstatement of a license.

21. Remove provisions requiring that courses adhere to standards established by the International Association of Continuing Education and Training.

22. Revise requirements for information a provider must provide to the board to receive approval.

23. Add a new section to provide for optician apprenticeships and criteria for board approval of such apprenticeships.

Issues: The primary advantage of these proposed amendments for the regulated community, including license applicants, is a reduction in the stringency of criminal conviction disclosure and reinstatement requirements. Another advantage of the revisions for the public is the updated standards for lenses, frames, and contact lenses. The amendments ensure a standardized approach to curriculum development, maintaining consistent quality and content in optician apprentice training. There are no identifiable disadvantages to the public. There are no identifiable advantages or disadvantages to the agency or Commonwealth. No other matter of interest to the regulated community, government officials, or the public has been identified.

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## Department of Planning and Budget Economic Impact Analysis:

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 Code of Virginia and Executive Order 19. The analysis presented represents DPB's best estimate of the potential economic impacts as of the date of this analysis.<sup>1</sup>

Summary of the Proposed Amendments to Regulation. The Board for Hearing Aid Specialists and Opticians (board) proposes to (i) only include misdemeanor convictions that occurred within three years of the date of application, instead of at any time, as a reason to revoke, suspend, or refuse to grant or renew a license; (ii) no longer require that duplicate licenses displayed at branch offices be notarized; (iii) increase from 30 days to 60 days the timeframe for reporting a change of name or address; (iv) add text describing the current criteria used for technical instruction courses for optician apprenticeships; and (v) make clarifying changes.

Background. Under the current regulation, conviction at any time in the past of a misdemeanor involving sexual offense or physical injury can be cited by the board as reason to revoke, suspend, or refuse to grant or renew a license. The board proposes to limit this to convictions that occurred within three years of the date of application. Under the current regulation, branch offices must post a duplicate license that has been notarized. The board proposes to instead require that the duplicate license only be clear and legible. Under the current regulation, notice in writing must be given to the board in the event of any change of name or address within 30 days of the change of name or address. Under the proposed regulation, licensees would have 60 days to report such information.

Estimated Benefits and Costs. By limiting the prohibition on having been convicted of a misdemeanor involving sexual offense or physical injury to a conviction that occurs within three years of the date of application, a small number of additional applicants with prior criminal history could potentially qualify for licensure. No data are available to indicate how many additional applicants may be affected. Libraries and some banks offer free notarization, and the cost elsewhere can be minimal. Nevertheless, the proposal to no longer require that the duplicate licenses posted in branch offices be notarized could be beneficial in that it would save a small amount of time and travel costs to get the notarization. Allowing licensees 60 days rather than 30 days to report name or address changes can be beneficial for licensees who have difficulty meeting the current 30-day deadline.

Businesses and Other Entities Affected. The proposed amendments affect the 1,748 opticians licensed in the Commonwealth, as well as future applicants.<sup>2</sup> The Code of Virginia requires DPB to assess whether an adverse impact may result from the proposed regulation.<sup>3</sup> An adverse impact is indicated if there is any increase in net cost or reduction in net benefit for any entity, even if the benefits exceed the costs for all entities combined.<sup>4</sup> The proposed amendments neither increase costs nor reduce benefits. Thus, no adverse impact is indicated.

Small Businesses<sup>5</sup> Affected.<sup>6</sup> The proposed amendments do not adversely affect small businesses.

Localities<sup>7</sup> Affected.<sup>8</sup> The proposed amendments neither disproportionately affect particular localities nor affect costs for local governments.

Projected Impact on Employment. The proposal to remove the prohibition on having been convicted of a misdemeanor involving sexual offense or physical injury more than three years prior to the date of application may enable a small number of individuals to become licensed and employed as opticians. No data are available to indicate how many additional applicants may be affected.

Effects on the Use and Value of Private Property. The proposed amendments do not substantively affect the use and value of private property or costs related to the development of real estate.

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<sup>1</sup> Section 2.2-4007.04 of the Code of Virginia requires that such economic impact analyses determine the public benefits and costs of the proposed amendments. Further the analysis should include but not be limited to: (1) the projected number of businesses or other entities to whom the proposed regulatory action would apply, (2) the identity of any localities and types of businesses or other entities particularly affected, (3) the projected number of persons and employment positions to be affected, (4) the projected costs to affected businesses or entities to implement or comply with the regulation, and (5) the impact on the use and value of private property.

<sup>2</sup> Data source: Department of Professional and Occupational Regulation.

<sup>3</sup> Pursuant to § 2.2-4007.04 D: In the event this economic impact analysis reveals that the proposed regulation would have an adverse economic impact on businesses or would impose a significant adverse economic impact on a locality, business, or entity particularly affected, the Department of Planning and Budget shall advise the Joint Commission on Administrative Rules, the House Committee on Appropriations, and the Senate Committee on Finance. Statute does not define "adverse impact," state whether only Virginia entities should be considered, nor indicate whether an adverse impact results from regulatory requirements mandated by legislation.

<sup>4</sup> Statute does not define "adverse impact," state whether only Virginia entities should be considered, nor indicate whether an adverse impact results from regulatory requirements mandated by legislation. As a result, DPB has adopted a definition of adverse impact that assesses changes in net costs and benefits for each affected Virginia entity that directly results from discretionary changes to the regulation.

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

<sup>6</sup> If the proposed regulatory action may have an adverse effect on small businesses, § 2.2-4007.04 requires that such economic impact analyses include: (1) an identification and estimate of the number of small businesses subject to the proposed regulation, (2) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the proposed regulation, including the type of professional skills necessary for preparing required reports and other documents, (3) a statement of the probable effect of the proposed regulation on affected small businesses, and (4) a description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation. Additionally, pursuant to § 2.2-4007.1 of the Code of Virginia, if there is a finding that a proposed regulation may have an adverse impact on small business, the Joint Commission on Administrative Rules shall be notified.

<sup>7</sup> "Locality" can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulatory change are most likely to occur.

<sup>8</sup> Section 2.2-4007.04 defines "particularly affected" as bearing disproportionate material impact.

Response to Economic Impact Analysis: The Board for Hearing Aid Specialists and Opticians concurs with the economic impact analysis prepared by the Department of Planning and Budget.

Summary:

*The proposed amendments (i) limit consideration of misdemeanor convictions as a reason to revoke, suspend, or refuse to grant or renew a license to those that occurred within three years of the date of application; (ii) discontinue requirement of duplicate licenses and license copies displayed at branch offices be notarized; (iii) increase to 60 days the timeframe for reporting a change of name or address; (iv) update the criteria used for technical instruction courses for optician apprenticeships; (v) revise the definitions sections; (vi) update entry requirements; (vii) clarify renewal and reinstatement provisions; (viii) update standards of practice and conduct; and (ix) revise provisions related to board-approved reinstatement courses and apprenticeships.*

**18VAC80-30-10. Definitions.**

A. Section 54.1-1500 of the Code of Virginia provides definitions of the following terms and phrases as used in this chapter:

"Board"

"Licensed optician"

"Licensed optometrist"

"Licensed physician"

"Optician"

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

"Active practice" means engaging in the practice of opticianry.

"Apprentice" means a person at least 16 years of age who is covered by a written agreement with an employer and approved by the Virginia Apprenticeship Council.

~~"Board" means the Board for Hearing Aid Specialists and Opticians.~~

"Contact lens endorsed optician" means any person not exempted by § 54.1-1506 of the Code of Virginia who is a Virginia licensed optician and who has received a contact lens endorsement from the board, who fits contact lenses on prescription from licensed physicians or licensed optometrists for the intended wearers.

"Department" means the Virginia Department of Professional and Occupational Regulation.

"Fit or dispense" means to measure, adapt, fit, or adjust eyeglasses, spectacles, lenses, or appurtenances to the human

face, or to verify the prescription to be correct in the prescription eyeglasses or prescription optical devices.

~~"Licensed optician" means any person who is the holder of a license issued by the board.~~

~~"Optician" means any person not exempted by § 54.1-1506 of the Code of Virginia who prepares or dispenses eyeglasses, spectacles, lenses, or related appurtenances for the intended wearers or users on prescriptions from licensed physicians or licensed optometrists, or as duplications or reproductions of previously prepared eyeglasses, spectacles, lenses, or related appurtenances; or who, in accordance with such prescriptions, duplications or reproductions, measures, adapts, fits, and adjusts eyeglasses, spectacles, lenses, or appurtenances to the human face.~~

"Opticianry" means the personal health service that is concerned with the art and science of ophthalmic optics as applied to the compounding, filling, and adaptations of ophthalmic prescriptions, products, and accessories.

**18VAC80-30-20. Qualifications of applicant.**

An applicant for a license ~~shall~~ must furnish satisfactory evidence on an application provided by the board establishing that:

1. The applicant is at least 18 years of age ~~unless emancipated under the provisions of § 16.1-333 of the Code of Virginia;~~

2. The applicant is a graduate of an accredited high school, has completed the equivalent of grammar school and a four-year high school course, or is a holder of a certificate of general educational development;

3. The applicant is in good standing as a licensed optician in every jurisdiction where licensed. The applicant must disclose to the board at the time of application for licensure any disciplinary action taken in Virginia and all other jurisdictions in connection with the applicant's practice as an optician. This includes monetary penalties, fines, suspensions, revocations, surrender of a license in connection with a disciplinary action, or voluntary termination of a license.

Upon review of the applicant's prior disciplinary action, the board, in its discretion, may deny licensure to any applicant who the board deems unfit or unsuited to engage in opticianry. The board will decide each case by taking into account the totality of the circumstances. Any plea of nolo contendere or comparable plea will be considered a disciplinary action for the purposes of this section. The applicant must provide a certified copy of a final order, decree, or case decision by a court, regulatory agency, or board with the lawful authority to issue such order, decree, or case decision, and such copy will be admissible as prima facie evidence of such disciplinary action;

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4. ~~The applicant has not been convicted in any jurisdiction of a misdemeanor or felony~~ In accordance with § 54.1-204 of the Code of Virginia, each applicant must disclose the following information regarding criminal convictions in Virginia and all other jurisdictions:

~~a. Misdemeanor convictions involving sexual offense or physical injury, or any felony involving drug distribution or that directly relates to the profession of opticianry. The board shall have the authority to determine, based upon all the information available, including the applicant's record of prior convictions, if the applicant is unfit or unsuited to engage in the profession of opticianry. Any plea of nolo contendere shall be considered a conviction for the purposes of this subdivision. The licensee shall provide a certified copy of a final order, decree, or case decision by a court or regulatory agency with the lawful authority to issue such order, decree, or case decision, and such copy shall be admissible as prima facie evidence of such conviction. This record shall be forwarded by the licensee to the board occurred within 10 days after all appeal rights have expired three years of the date of application; and~~

~~b. Felony convictions involving sexual offense, physical injury, drug distribution, or felony convictions involving the profession of opticianry.~~

The record of a conviction authenticated in such form as to be admissible in evidence under the laws of the jurisdiction where convicted is admissible as prima facie evidence of such conviction or guilt. The board has the authority to determine, based upon all the information available, including the applicant's record of prior convictions, if the applicant is unfit or unsuited to engage in the profession of opticianry;

5. The applicant has successfully completed one of the following education requirements:

a. A board-approved two-year course in a school of opticianry, including the study of topics essential to qualify for practicing as an optician; or

b. A two-year apprenticeship, including all required related technical instruction, while registered in the apprenticeship program in accordance with the standards established by the state Department of ~~Labor~~ Workforce Development and Industry Advancement, Division of Registered Apprenticeship, and approved by the board;

6. The applicant has disclosed ~~his~~ the applicant's current mailing address. A post office box may be provided as a secondary address;

7. The nonresident applicant for a license has filed and maintained with the department an irrevocable consent for the director of the department to serve as service agent for all actions filed in any court in the Commonwealth; and

8. The applicant ~~shall~~ must certify, as part of the application, that the applicant has read and understands Chapter 15

(§ 54.1-1500 et seq.) of Title 54.1 of the Code of Virginia and the regulations of the board.

## **18VAC80-30-30. Opticians licensed in another state Licensure by endorsement.**

~~A. An optician licensed in another state seeking to be licensed as an optician in~~ Every applicant for Virginia shall submit an application on a form provided by the board with the required fee. All fees are nonrefundable and shall not be prorated licensure through endorsement who is currently licensed as an optician in good standing in another jurisdiction must provide information upon application establishing that the requirements and standards under which the license was issued are substantially equivalent to and not in conflict with the provisions of this chapter. The applicant must file the application for endorsement and pay a fee to the board.

B. The board, using the following standards, ~~shall~~ will issue a license to any person licensed in another state who:

1. Has met requirements equivalent to those listed in subdivisions A 1 through 5 of 18VAC 80-30-20; and
2. Has passed a substantially equivalent examination.

## **18VAC80-30-40. Registration for voluntary practice by out-of-state licensees. (Repealed.)**

~~Any optician who does not hold a license to practice in Virginia and who seeks registration in accordance with subdivision 5 of § 54.1-1506 of the Code of Virginia shall:~~

- ~~1. File a complete application for registration on a form provided by the board within 15 days prior to engaging in such practice. An incomplete application will not be considered;~~
- ~~2. Provide a complete list of professional licensure in each state in which he has held a license and a copy of any current license;~~
- ~~3. Provide a name of the nonprofit organization, the dates and location of the voluntary provision of services; and~~
- ~~4. Provide a notarized statement from a representative of the nonprofit organization attesting to its compliance with the provisions of subdivision 5 of § 54.1-1506 of the Code of Virginia.~~

## **18VAC80-30-50. Fees.**

~~A. The fee for examination or examinations shall consist of the combination of an administrative charge of \$25 (spectacle), \$25 (contact lens), and will be the appropriate contract charges to the board by an outside vendor. Examination service contracts shall will be established in compliance with the Virginia Public Procurement Act (§ 2.2-4300 et seq. of the Code of Virginia). The total examination fee shall will not exceed a the cost of \$1,000 to the applicant.~~



B. All application fees for licenses are nonrefundable and the date of receipt by the board or its agent is the date ~~which will be used to determine whether it~~ the fee is on time.

C. Application ~~and examination~~ fees must be submitted with the application for licensure.

The following fees shall apply:

FEE TYPE	AMOUNT DUE	WHEN DUE
Application for licensure	\$100	With application
Application for contact lens certification	\$100	With application
Renewal	\$100	Up to the expiration date on the license with a 30-day grace period
Late renewal (includes renewal fee)	\$125	Between 30 and 60 days after the expiration date on the license
Reinstatement (includes renewal and late renewal fees)	\$225	After 60 days following the expiration date on the license

**18VAC80-30-60. Examinations.**

A. All examinations required for licensure ~~shall~~ must be approved by the board and administered by the board; or its agents or employees acting on behalf of the board.

B. The board ~~shall~~ will schedule an examination to be held at least twice each calendar year ~~at a time and place to be designated by the board.~~

C. The applicant ~~shall~~ must follow all rules established by the board with regard to conduct at an examination. Such rules ~~shall~~ include any written instructions communicated prior to the examination date and any instructions communicated at the site, either written or oral, on the date of the examination. Failure to comply with all rules established by the board with regard to conduct at an examination ~~shall~~ will be grounds for denial of application.

**18VAC80-30-70. Content of optician examination and reexamination.**

A. Applicants for licensure ~~shall~~ must pass a written examination and a practical examination approved by the board. An applicant must pass the written and practical examination within two years of the initial test date. After two years, the applicant must file a new application and pay the required fee. Any applicant who fails the written or practical examination will be required to be reexamined on the failed examination and pay the reexamination fee.

B. The optician examination given by the board ~~may~~ will include, ~~but is not limited to,~~ the following topics:

1. Ophthalmic materials;
2. Ophthalmic optics and equipment;
3. Ophthalmic spectacle lens grinding;
4. Prescription interpretation;
5. Theory of light;
6. Finishing, fitting, and adjusting of eyeglasses and frames;
7. Ethics of relationship in respect to patient and physician or optometrist;
8. Anatomy and physiology; and
9. Applicable laws and regulations.

~~C. Any applicant who fails the written or practical examination, or both examinations, shall be required to be reexamined on the failed examination(s) and shall pay the reexamination fee(s).~~

~~D. An applicant shall pass the written and practical examination within two years of the initial test date. After two years, the applicant shall file a new application and pay the required fee.~~

**18VAC80-30-80. Endorsement to fit contact lenses.**

The board ~~shall~~ will administer a contact lens examination to fit contact lenses. The "Contact Lens" endorsement ~~shall~~ will be mandatory for licensed opticians to fit contact lenses as set out in §§ 54.1-1508 and 54.1-1509 of the Code of Virginia, and the contact lens endorsement ~~shall~~ will not be issued unless the individual's license is in good standing. ~~A contact lens endorsed optician is any Virginia licensed optician who has been endorsed by the board to fit contact lens.~~

**18VAC80-30-90. Content of contact lens endorsement examination and reexamination.**

A. The contact lens endorsement examination administered by the board ~~may~~ will include, ~~but is not limited to,~~ the following topics:

1. Rigid lens verification;
2. Lens identification;
3. ~~Keratometry~~ Keratometry;
4. Slit lamp;
5. Slides (fitting patterns, edge patterns, quality stains); and
6. ~~Insertion/removal~~ Insertion and removal.

~~B. Any applicant who fails the written or practical contact lens examination, or both examinations, who desires to retake the examination(s), shall be required to be reexamined on the failed examination(s) and shall pay the reexamination fee(s).~~

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~~C. B.~~ An applicant ~~shall~~ must pass the written and practical examination approved by the board within two years of the initial test date. After two years, the applicant ~~shall~~ must file a new application and pay the required fee.

## 18VAC80-30-100. License renewal required.

A. Licenses issued under this chapter ~~shall~~ will expire 24 months from the last day of the month in which the license was issued.

B. The board ~~shall~~ will mail a renewal application form to the licensee ~~at the last known mailing address~~. Failure to receive this notice does not relieve the licensee of the obligation to renew. Prior to the expiration date shown on the license, each licensee desiring to renew ~~his~~ a license must return all of the required forms and the appropriate fee to the board as outlined in 18VAC80-30-50. ~~If the licensee fails to receive the renewal notice, a copy of the existing license shall be submitted to the board with the required fee.~~

C. Licensees ~~shall~~ will be required to renew ~~their~~ the license by submitting the appropriate fee made payable to the Treasurer of Virginia. Any licensee who fails to renew within 30 days after the license expires ~~shall~~ must pay a late renewal fee, in addition to the renewal fee, as set out in 18VAC80-30-50.

D. The board, in its discretion and for just cause, may deny renewal of a license. ~~Upon~~ Before such denial, the applicant for renewal may request that a proceeding be held in accordance with the provision of the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia).

## 18VAC80-30-110. Reinstatement required.

A. If a licensee fails to renew his license within 60 days after the expiration date on the license, the licensee must apply for reinstatement on a form provided by the board.

1. Individuals applying for reinstatement ~~shall~~ must continue to meet the standards of entry as set out in subdivisions ~~1 through 8~~ 3 and 4 of 18VAC80-30-20.

2. Individuals applying for reinstatement ~~shall~~ must submit the required fee as set out in 18VAC80-30-50.

B. Twenty-four months after the expiration of the license, the individual may be reinstated if ~~he~~ the individual can show proof of continuous, active, ethical, and legal practice outside of Virginia. If not, the individual must show proof of completion of a board-approved review course ~~which~~ that measures current competence. Credit will not be allowed for any ~~review~~ reinstatement course ~~which~~ that has not been approved by the board prior to administration of the course.

C. Sixty months after the expiration of the license, the individual, who cannot show proof of continuous, active, ethical, and legal practice outside of Virginia, ~~shall~~ will be required to apply as a new applicant for licensure. ~~He shall~~ The individual will be required to meet all current education

requirements and retake the board's written and practical ~~examination~~ examinations.

D. The board, in its discretion and for just cause, may deny reinstatement of a license. ~~Upon~~ Before such denial, the applicant for reinstatement may request that a proceeding be held in accordance with the provisions of the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia).

E. A licensee who reinstates his license ~~shall~~ will be regarded as having been continually licensed without interruption. Therefore, the licensee ~~shall~~ will remain under the disciplinary authority of the board during the entire period and may be held accountable for his activities during this period. Nothing in these regulations shall divest the board of its authority to discipline a licensee for a violation of the law or regulations during the period of licensure as set out in this provision.

## 18VAC80-30-120. Lenses and frames standards.

A. Power Tolerance for Single Vision and Multifocal Lenses (diopters).

Sphere: Plano to $\pm 6.50$	<del><math>\pm 1.3</math></del> <u>0.13</u> diopter
<del>Above</del> <u>Stronger than</u> $\pm -6.50$	$\pm 2.0\%$
Cylinder: Plano to $-2.00$	<del><math>\pm 1.3</math></del> <u>0.13</u> diopter
<del><math>-2.12</math></del> <u><math>\geq -2.00</math></u> to $-4.50$	<del><math>\pm 1.5</math></del> <u>0.15</u> diopter
<del>above</del> <u>Greater than</u> $-4.50$	$\pm 4\%$

B. Power Tolerance for Progressive Addition Lenses (diopters).

<u>Sphere: Plano to <math>\pm 8.00</math></u>	<u><math>\pm 0.16</math> diopter</u>
<u>Stronger than <math>\pm 8.00</math></u>	<u><math>\pm 2\%</math></u>
<u>Cylinder: Plano to <math>-2.00</math></u>	<u><math>\pm 0.16</math> diopter</u>
<u><math>\geq -2.00</math> to <math>-3.50</math></u>	<u><math>\pm 0.18</math> diopter</u>
<u>Greater than <math>-3.50</math></u>	<u><math>\pm 5\%</math></u>

~~B. C.~~ Cylinder Axis.

Cyl. Power Diopters	Degrees $\pm$
<del>0.12</del> <del>0.37</del> <u><math>-0.12</math> to <math>-0.25</math></u>	<u><math>7^\circ</math> <math>\pm 14^\circ</math></u>
<u><math>\geq -0.25</math> to <math>-0.50</math></u>	<u><math>\pm 7^\circ</math></u>
<del>0.50</del> <del>0.75</del> <u><math>\geq -0.50</math> to <math>-0.75</math></u>	<u><math>\pm 5^\circ</math></u>
<del>0.87</del> <del>1.50</del> <u><math>\geq -0.75</math> to <math>-1.50</math></u>	<u><math>\pm 3^\circ</math></u>
<del>1.62 and above</del> <u>Greater than <math>-1.50</math></u>	<u><math>\pm 2^\circ</math></u>

~~C. Distance Optical Center. Contribution to net horizontal prism from processing should not exceed 2/3 prism diopter. A~~

maximum of  $\pm 2.5$  mm variation from the specified distance optical center is permissible in higher power lens combinations.

D. Prism Reference Point Location and Power Tolerances (Vertical). ~~Contribution to imbalance from processing~~ The prismatic power measured at the prism reference point should not exceed 1/3 prism diopters. ~~A maximum of or the prism reference point shall not be more than 1.0mm difference in vertical level is permissible in higher power lens combinations away from its specified position in any direction.~~

E. Prismatic Imbalance Tolerance in Mounted Single Vision and Multifocal Eyewear.

Refractive Power	Tolerance
Plano to $\pm 3.375D$	No more than 0.33 prism diopters vertically
Greater than $\pm 3.375D$	No more than 1mm difference in height of PRP
Plano to $\pm 2.75D$	No more than 0.67 prism diopters horizontally
Greater than $\pm 2.75D$	No more than 2.5mm from specified interpupillary distance

F. Prismatic Imbalance Tolerance in Mounted Progressive Addition Lens Eyewear.

Refractive Power	Tolerance
Plano to $\pm 3.375D$	No more than 0.33 prism diopters vertically
Greater than $\pm 3.375D$	No more than 1mm difference in height of PRP
Plano to $\pm 3.375D$	No more than 0.67 prism diopters horizontally
Greater than $\pm 3.375D$	No more than 1mm from specified monocular pupillary distance

G. Segment Location and Fitting Cross Vertical Location and Segment Tilt.

Multifocals:	Tolerance
<del>Vertical</del> Segment height for each lens	$\pm 1.0$ mm
<del>Horizontal</del> Difference between segments heights in mounted pair	<del><math>\pm 2.5</math> mm</del> 1.0 mm
Progressive Addition Lenses:	
Fitting Cross height for each lens	$\pm 1.0$ mm
Difference between fitting cross heights in mounted pair	$\pm 1.0$ mm

Horizontal tilt for each lens using permanent reference markings	$\pm 2$ degrees
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Tilt or twist in the case of a flat top segment, the tilt of its horizontal axis should be less than 1/2 mm in differential elevation between the segment edges.

F. H. Multifocal Additions and Progressive Addition Lens Addition Power Tolerances.

Plano + 8.00 Nominal Value of Addition Power	<del><math>\pm 1.3</math> diopter</del> 0.00 to $\pm 4.00D$	$\pm 4.00D$ and above
Above + 8.00 Tolerance on Addition Power	<del><math>\pm 1.8</math> diopter</del> $\pm 0.12$	$\pm 0.18$

G. I. Base Curve Tolerance. When specified, the base curve should be supplied within  $\pm 0.75$  diopter.

H. Warpage. ~~The cylindrical surface power induced in the base curve of a lens should not exceed 1 diopter. This recommendation need not apply within 6mm of the mounting eyewire.~~

I. J. Center Thickness Tolerance. When specified, the center thickness should be within  $\pm 0.3$  mm measured at the prism reference point of the convex surface.

K. Localized errors (aberration). Areas outside a ~~20mm radius~~ 30mm diameter from the ~~specified major distance~~ reference point or optical center within 6mm from the edge need not be tested for ~~aberration~~ local power errors or aberrations. Progressive addition lenses are exempt from this requirement.

L. Prescription Dress Eyewear Impact Resistance. All lenses must conform to the impact resistance requirements of 21 CFR § 801.410.

M. Axis of Polarization. The actual plan of transmittance shall be at  $90 \pm 3$  degrees from the intended direction of horizontal orientation of polarization marking.

### 18VAC80-30-130. Contact lens standards.

To fit contact lenses, the following shall must be done:

1. The prescription (RX) must show evidence that contact lenses may be worn by the patient before the prescription can be filled by the ~~licensed~~ contact lens endorsed optician. Verbal approval from the optometrist or ophthalmologist or its agents or employees of the optometrist or ophthalmologist is acceptable. The ~~licensed~~ contact lens endorsed optician must make a notation in the patient's record of the name of the authorizing optometrist or ophthalmologist and the date of the authorization.

2. The optician must use all the following to fit contact lenses:

- a. Slit Lamp;

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- b. Keratometer and topographer; and
- c. Standardized Snellen type acuity chart.

## 18VAC80-30-140. Display of license.

Every person to whom a current license has been granted under this chapter ~~shall~~ must visibly display ~~his~~ the unaltered license in a conspicuous place in plain view of the public in the principal office in which ~~he~~ the person works. A ~~duplicate~~ clear and legible copy of the license ~~which has been notarized shall~~ must be posted in any branch offices.

## 18VAC80-30-150. Notification of change of address or name.

Notice in writing ~~shall~~ must be given to the board in the event of any change of name or address. Such notice ~~shall~~ must be ~~mailed~~ submitted to the board within ~~30~~ 60 days of the change of name or address. The board ~~shall~~ will not be responsible for the licensee's failure to receive notices, communications, and correspondence caused by the licensee's failure to promptly notify the board in writing of any change of name or address.

## 18VAC80-30-160. Grounds for disciplinary action.

A. The board is empowered to revoke, suspend, or refuse to grant or renew a license and is empowered to impose a fine up to the statutory limit, as authorized under § 54.1-202 of the Code of Virginia, per violation on a licensee for any of the following reasons:

- ~~1. Using nonprescribed controlled substances as defined in § 54.1-3401 of the Code of Virginia or alcohol at the work place during working hours;~~
- ~~2.~~ 1. Displaying professional incompetence or negligence, including failure to comply with this ~~part~~ chapter in the performance of opticianry;
- ~~3.~~ 2. Presenting false or fraudulent information on an application certifying possession of the qualifications required under 18VAC80-30-20;
- ~~4.~~ 3. Violating or inducing others to violate any provisions of Chapter 1 (§ 54.1-100 et seq.), 2 (§ 54.1-200 et seq.), 3 (§ 54.1-300 et seq.), or 15 (§ 54.1-1500 et seq.) of Title 54.1 of the Code of Virginia, ~~or of any other statute applicable to the practice of the profession herein regulated by this chapter, or of any provisions of this chapter;~~
- ~~5.~~ 4. Publishing or causing to be published any advertisement related to opticianry that is false, deceptive, or misleading;
- ~~6.~~ 5. Having been convicted in any jurisdiction of a misdemeanor involving sexual offense or physical injury in the last three years or a felony involving sexual offense, ~~or physical injury, or of any felony involving drug distribution, or that directly relates to crimes involving the profession of opticianry.~~ The board ~~shall~~ has the authority to determine, based upon all the information available,

including the applicant's record of prior convictions, if the applicant is unfit or unsuited to engage in the profession of opticianry. ~~Any plea of nolo contendere shall be considered a conviction for the purposes of this section. The licensee shall provide a certified copy of a final order, decree or case decision by a court or regulatory agency with the lawful authority to issue such order, decree or case decision, and such copy shall be admissible as prima facie evidence of such conviction. This record shall be forwarded by the licensee to the board within 10 days after all appeal rights have expired;~~

~~7.~~ 6. Having been disciplined by another jurisdiction in the practice of opticianry. Documentary evidence of such discipline ~~shall~~ must be submitted by the licensee to the board within 10 days after all appeal rights have expired; or

~~8.~~ 7. Allowing any person to engage in the practice of opticianry, except an optician apprentice or student enrolled in a course in a school of opticianry under the direct supervision of a licensed optician.

B. A finding of improper or dishonest conduct in the practice of the profession by a court of competent jurisdiction ~~shall~~ is cause for disciplinary action.

## 18VAC80-30-170. Accountability of licensee.

A licensee ~~shall~~ is responsible for ~~his~~ the licensee's acts or omissions and for the acts of ~~his~~ the licensee's agents or employees or ~~his~~ the licensee's staff in the performance of opticianry services.

## 18VAC80-30-180. Approval of review Board-approved reinstatement courses.

A. ~~Review~~ Reinstatement courses set out in this chapter ~~shall~~ must be approved by the board, except those provided by institutions, schools, and universities approved by the State Council of Higher Education for Virginia, ~~for which continuing education units are awarded. Training~~ Reinstatement courses requiring board approval ~~shall~~ must be approved by the board in accordance with the provisions of this section prior to commencing ~~in accordance with subsection B of this section.~~

B. ~~Training activities for which experience credit may be granted must be conducted in general conformance with the International Association for Continuing Education and Training's "Criteria and Guidelines for Quality Continuing Education and Training Programs: the CEU and Other Measurement Units," 1998. The board reserves the right to waive any of the requirements of the association's guidelines on a case by case basis. Only classroom, laboratory and field trip contact time will be used to compute training credits. No credit will be given for breaks, meals, or receptions.~~

~~1. Organization. The board will only approve training offered by a sponsor who is an identifiable organization with a mission statement outlining its functions, structure,~~

process and philosophy, and that has a staff of one or more persons with the authority to administer training.

2. Training records. The board will only approve training offered by a sponsor who maintains training records for all participants for a minimum of five years, and who has a written policy on retention and release of training records.

3. Instructors. The board will only approve training conducted by personnel who have demonstrated competence in the subject being taught, an understanding of the learning objective, a knowledge of the learning process to be used, and a proven ability to communicate.

4. Objectives. The board will only approve courses that have a series of stated objectives that are consistent with the job requirements of an optician. The training content must be consistent with those objectives.

5. Course completion requirements. For successful completion of a training program, participants must attend 90% or more of the class contact time and must demonstrate their learning through written examinations, completion of a project, self-assessment, oral examination, or other assessment technique.

~~C. B.~~ The board shall will consider the following information, to be submitted by the instructor, institution, school, or university on forms provided by the board; at least 45 days prior to the scheduled training activity:

1. Course information.
  - a. Course title;
  - b. Planned audience;
  - c. Name of sponsor;
  - d. Name, address, ~~phone~~ and telephone number of contact person;
  - e. Schedule presentation dates;
  - f. Detailed, ~~hour-by-hour~~ course schedule, ~~hour by hour~~;
  - g. List of planned breaks;
  - h. Scheduled presentation ~~location(s)~~ location; and
  - i. ~~Relevancy~~ Relevance of course to opticianry licensing topics listed in 18VAC80-30-70.
2. Instructor qualifications.
  - a. Name of instructor;
  - b. Title of instructor; and
  - c. Summary of qualifications to teach this course.
3. Training materials.
  - a. Course objectives -- A listing of the course objectives stated in terms of the skills, knowledge, or attitude the participant will be able to demonstrate as a result of the training;
  - b. Course outline -- A detailed outline showing the planned activities that will occur during the training

program, including major topics, planned presentation sequence, laboratory and field activities, audio-visual presentations, and other major activities;

c. Course reference materials -- A list of the name, publisher, and publication date for commercially available publications; for reference materials developed by the course sponsor or available exclusively through the course, a copy of the reference materials;

d. Audio-visual support materials -- A listing of any commercially available audio-visual support material that will be used in the program; a brief description of any ~~sponsor~~ sponsor-generated or ~~instructor-generated~~ instructor-generated audio-visual material that will be used; and

e. Handouts -- Identification of all commercially available handout material that will be used; copies of all other planned handouts.

4. Determination of successful completion. A description of the means that will be used to determine the successful completion of the training program by individual attendees, such as examinations, projects, personal evaluations by the instructor, or other recognized evaluation techniques.

~~D. C.~~ Recurring training programs. If there are plans to present the same course of instruction routinely at multiple locations with only minor modifications and changes, the board may approve the overall program rather than individual presentations if ~~so~~ requested by the sponsor.

1. The board shall will consider all of the information listed ~~above in subsection B of this section~~, except those items related to specific offerings of the course.

2. Board approval may be granted for a specific period of time ~~or for an indefinite period~~.

3. Board approval will apply only to those specific offerings certified by the sponsoring organization as having been conducted by instructors meeting the established criteria and in accordance with the board-approved courses, outlines, and objectives.

4. To maintain approval of the program, changes made to the program since initial approval must be submitted to the board for review and approval. Changes must be approved by the board prior to any training ~~subsequent to the changes~~.

**18VAC80-30-190. Criteria for related technical instruction.**

A. Related technical instruction courses for optician apprenticeships set out in this chapter must be approved by the board. Training institutions must meet the following criteria for related technical instruction.

1. Course Information. The curriculum must, at a minimum, teach to the American Board of Opticianry – National Contact Lens Examiners (ABO - NCLE) National Opticianry Competency Examination (NOCE) Content

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Outline and Test Specifications (<https://www.abo-ncle.org/ABONCLE/ABONCLE/Exams/Basic-Exams.aspx>).

## 2. Training Material.

a. Course objectives: a listing of the course objectives stated in terms of the skills, knowledge, or aptitude the participant will be able to demonstrate as a result of the instruction;

b. Course description: a detailed description showing the major topics, planned presentation sequence, activities, audio-visual presentations, and other major activities;

c. Required course materials: a list of the name, publisher, and publication date for commercially available publications or, for reference materials developed by the program or available exclusively through the course, a copy of the reference material to be used by the participant; and

d. Modality of instruction.

3. Evidence satisfactory to the board that the related technical instruction meets the minimum of 144 hours for each year of the two-year apprenticeship.

4. List of references used in course content development.

5. List of individuals, including qualifications, used in course content development.

6. List of review criteria used to ensure course content is current with ABO-NCLE NOCE Content Outline and Test Specifications.

7. A description of the means that will be used to determine the successful completion of the related technical instruction program by individuals, such as examinations, projects, personal evaluations, or other recognized evaluation techniques.

B. To maintain approval of the program, the curriculum must be submitted to the board for review and approval:

1. Every five years; or

2. Thirty days prior to any substantive changes to the requirements found in subsection A of this section.

VA.R. Doc. No. R24-7491; Filed March 25, 2025, 8:02 a.m.

## **BOARD OF MEDICINE**

### **Fast-Track Regulation**

**Title of Regulation: 18VAC85-80. Regulations Governing the Practice of Occupational Therapy (amending 18VAC85-80-10, 18VAC85-80-70).**

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

**Public Hearing Information:** No public hearing is currently scheduled.

**Public Comment Deadline:** May 21, 2025.

**Effective Date:** June 5, 2025.

**Agency Contact:** Erin Barrett, Director of Legislative and Regulatory Affairs, Department of Health Professions, Perimeter Center, 9960 Mayland Drive, Suite 300, Henrico, VA 23233, telephone (804) 750-3912, FAX (804) 915-0382, or email [erin.barrett@dhp.virginia.gov](mailto:erin.barrett@dhp.virginia.gov).

**Basis:** Regulations of the Board of Medicine are promulgated under the general authority of § 54.1-2400 of the Code of Virginia, which authorizes the health regulatory boards to promulgate regulations that are reasonable and necessary to effectively administer the regulatory system.

**Purpose:** Reduction of requirements for renewal may encourage new occupational therapists (OTs) and occupational therapist assistants (OTAs) to obtain licensure in Virginia and may help existing occupational therapists and occupational therapist assistants in Virginia maintain licensure, thereby increasing the number of practicing occupational therapists and occupational therapist assistants in the Commonwealth. Ensuring an adequate number of occupational therapists and occupational therapist assistants available to treat patients in the Commonwealth is essential to protect the public health, safety, and welfare.

**Rationale for Using Fast-Track Rulemaking Process:** This change is considered noncontroversial and therefore appropriate for the fast-track rulemaking process because it reduces requirements on occupational therapists and occupational therapist assistants to maintain an active license to practice in the Commonwealth.

**Substance:** This action removes the active practice requirement in the section governing biennial renewal of licenses.

**Issues:** The primary advantages to the public are swift and appropriate renewal of OT and OTA licenses to allow those practitioners to provide health care services to the public. There are no disadvantages to the public. There are no primary advantages or disadvantages to the agency or the Commonwealth.

#### **Department of Planning and Budget Economic Impact Analysis:**

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 Code of Virginia and Executive Order 19. The analysis presented represents DPB's best estimate of the potential economic impacts as of the date of this analysis.<sup>1</sup>

**Summary of the Proposed Amendments to Regulation.** The Board of Medicine (board) proposes to remove the requirement that occupational therapists (OTs) and occupational therapy assistants (OTAs) have engaged in the active practice of occupational therapy in order to renew their license.

**Background.** The current regulation requires the following for biennial license renewal for both OTs and OTAs: (i) fee payment (\$135 for OTs; \$70 for OTAs), (ii) a minimum of 160 hours of active professional practice as an OT or an OTA within the 24-month period immediately preceding renewal, and (iii) 20 contact hours of continuing learning activities. According to the Department of Health Professions (DHP), following time out of active practice, such as for parental leave or family leave, many OTs and OTAs have faced difficulty

renewing their license due to the active practice requirement. All or most other professions licensed by the board or the agency do not have this requirement and the board does not believe it is necessary. Thus, the board proposes to eliminate the active practice requirement.

Estimated Benefits and Costs: Currently, OTs and OTAs who do not have the 160 hours of active practice required for license renewal would have to have their license reinstated.<sup>2</sup> The reinstatement fee for a lapsed license is \$180 for an OT and \$90 for an OTA. An OT or OTA who has allowed a license to lapse for fewer than six years, and who has not engaged in active practice, must serve a board-approved practice of 160 hours to be completed in two consecutive months under the supervision of a licensed OT. An OT or OTA who has allowed a license to lapse for six years or more, and who has not engaged in active practice, must serve a board-approved practice of 320 hours to be completed in four consecutive months under the supervision of a licensed OT. Additionally, the applicant for reinstatement must meet the continuing competency requirements for the number of years the license has been lapsed, not to exceed four years. The requirement to work under supervision may in particular discourage some competent OTs and OTAs from returning to active practice after time away for medical leave, caring for family, childbirth, or other circumstances. The Board of Medicine, like other DHP boards, has determined that active practice is not necessary to assure competency of the practitioners. (The practitioners would still need to complete the contact hours of continuing learning activities.) The OTs and OTAs returning to practice would benefit by not having to work under supervision and by paying the lower renewal fee (\$135 for an OT and \$70 for an OTA) versus the higher reinstatement fee (\$180 for an OT and \$90 for an OTA). To the extent that some competent OTs and OTAs do not return to practice due to the current active practice requirement, removing the requirement would be beneficial for the public by increasing the availability of competent health care professionals.

Businesses and Other Entities Affected. As of June 30, 2024, there were 5,349 OTs and 1,811 OTAs licensed in the Commonwealth. DHP does not possess a count of OTs and OTAs negatively impacted by the active practice renewal requirement. According to survey data from the most recently published profession relevant Virginia Healthcare Workforce Data Center reports, the primary type of employers of OTs and OTAs in the Commonwealth are distributed as follows:

Employer Type for OTs <sup>3</sup>	Percentage
General Hospital, Inpatient Department	17%
K-12 School System	14%
Home Health Care	12%
Skilled Nursing Facility	11%

Rehabilitation Facility, Outpatient Clinic	9%
Private Practice, Group	7%
Rehabilitation Facility, Residential/Inpatient	7%
General Hospital, Outpatient Department	5%
Assisted Living or Continuing Care Facility	4%
Academic Institution	3%
Private Practice, Solo	3%
Mental Health, Inpatient	1%
Physician Office	1%
Other	7%
Employer Type for OTAs <sup>4</sup>	Percentage
Skilled Nursing Facility	36%
Home Health Care	15%
K-12 School System	9%
Rehabilitation Facility, Residential/Inpatient	8%
Assisted Living or Continuing Care Facility	8%
General Hospital, Inpatient Department	5%
Rehabilitation Facility, Outpatient Clinic	5%
Private Practice, Group	2%
Academic Institution	2%
General Hospital, Outpatient Department	2%
Private Practice, Solo	2%
Mental Health, Inpatient	1%
Mental Health, Outpatient	1%
Other	4%

The Code of Virginia requires DPB to assess whether an adverse impact may result from the proposed regulation.<sup>5</sup> An

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adverse impact is indicated if there is any increase in net cost or reduction in net benefit for any entity, even if the benefits exceed the costs for all entities combined.<sup>6</sup> The proposed amendment neither increases net costs nor reduces net benefit. No adverse impact is indicated.

Small Businesses<sup>7</sup> Affected.<sup>8</sup> The proposed amendment does not adversely affect small businesses.

Localities<sup>9</sup> Affected.<sup>10</sup> Localities that have a shortage of available OTs or OTAs may be particularly affected by the potential increase in available services. The proposed amendment does not increase costs for local governments.

Projected Impact on Employment. By removing a barrier from OTs and OTAs returning to active practice, the proposal may result in a small increase in employed OTs and OTAs.

Effects on the Use and Value of Private Property. As the proposed amendment may moderately increase the supply of licensed OTs and OTAs, the cost of hiring and employing OTs and OTAs may be moderately reduced. Consequently, the value of firms that employ and hire OTs or OTAs may moderately increase. The proposed amendment does not affect real estate development costs.

employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million."

<sup>8</sup> If the proposed regulatory action may have an adverse effect on small businesses, § 2.2-4007.04 requires that such economic impact analyses include: (1) an identification and estimate of the number of small businesses subject to the proposed regulation, (2) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the proposed regulation, including the type of professional skills necessary for preparing required reports and other documents, (3) a statement of the probable effect of the proposed regulation on affected small businesses, and (4) a description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation. Additionally, pursuant to § 2.2-4007.1 of the Code of Virginia, if there is a finding that a proposed regulation may have an adverse impact on small business, the Joint Commission on Administrative Rules shall be notified.

<sup>9</sup> "Locality" can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulatory change are most likely to occur.

<sup>10</sup> Section 2.2-4007.04 defines "particularly affected" as bearing disproportionate material impact.

**Agency Response to Economic Impact Analysis:** The Board of Medicine concurs with the economic impact analysis prepared by the Department of Planning and Budget.

## Summary:

*The amendments eliminate the requirement for active practice for renewal of a license as an occupational therapist or occupational therapist assistant.*

## **18VAC85-80-10. Definitions.**

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

"Board"

"Occupational therapy assistant"

"Practice of occupational therapy"

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

"ACOTE" means the Accreditation Council for Occupational Therapy Education.

"Active practice" means a minimum of 160 hours of professional practice as an occupational therapist or an occupational therapy assistant within the 24-month period immediately preceding ~~renewal~~ or application for licensure, if previously licensed or certified in another jurisdiction. The active practice of occupational therapy may include supervisory, administrative, educational, or consultative activities or responsibilities for the delivery of such services.

"Advisory board" means the Advisory Board of Occupational Therapy.

"Compact" means the Occupational Therapy Interjurisdictional Licensure Compact.

"Compact privilege" means the same as the definition of the term in § 54.1-2956.7:1 of the Code of Virginia.

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<sup>1</sup> Section 2.2-4007.04 of the Code of Virginia requires that such economic impact analyses determine the public benefits and costs of the proposed amendments. Further the analysis should include but not be limited to: (1) the projected number of businesses or other entities to whom the proposed regulatory action would apply, (2) the identity of any localities and types of businesses or other entities particularly affected, (3) the projected number of persons and employment positions to be affected, (4) the projected costs to affected businesses or entities to implement or comply with the regulation, and (5) the impact on the use and value of private property.

<sup>2</sup> The definition of active practice in the regulation states in part that the active practice of occupational therapy may include supervisory, administrative, educational, or consultative activities or responsibilities for the delivery of such services. If the OT or OTA was close to fulfilling the 160 hours. He or she could potentially get to the 160 hours through educational activities. Then he or she would just pay the late fee (\$50 for an OT and \$30 for an OTA) rather than reinstatement.

<sup>3</sup> See <https://www.dhp.virginia.gov/media/dhpweb/docs/hwdc/medicine/0119OT2022.pdf>.

<sup>4</sup> See <https://www.dhp.virginia.gov/media/dhpweb/docs/hwdc/medicine/0131OTA2022.pdf>.

<sup>5</sup> Pursuant to § 2.2-4007.04 D: In the event this economic impact analysis reveals that the proposed regulation would have an adverse economic impact on businesses or would impose a significant adverse economic impact on a locality, business, or entity particularly affected, the Department of Planning and Budget shall advise the Joint Commission on Administrative Rules, the House Committee on Appropriations, and the Senate Committee on Finance. Statute does not define "adverse impact," state whether only Virginia entities should be considered, nor indicate whether an adverse impact results from regulatory requirements mandated by legislation.

<sup>6</sup> Statute does not define "adverse impact," state whether only Virginia entities should be considered, nor indicate whether an adverse impact results from regulatory requirements mandated by legislation. As a result, DPB has adopted a definition of adverse impact that assesses changes in net costs and benefits for each affected Virginia entity that directly results from discretionary changes to the regulation.

<sup>7</sup> Pursuant to § 2.2-4007.04, small business is defined as "a business entity, including its affiliates, that (i) is independently owned and operated and (ii)



"Contact hour" means 60 minutes of time spent in continued learning activity.

"NBCOT" means the National Board for Certification in Occupational Therapy, under which the national examination for certification is developed and implemented.

"National examination" means the examination prescribed by NBCOT for certification as an occupational therapist or an occupational therapy assistant and approved for licensure in Virginia.

"Occupational therapy personnel" means appropriately trained individuals who provide occupational therapy services under the supervision of a licensed occupational therapist.

"Practitioner" means an occupational therapist or occupational therapy assistant licensed in Virginia or an occupational therapist or occupational therapy assistant practicing in Virginia with a compact privilege.

#### **18VAC85-80-70. Biennial renewal of licensure.**

A. An occupational therapist or an occupational therapy assistant shall renew his license biennially during his birth month in each even-numbered year by:

1. Paying to the board the renewal fee prescribed in 18VAC85-80-26; and
2. ~~Indicating that he has been engaged in the active practice of occupational therapy as defined in 18VAC85-80-10; and~~
3. 2. Attesting to completion of continued competency requirements as prescribed in 18VAC85-80-71.

B. An occupational therapist or an occupational therapy assistant whose license has not been renewed by the first day of the month following the month in which renewal is required shall pay an additional fee as prescribed in 18VAC85-80-26.

C. In order to renew a compact privilege to practice in Virginia, the holder shall comply with the rules adopted by the Occupational Therapy Compact Commission in effect at the time of the renewal.

VA.R. Doc. No. R25-7966; Filed March 20, 2025, 9:19 a.m.

## **BOARD OF PHARMACY**

### **Final Regulation**

**REGISTRAR'S NOTICE:** The Board of Pharmacy is claiming an exemption from Article 2 of the Administrative Process Act in accordance with § 2.2-4006 A 13 of the Code of Virginia, which exempts amendments to regulations of the board to schedule a substance in Schedule I or II pursuant to subsection D of § 54.1-3443 of the Code of Virginia. The board will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

**Title of Regulation:** 18VAC110-20. Regulations Governing the Practice of Pharmacy (amending 18VAC110-20-322).

**Statutory Authority:** §§ 54.1-2400 and 54.1-3443 of the Code of Virginia.

**Effective Date:** May 21, 2025.

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

**Summary:**

*The amendments place two compounds into Schedule I of the Drug Control Act. The added compounds will remain in effect for 18 months or until the compounds are placed in Schedule I by action of the General Assembly.*

#### **18VAC110-20-322. Placement of chemicals in Schedule I.**

A. Pursuant to subsection D of § 54.1-3443 of the Code of Virginia, the Board of Pharmacy places the following in Schedule I of the Drug Control Act:

1. Synthetic opioid.

a. N-ethyl-2-[5-nitro-2-[(4-propan-2-yloxyphenyl)methyl]benzimidazol-1-yl]ethanamine (other name: N-desethyl Isotonitazene), its isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, unless specifically excepted, whenever the existence of these isomers, esters, ethers and salts is possible within the specific chemical designation.

b. 7-[(3-chloro-6-methyl-5,5-dioxo-1H-benzo[c][2,1]benzothiazepin-11-yl)amino]heptanoic acid (other name: Tianeptine), its isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, unless specifically excepted, whenever the existence of these isomers, esters, ethers, and salts is possible within the specific chemical designation.

2. Cannabimimetic agent. Ethyl-3,3-dimethyl-2-[(1-(pent-4-enylindazole-3-carbonyl)amino)butanoate (other name: EDMB-4en-PINACA), its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.

The placement of drugs listed in this subsection shall remain in effect until July 31, 2025, unless enacted into law in the Drug Control Act.

B. Pursuant to subsection D of § 54.1-3443 of the Code of Virginia, the Board of Pharmacy places the following compounds expected to have hallucinogenic properties in Schedule I of the Drug Control Act:

1. 1-(3,5-Dimethoxy-4-propoxyphenyl)-2-propanamine (other names: 4-propoxy-3,5-DMA, 3C-P, 1-(3,5-Dimethoxy-4-propoxyphenyl)propan-2-amine), its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.

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2. 2-(5-methoxy-1H-indol-3-yl)ethanamine (other names: 5-methoxytryptamine, 5-MeOT), its salts, isomers (optical, position, and geometric), and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.

The placement of drugs listed in this subsection shall remain in effect until August 28, 2025, unless enacted into law in the Drug Control Act.

C. Pursuant to subsection D of § 54.1-3443 of the Code of Virginia, the Board of Pharmacy places the following in Schedule I of the Drug Control Act:

1. Compounds expected to have hallucinogenic properties:
  - a. 1-(1,3-benzodioxol-5-yl)-2-(isobutylamino)-1-pentanone (other name: N-isobutylpentylone), its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.
  - b. 1-(1,3-benzodioxyl-5-yl)-2-(tert-butylamino)-1-pentanone (other name: N-tert-butyl pentylone), its salts, isomers (optical, position, and geometric), and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.
  - c. 1-Phenyl-N-propylcyclohexanamine (other names: N-(1-phenylcyclohexyl)propanamine, PCPr), its salts, isomers (optical, position, and geometric), and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.
2. Compound classified as a cannabimimetic agent. Methyl N-(1H-indazol-3-ylcarbonyl)-3-methyl-valinate (other name: MDMA-INACA), its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.

The placement of drugs listed in this subsection shall remain in effect until April 8, 2026, unless enacted into law in the Drug Control Act.

D. Pursuant to subsection D of § 54.1-3443 of the Code of Virginia, the Board of Pharmacy places the following in Schedule I of the Drug Control Act:

1. The following compounds expected to have hallucinogenic properties:
  - a. 1-[(4-fluorophenyl)methyl]-4-methylpiperazine (other names: 4-fluoro-MBZP, 4-fluoro methylbenzylpiperazine), its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.
  - b. 4-fluoro-alpha-pyrrolidinoisohexiophenone (other name: 4-fluoro-alpha-PiHP), its salts, isomers (optical, position, and geometric), and salts of isomers whenever

the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.

c. 8-bromo-1-methyl-6-pyridin-2-yl-4H-[1,2,4]triazolo[4,3-a][1,4]benzodiazepine (other name: pyrazolam), its salts, isomers (optical, position, and geometric), and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.

2. The following cannabimimetic agent: Methyl-2-(1-butyl-1H-indazole-3-carboxamido)-3,3-dimethylbutanoate (other name: MDMA-BUTINACA), its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.

The placement of drugs listed in this subsection shall remain in effect until April 8, 2026, unless enacted into law in the Drug Control Act.

E. Pursuant to subsection D of § 54.1-3443 of the Code of Virginia, the Board of Pharmacy places the following in Schedule I of the Drug Control Act:

1. Compound expected to have depressant properties. 7-Bromo-5-(2-chlorophenyl)-1,3-dihydro-2H-1,4-benzodiazepin-2-one (other name: phenazepam), its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.

2. Cannabimimetic agent. Methyl N-[(5-methyl-1H-indazol-3-yl)carbonyl]-3-methyl-valinate (other name: MDMA-5Me-INACA), its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.

The placement of drugs listed in this subsection shall remain in effect until November 21, 2026, unless enacted into law in the Drug Control Act.

VA.R. Doc. No. R25-7995; Filed April 1, 2025, 3:32 p.m.

## Final Regulation

**REGISTRAR'S NOTICE:** The Board of Pharmacy is claiming an exemption from Article 2 of the Administrative Process Act in accordance with § 2.2-4006 A 13 of the Code of Virginia, which exempts amendments to regulations of the board to schedule a substance in Schedule I or II pursuant to subsection E of § 54.1-3443 of the Code of Virginia. The board will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

**Title of Regulation:** 18VAC110-20. Regulations Governing the Practice of Pharmacy (amending 18VAC110-20-322).

**Statutory Authority:** §§ 54.1-2400 and 54.1-3443 of the Code of Virginia.

**Effective Date:** May 21, 2025.

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

**Summary:**

*Pursuant to § 54.1-3443 of the Code of Virginia, the amendments place 12 compounds into Schedule I of the Drug Control Act to conform with federal scheduling actions.*

**18VAC110-20-322. Placement of chemicals in Schedule I.**

A. Pursuant to subsection D of § 54.1-3443 of the Code of Virginia, the Board of Pharmacy places the following in Schedule I of the Drug Control Act:

1. Synthetic opioid.

a. N-ethyl-2-[5-nitro-2-[(4-propan-2-yloxyphenyl)methyl]benzimidazol-1-yl]ethanamine (other name: N-desethyl Isotonitazene), its isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, unless specifically excepted, whenever the existence of these isomers, esters, ethers and salts is possible within the specific chemical designation.

b. 7-[(3-chloro-6-methyl-5,5-dioxo-1H-benzo[c][2,1]benzothiazepin-11-yl)amino]heptanoic acid (other name: Tianeptine), its isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, unless specifically excepted, whenever the existence of these isomers, esters, ethers, and salts is possible within the specific chemical designation.

2. Cannabimimetic agent. Ethyl-3,3-dimethyl-2-[(1-(pent-4-enylindazole-3-carbonyl)amino)butanoate (other name: EDMB-4en-PINACA), its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.

The placement of drugs listed in this subsection shall remain in effect until July 31, 2025, unless enacted into law in the Drug Control Act.

B. Pursuant to subsection D of § 54.1-3443 of the Code of Virginia, the Board of Pharmacy places the following compounds expected to have hallucinogenic properties in Schedule I of the Drug Control Act:

1. 1-(3,5-Dimethoxy-4-propoxyphenyl)-2-propanamine (other names: 4-propoxy-3,5-DMA, 3C-P, 1-(3,5-Dimethoxy-4-propoxyphenyl)propan-2-amine), its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.

2. 2-(5-methoxy-1H-indol-3-yl)ethanamine (other names: 5-methoxytryptamine, 5-MeOT), its salts, isomers (optical, position, and geometric), and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.

The placement of drugs listed in this subsection shall remain in effect until August 28, 2025, unless enacted into law in the Drug Control Act.

C. Pursuant to subsection D of § 54.1-3443 of the Code of Virginia, the Board of Pharmacy places the following in Schedule I of the Drug Control Act:

1. Compounds expected to have hallucinogenic properties:

a. 1-(1,3-benzodioxol-5-yl)-2-(isobutylamino)-1-pentanone (other name: N-isobutylpentylone), its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.

b. 1-(1,3-benzodioxyl-5-yl)-2-(tert-butylamino)-1-pentanone (other name: N-tert-butyl pentylone), its salts, isomers (optical, position, and geometric), and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.

c. 1-Phenyl-N-propylcyclohexanamine (other names: N-(1-phenylcyclohexyl)propanamine, PCPr), its salts, isomers (optical, position, and geometric), and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.

2. Compound classified as a cannabimimetic agent. Methyl N-(1H-indazol-3-ylcarbonyl)-3-methyl-valinate (other name: MDMB-INACA), its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.

The placement of drugs listed in this subsection shall remain in effect until April 8, 2026, unless enacted into law in the Drug Control Act.

D. Pursuant to subsection D of § 54.1-3443 of the Code of Virginia, the Board of Pharmacy places the following in Schedule I of the Drug Control Act:

1. The following compounds expected to have hallucinogenic properties:

a. 1-[(4-fluorophenyl)methyl]-4-methylpiperazine (other names: 4-fluoro-MBZP, 4-fluoro methylbenzylpiperazine), its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.

b. 4-fluoro-alpha-pyrrolidinoisohexiophenone (other name: 4-fluoro-alpha-PiHP), its salts, isomers (optical, position, and geometric), and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.

c. 8-bromo-1-methyl-6-pyridin-2-yl-4H-[1,2,4]triazolo[4,3-a][1,4]benzodiazepine (other name: pyrazolam), its salts, isomers (optical, position, and geometric), and salts of isomers whenever the existence of

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such salts, isomers, and salts of isomers is possible within the specific chemical designation.

2. The following cannabimimetic agent: Methyl-2-(1-butyl-1H-indazole-3-carboxamido)-3,3-dimethylbutanoate (other name: MDMB-BUTINACA), its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.

The placement of drugs listed in this subsection shall remain in effect until April 8, 2026, unless enacted into law in the Drug Control Act.

E. Pursuant to subsection E of § 54.1-3443 of the Code of Virginia, the Board of Pharmacy places the following compounds into Schedule I of the Drug Control Act to conform to federal scheduling changes:

1. Meta-fluorofentanyl (other name: N-(3-fluorophenyl)-N-(1-phenethylpiperidin-4-yl)propionamide);
2. Meta-fluoroisobutyryl fentanyl (other name: N-(3-fluorophenyl)-N-(1-phenethylpiperidin-4-yl)isobutyramide);
3. Para-methoxyfuranyl fentanyl (other name: N-(4-methoxyphenyl)-N-(1-phenethylpiperidin-4-yl)furan-2-carboxamide);
4. 3-furanyl fentanyl (other name: N-(1-phenethylpiperidin-4-yl)-N-phenylfuran-3-carboxamide);
5. 2',5'-dimethoxyfentanyl (other name: N-(1-(2,5-dimethoxyphenethyl)piperidin-4-yl)-N-phenylpropionamide);
6. Isovaleryl fentanyl (other name: 3-methyl-N-(1-phenethylpiperidin-4-yl)-N-phenylbutanamide);
7. Ortho-fluorofuranyl fentanyl (other name: N-(2-fluorophenyl)-N-(1-phenethylpiperidin-4-yl)furan-2-carboxamide);
8. Para-methylcyclopropyl fentanyl (other name: N-(4-methylphenyl)-N-(1-phenethylpiperidin-4-yl)cyclopropanecarboxamide);
9. Methyl 2-[[1-(4-fluorobutyl)indole-3-carbonyl]amino]-3,3-dimethyl-butanoate (other names: 4F-MDMB-BUTICA; 4F-MDMB-BICA);
10. 5-Pentyl-2-(2-phenylpropan-2-yl)pyridof[4,3-b]indol-1-one (other names: CUMYL-PEGAclone; SGT-151);
11. Ethyl 2-[[1-(5-fluoropentyl)indole-3-carbonyl]amino]-3,3-dimethyl-butanoate (other names: 5F-EDMB-PICA; 5F-EDMB-2201); and
12. 2-(4-ethoxybenzyl)-5-nitro-1-(2-(piperidin-1-yl)ethyl)-1H-benzimidazole (other names: N-piperidinyl etonitazene; etonitazepipne).

VA.R. Doc. No. R25-8087; Filed April 1, 2025, 4:13 p.m.

## Final Regulation

**REGISTRAR'S NOTICE:** The Board of Pharmacy is claiming an exemption from Article 2 of the Administrative Process Act in accordance with § 2.2-4006 A 13 of the Code of Virginia, which exempts amendments to regulations of the board to schedule a substance in Schedule I or II pursuant to subsection D of § 54.1-3443 of the Code of Virginia. The board will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

**Title of Regulation:** 18VAC110-20. Regulations Governing the Practice of Pharmacy (amending 18VAC110-20-322).

**Statutory Authority:** §§ 54.1-2400 and 54.1-3443 of the Code of Virginia.

**Effective Date:** May 21, 2025.

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

### Summary:

*The amendments place eight compounds into Schedule I of the Drug Control Act. The added compounds will remain in effect for 18 months or until the compounds are placed in Schedule I by action of the General Assembly.*

### 18VAC110-20-322. Placement of chemicals in Schedule I.

A. Pursuant to subsection D of § 54.1-3443 of the Code of Virginia, the Board of Pharmacy places the following in Schedule I of the Drug Control Act:

#### 1. Synthetic opioid.

a. N-ethyl-2-[5-nitro-2-[(4-propan-2-yloxyphenyl)methyl]benzimidazol-1-yl]ethanamine (other name: N-desethyl Isotonitazene), its isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, unless specifically excepted, whenever the existence of these isomers, esters, ethers and salts is possible within the specific chemical designation.

b. 7-[(3-chloro-6-methyl-5,5-dioxo-1H-benzo[c][2,1]benzothiazepin-11-yl)amino]heptanoic acid (other name: Tianeptine), its isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, unless specifically excepted, whenever the existence of these isomers, esters, ethers, and salts is possible within the specific chemical designation.

2. Cannabimimetic agent. Ethyl-3,3-dimethyl-2-[(1-(pent-4-enylindazole-3-carbonyl)amino)butanoate (other name: EDMB-4en-PINACA), its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.

The placement of drugs listed in this subsection shall remain in effect until July 31, 2025, unless enacted into law in the Drug Control Act.

B. Pursuant to subsection D of § 54.1-3443 of the Code of Virginia, the Board of Pharmacy places the following

compounds expected to have hallucinogenic properties in Schedule I of the Drug Control Act:

1. 1-(3,5-Dimethoxy-4-propoxyphenyl)-2-propanamine (other names: 4-propoxy-3,5-DMA, 3C-P, 1-(3,5-Dimethoxy-4-propoxyphenyl)propan-2-amine), its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.
2. 2-(5-methoxy-1H-indol-3-yl)ethanamine (other names: 5-methoxytryptamine, 5-MeOT), its salts, isomers (optical, position, and geometric), and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.

The placement of drugs listed in this subsection shall remain in effect until August 28, 2025, unless enacted into law in the Drug Control Act.

C. Pursuant to subsection D of § 54.1-3443 of the Code of Virginia, the Board of Pharmacy places the following in Schedule I of the Drug Control Act:

1. Compounds expected to have hallucinogenic properties:
  - a. 1-(1,3-benzodioxol-5-yl)-2-(isobutylamino)-1-pentanone (other name: N-isobutylpentylone), its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.
  - b. 1-(1,3-benzodioxyl-5-yl)-2-(tert-butylamino)-1-pentanone (other name: N-tert-butyl pentylone), its salts, isomers (optical, position, and geometric), and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.
  - c. 1-Phenyl-N-propylcyclohexanamine (other names: N-(1-phenylcyclohexyl)propanamine, PCPr), its salts, isomers (optical, position, and geometric), and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.
2. Compound classified as a cannabimimetic agent. Methyl N-(1H-indazol-3-ylcarbonyl)-3-methyl-valinate (other name: MDMB-INACA), its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.

The placement of drugs listed in this subsection shall remain in effect until April 8, 2026, unless enacted into law in the Drug Control Act.

D. Pursuant to subsection D of § 54.1-3443 of the Code of Virginia, the Board of Pharmacy places the following in Schedule I of the Drug Control Act:

1. The following compounds expected to have hallucinogenic properties:

- a. 1-[(4-fluorophenyl)methyl]-4-methylpiperazine (other names: 4-fluoro-MBZP, 4-fluoro methylbenzylpiperazine), its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.
- b. 4-fluoro-alpha-pyrrolidinoisohexiophenone (other name: 4-fluoro-alpha-PiHP), its salts, isomers (optical, position, and geometric), and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.
- c. 8-bromo-1-methyl-6-pyridin-2-yl-4H-[1,2,4]triazolo[4,3-a][1,4]benzodiazepine (other name: pyrazolam), its salts, isomers (optical, position, and geometric), and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.

2. The following cannabimimetic agent: Methyl-2-(1-butyl-1H-indazole-3-carboxamido)-3,3-dimethylbutanoate (other name: MDMB-BUTINACA), its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.

The placement of drugs listed in this subsection shall remain in effect until April 8, 2026, unless enacted into law in the Drug Control Act.

E. Pursuant to subsection D of § 54.1-3443 of the Code of Virginia, the Board of Pharmacy places the following in Schedule I of the Drug Control Act:

1. The following compounds classified as synthetic opioids:
  - a. 2-[(4-methoxyphenyl)methyl]-5-nitro-1-(2-pyrrolidin-1-ylethyl)benzimidazole (other names: metonitazepyne, N-pyrrolidino metonitazene), its isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, unless specifically excepted, whenever the existence of these isomers, esters, ethers, and salts is possible within the specific chemical designation.
  - b. 2-[2-[(4-ethoxyphenyl)methyl]-5-nitrobenzimidazol-1-yl]-N-ethylethanamine (other name: N-desethyl etonitazene), its isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, unless specifically excepted, whenever the existence of these isomers, esters, ethers, and salts is possible within the specific chemical designation.
  - c. N-(2-methylphenyl)-N-[1-(2-phenethyl)piperidin-4-yl]propanamide (other name: ortho-methylfentanyl), its isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, unless specifically excepted, whenever the existence of these isomers, esters, ethers, and salts is possible within the specific chemical designation.

2. The following compounds expected to have hallucinogenic properties:

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a. [3-[2-(diethylamino)ethyl]-1H-indol-4-yl] acetate (other names: 4-acetoxy-N,N-diethyltryptamine; 4-acetoxy DET; 4-AcO-DET; ethacatin), its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.

b. 3-[2-(diethylamino)ethyl]-1H-indol-4-ol (other names: 4-hydroxy-N,N-diethyltryptamine; 4-hydroxy DET; ethocin), its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.

c. 3-methylmethcathinone (other names: 3-MMC; metaphedrone; 2-(methylamino)-1-(3-methylphenyl)propan-1-one), its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.

### 3. The following compounds classified as cannabimimetic agents:

a. N-(1-amino-3,3-dimethyl-1-oxobutan-2-yl)-1H-indazole-3-carboxamide (other name: ADB-INACA), its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.

b. N-cyclohexyl-2-(1-pentylindol-3-yl)acetamide (other names: cyclohexyl-PIATA, CH-PIACA, CH-PIATA), its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.

The placement of drugs listed in this subsection shall remain in effect until November 21, 2026, unless enacted into law in the Drug Control Act.

VA.R. Doc. No. R25-8124; Filed April 1, 2025, 4:14 p.m.

## Final Regulation

**REGISTRAR'S NOTICE:** The Board of Pharmacy is claiming an exemption from the Administrative Process Act in accordance with the second enactment of Chapter 725 of the 2024 Acts of Assembly, which exempts the board's initial adoption of regulations necessary to implement the provisions of the act, except that the board must provide an opportunity for public comment on the regulations prior to adoption.

**Title of Regulation:** **18VAC110-20. Regulations Governing the Practice of Pharmacy (adding 18VAC110-20-351).**

**Statutory Authority:** §§ 54.1-2400 and 54.1-3410.3 of the Code of Virginia.

**Effective Date:** May 21, 2025.

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

**Summary:**

*Pursuant to Chapter 725 of the 2024 Acts of Assembly, the amendments require pharmacy staff to ensure that accessibility requirements for print-disabled persons are met on prescription labels.*

### **18VAC110-20-351. Accessible prescription labels.**

**A.** Prescriptions dispensed to a person who informs the pharmacy that the person is blind, visually impaired, or otherwise print disabled shall meet the requirements of § 54.1-3410.3 of the Code of Virginia to ensure that all necessary information is included for patient safety.

**B.** If the accommodation provided by the pharmacy includes the use of an accessible label, a pharmacist, pharmacy intern, pharmacy technician, or pharmacy technician trainee shall affix the label prior to dispensing to the patient as required by 18VAC110-20-270.

VA.R. Doc. No. R25-8039; Filed April 1, 2025, 3:34 p.m.

## Final Regulation

**Title of Regulation:** **18VAC110-20. Regulations Governing the Practice of Pharmacy (amending 18VAC110-20-555).**

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

**Effective Date:** May 21, 2025.

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

**Summary:**

*In response to a petition for rulemaking, the amendments (i) remove the prior authorization requirement if a stat drug is dispensed from an automatic dispensing device (ADD), provided that a delay in administration of the drug could result in harm to the patient, and (ii) include drugs that would be included in a stat drug box, thereby treating drugs that would be contained in a stat drug box the same as drugs that would be kept in an emergency kit.*

*Changes to the proposed regulation clarify that removal of drugs from an ADD must be pursuant to a valid prescription or lawful order of a prescriber.*

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

### **18VAC110-20-555. Use of automated dispensing devices.**

Nursing homes licensed pursuant to Chapter 5 (§ 32.1-123 et seq.) of Title 32.1 of the Code of Virginia may use automated drug dispensing systems, as defined in § 54.1-3401 of the Code of Virginia, upon meeting the following conditions:

1. Drugs placed in an automated drug dispensing system in a nursing home shall be under the control of the pharmacy

providing services to the nursing home, the pharmacy shall have online communication with and control of the automated drug dispensing system, and access to any drug for a patient shall be controlled by the pharmacy.

2. A nursing home without an in-house pharmacy shall obtain a controlled substances registration prior to using an automated dispensing system, unless the system is exclusively stocked with drugs that would be kept in a stat-drug box pursuant to 18VAC110-20-550 or an emergency drug kit pursuant to 18VAC110-20-540 and are solely administered for stat or emergency administration.

3. For facilities not required to obtain a controlled substance registration, access to the automated dispensing device shall be restricted to a licensed nurse, pharmacist, or prescriber, or a registered pharmacy technician for the purpose of stocking or reloading.

4. Removal of drugs from any automated drug dispensing system for administration to patients can only be made pursuant to a valid prescription or lawful order of a prescriber under the following conditions:

a. ~~A No drug, including a drug that would be stocked in a stat drug box pursuant to subsection B of 18VAC110-20-550, may not be administered to a patient from an automated dispensing device until a pharmacist has reviewed the prescription order and electronically authorized the access of that drug for that particular patient in accordance with the order [ , except as provided in subdivision 4 c of this section ] .~~

b. The PIC of the provider pharmacy shall ensure that a pharmacist who has online access to the system is available at all times to review a prescription order as needed and authorize administering pursuant to the order reviewed.

c. Drugs that would be stocked in an emergency drug kit pursuant to 18VAC110-20-540 or a stat drug box pursuant to subsection B of 18VAC110-20-550 may be accessed [ pursuant to a valid prescription or lawful order of a prescriber and ] prior to receiving electronic authorization from the pharmacist, provided that the absence of the [ drugs emergency drug ] would threaten the survival of the patients patient or that a delay in administration of the [ stat ] drug could result in harm to the patient.

d. Automated dispensing devices shall be capable of producing a hard-copy record of distribution that shall show patient name, drug name and strength, dose withdrawn, dose to be administered, date and time of withdrawal from the device, and identity of person withdrawing the drug.

5. Drugs placed in automated dispensing devices shall be in the manufacturer's sealed original unit dose or unit-of-use packaging or in repackaged unit-dose containers in compliance with the requirements of 18VAC110-20-355 relating to repackaging, labeling, and records.

6. Prior to the removal of drugs from the pharmacy, a delivery record shall be generated for all drugs to be placed in an automated dispensing device, which shall include the date; drug name, dosage form, and strength; quantity; nursing home; a unique identifier for the specific device receiving drugs; and initials of the pharmacist checking the order of drugs to be removed from the pharmacy and the records of distribution for accuracy.

7. At the direction of the PIC, drugs may be loaded in the device by a pharmacist or a pharmacy technician adequately trained in the proper loading of the system.

8. At the time of loading, the delivery record for all Schedules II through VI drugs shall be signed by a nurse or other person authorized to administer drugs from that specific device, and the record returned to the pharmacy.

9. At the time of loading any Schedules II through V drug, the person loading will verify that the count of that drug in the automated dispensing device is correct. Any discrepancy noted shall be recorded on the delivery record and immediately reported to the PIC, who shall be responsible for reconciliation of the discrepancy or the proper reporting of a loss.

10. The PIC of the provider pharmacy or ~~his~~ the PIC's designee shall conduct at least a monthly audit to review distribution and administration of Schedules II through V drugs from each automated dispensing device as follows:

a. The audit shall reconcile records of all quantities of Schedules II through V drugs dispensed from the pharmacy with records of all quantities loaded into each device to detect whether any drugs recorded as removed from the pharmacy were diverted rather than being placed in the proper device.

b. A discrepancy report shall be generated for each discrepancy in the count of a drug on hand in the device. Each such report shall be resolved by the PIC or ~~his~~ the PIC's designee within 72 hours of the time the discrepancy was discovered or, if determined to be a theft or an unusual loss of drugs, shall be immediately reported to the board in accordance with § 54.1-3404 E of the Drug Control Act.

c. The audit shall include a review of a sample of administration records from each device per month for possible diversion by fraudulent charting. A sample shall include all Schedules II through V drugs administered for a time period of not less than 24 consecutive hours during the audit period.

d. The audit shall include a check of medical records to ensure that a valid order exists for a random sample of doses recorded as administered.

e. The audit shall also check for compliance with written procedures for security and use of the automated dispensing devices, accuracy of distribution from the device, and proper recordkeeping.

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f. The hard copy distribution and administration records printed out and reviewed in the audit shall be initialed and dated by the person conducting the audit. If nonpharmacist personnel conduct the audit, a pharmacist shall review the record and shall initial and date the record.

11. Automated dispensing devices shall be inspected monthly by pharmacy personnel to verify proper storage, proper location of drugs within the device, expiration dates, the security of drugs and validity of access codes.

12. Personnel allowed access to an automated dispensing device shall have a specific access code ~~which~~ that records the identity of the person accessing the device.

13. The PIC of the pharmacy providing services to the nursing home shall establish, maintain, and ~~assure~~ ensure compliance with written policy and procedure for the accurate stocking and proper storage of drugs in the automated drug dispensing system, accountability for and security of all drugs maintained in the automated drug dispensing system, preventing unauthorized access to the system, tracking access to the system, complying with federal and state regulations related to the storage and dispensing of controlled substances, maintaining patient confidentiality, maintaining required records, and ~~assuring~~ ensuring compliance with the requirements of this chapter. The manual shall be ~~capable of being accessed~~ accessible at both the pharmacy and the nursing home.

14. All records required by this section shall be filed in chronological order from date of issue and maintained for a period of not less than two years. Records shall be maintained at the address of the pharmacy providing services to the nursing home, except:

a. Manual Schedule VI distribution records may be maintained in offsite storage or electronically as an electronic image that provides an exact image of the document that is clearly legible, provided such offsite or electronic storage is retrievable and made available for inspection or audit within 48 hours of a request by the board or an authorized agent.

b. Distribution and delivery records and required signatures may be generated or maintained electronically, provided:

(1) The system being used has the capability of recording an electronic signature that is a unique identifier and restricted to the individual required to initial or sign the record.

(2) The records are maintained in a read-only format that cannot be altered after the information is recorded.

(3) The system used is capable of producing a hard-copy printout of the records upon request.

c. Schedules II through V distribution and delivery records may only be stored offsite or electronically as described in

subdivisions 14 a and 14 b of this section if authorized by DEA or in federal law or regulation.

d. Hard-copy distribution and administration records that are printed and reviewed in conducting required audits may be maintained offsite or electronically, provided that (i) they can be readily retrieved upon request; ~~provided~~ (ii) they are maintained in a read-only format that does not allow alteration of the records; and ~~provided~~ (iii) a separate log is maintained for a period of two years showing dates of audit and review, the identity of the automated dispensing device being audited, the time period covered by the audit and review, and the initials of all reviewers.

VA.R. Doc. No. R22-23; Filed March 23, 2025, 11:27 a.m.

## DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL REGULATION

### Proposed Regulation

**Title of Regulation:** **18VAC120-30. Regulations Governing Polygraph Examiners (amending 18VAC120-30-10, 18VAC120-30-30 through 18VAC120-30-80, 18VAC120-30-100, 18VAC120-30-110, 18VAC120-30-130, 18VAC120-30-160 through 18VAC120-30-260, 18VAC120-30-280, 18VAC120-30-290; repealing 18VAC120-30-20).**

**Statutory Authority:** § 54.1-1802.1 of the Code of Virginia.

**Public Hearing Information:**

May 8, 2025 - 2 p.m. - Department of Professional and Occupational Regulation, 9960 Mayland Drive, Second Floor, Board Room Two, Richmond, VA 23233.

**Public Comment Deadline:** June 20, 2025.

**Agency Contact:** Marjorie King, Department of Professional and Occupational Regulation, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-2785, FAX (866) 430-1033, or email [polygraph@dpor.virginia.gov](mailto:polygraph@dpor.virginia.gov).

**Basis:** Section 54.1-201 of the Code of Virginia authorizes the Department of Professional and Occupational Regulation (DPOR) to promulgate regulations necessary to ensure continued competency and prevent deceptive or misleading practices by practitioners and to effectively administer the regulatory system. Section 54.1-1802.1 of the Code of Virginia requires the department to administer and enforce the provisions of Chapter 18 (§ 54.1-1800 et seq.) of Title 54.1 of the Code of Virginia, including the establishment of minimum qualifications for the operators of polygraphs and other detection devices.

**Purpose:** Performance of polygraph examinations by those who lack sufficient expertise, competence, or integrity poses risks to the public welfare, including false results regarding the truthfulness of an individual who is subject to a polygraph examination, which could result in an individual being denied employment or suffering reputational damage. The goals of this action are to ensure that the regulation complements



Virginia law, reflects current agency procedures, and provides clarification to provisions of the regulation and to reduce regulatory burdens by removing requirements that are not necessary to protect the health, safety, or welfare of the public.

Substance: The proposed amendments:

1. Revise definitions;
2. Remove a duplicative requirement that an applicant for licensure be "in good standing" in other jurisdictions and instead require disclosure of prior regulatory discipline;
3. Remove a requirement that an applicant disclose whether the applicant has been previously licensed in Virginia;
4. Remove a requirement that an applicant be "fit and suited" to engage in the profession of polygraphy and simply require disclosure of prior criminal history. Criminal history disclosure provisions are also revised to remove unnecessary language providing that a plea of nolo contendere is considered a conviction and that the record of a conviction will be accepted as prima facie evidence of a conviction;
5. Remove a requirement for nonresident applicants to designate DPOR as an agent for service of process;
6. Provide that required training must be completed at an accredited Polygraph Association Training Program or an equivalent;
7. Remove the requirement that a registered intern examiner be under the "personal and direct on premise" supervision of the supervising licensed examiner;
8. Reduce from three to two years the amount of time for which a licensee must hold a license before being eligible to act as a polygraph intern supervisor;
9. Remove provisions requiring a supervising licensee to file a description of how the intern will be supervised with the intern application and clarify a supervising licensee's responsibility to review an intern's charts for quality control and to address any deficiencies;
10. Remove prerequisite experience requirements for an applicant seeking licensure through reciprocity;
11. Remove an application fee that is no longer applicable and language related to dishonored forms of payment;
12. Clarify that a licensee may have any action to deny renewal or reinstatement of license reviewed under the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia) and remove a requirement for renewal and reinstatement that will no longer be applicable;
13. Remove provisions regarding the posting of licenses and registrations;
14. Reduce to five the number of polygraph examinations that a licensed examiner may perform in a 24-hour period and increase the amount of time a licensed examiner must wait between ending one question and beginning the next question;
15. Remove language that provides that a plea of nolo contendere is considered a conviction and that a record of

conviction admissible as prima facie evidence of conviction or guilt, and align reporting requirements for misdemeanor offenses with other DPOR regulations;

16. Provide that written notification of a name or address change be made, instead of mailed, to DPOR within 30 days of the change; and

17. Remove the requirement that instructor names and qualifications be provided on a specific form.

Issues: The primary advantages to the public and the regulated community are that the proposed amendments will (i) update and clarify the regulation; (ii) reduce regulatory burdens while still protecting the public health, safety, and welfare, including revising requirements to potentially allow more individuals to qualify for licensure through reciprocity; (iii) remove requirements in the regulation that are not necessary to protect the public welfare; and (iv) enhance standards of conduct and practice that will better serve to protect members of the public. An anticipated advantage is that the regulatory change potentially increases the number of individuals who may qualify for licensure through reciprocity, and, therefore, be available to members of the public to provide polygraph services. Another anticipated advantage is the ability for licensees to act as supervisors after a shorter amount of time. There are no identifiable disadvantages to the public. It is not anticipated that the regulatory change will create any substantial disadvantages to the regulated community. The primary advantage of the proposed amendments to the Commonwealth is that the changes will permit the agency to administer the licensure program more ably.

Department of Planning and Budget Economic Impact Analysis:

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 Code of Virginia and Executive Order 19. The analysis presented represents DPB's best estimate of the potential economic impacts as of the date of this analysis.<sup>1</sup>

Summary of the Proposed Amendments to Regulation. The Department of Professional and Occupational Regulation (DPOR), based upon the recommendation of the Polygraph Examiners Advisory Board (board), proposes to (i) expand the number of approved training programs, (ii) remove the active practice requirement for examiner licensure by reciprocity, (iii) provide more flexibility in supervision of interns, (iv) conform two of the polygraph exam standards to industry benchmarks, and (v) allow electronic notification of licensee address changes to DPOR.

Background. This regulation applies to polygraph examiners, interns, and training. Polygraph examinations are used for a variety of purposes, including use in screening for jobs in law enforcement and other security-sensitive positions; criminal investigations; monitoring sex offenders; and investigations related to civil matters (e.g., divorce proceedings). DPOR states that to comply with Executive Directive Number One

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(2022), the board reviewed discretionary requirements imposed on regulated parties. The proposed amendments to the regulation discussed below reflect board and DPOR consideration in eliminating current substantive requirements that are not deemed necessary to protect public health, safety, or welfare or to effectively administer the licensure program.

**Estimated Benefits and Costs: Expanding DPOR-approved training programs.** Currently, there are 13 training programs approved by DPOR, all of which are accredited by the American Polygraph Association. However, there are three more programs accredited by the association but not currently approved by DPOR. The proposal would expand the approved training providers to all programs accredited by the American Polygraph Association, increasing the number of approved providers from 13 to 16. The proposal should benefit the three new training providers by expanding their potential customer base, improve the accessibility of training to potential applicants, and increase competition among the providers.

**Active practice for licensure by reciprocity.** The board proposes to remove the requirement that an individual seeking licensure by reciprocity be actively engaged in the practice of polygraphy for at least 12 consecutive months prior to application. This change may expand the pool of individuals eligible for licensure by reciprocity.

**Supervision of interns.** There are two proposed changes that pertain to intern supervision. One change would reduce from three years to two years the amount of time an examiner must have been licensed before they can supervise polygraph interns. This change is expected to increase the number of individuals who can supervise interns, which may increase the number of individuals able to engage in training and ultimately obtain an examiner license. Another change would remove the requirement that an intern be under the personal and direct on premise supervision of a licensed supervising examiner. This change would provide flexibility for interns or supervisors to gain or provide supervision while at different locations and through broader modes of communication (electronic versus in person).

**Polygraph exam standards.** The proposal would revise the standards of practice for polygraph examinations to provide that an examiner cannot perform more than five polygraph examinations in a 24-hour period. Currently, up to 12 exams are allowed in the same timeframe. Additionally, the standards of practice would be revised to provide that on every polygraph test a polygraph examiner must allow a minimum interval of 20 seconds between the examinee answer to a question and the start of the next question. The current minimum interval is 10 seconds. DPOR states that these two changes are being proposed based on industry standards and what is considered reasonable and fair to both examiners and examinees.<sup>2</sup> According to the American Polygraph Association, the revised standards promote the highest degree of decision accuracy in credibility assessment.<sup>3</sup>

**Other.** The proposal would allow licensees to provide notification of address change to DPOR by electronic means in addition to mail notification, which would likely reduce this administrative burden by a small amount. The remaining proposed changes would update and clarify provisions of the

regulation, to include ensuring that the regulation reflects current agency procedures and practices. Notably in this category, the proposal would strike a \$90 fee for application for the examiner's license. However, this fee has been inadvertently left in the regulatory text from past regulatory actions and has not been enforced in practice.

**Businesses and Other Entities Affected.** According to DPOR, as of January 1, 2025, there were 291 licensed polygraph examiners, 17 polygraph interns, and 13 approved training providers. The proposed regulatory changes would affect all licensees and ultimately may affect interns, should they obtain a license upon completion of their internship. No entity appears to be disproportionately affected. The Code of Virginia requires DPB to assess whether an adverse impact may result from the proposed regulation.<sup>4</sup> An adverse impact is indicated if there is any increase in net cost or reduction in net benefit for any entity, even if the benefits exceed the costs for all entities combined.<sup>5</sup> The addition of three new DPOR-approved training providers may indirectly have a negative impact on the 13 incumbent training providers due to increased competition. Moreover, DPOR states that it is unlikely that a licensee would perform more than five exams in a 24-hour period. Furthermore, the remaining proposals do not reduce revenues or increase costs to any entity. Thus, no direct adverse impact is indicated.

**Small Businesses<sup>6</sup> Affected.<sup>7</sup>** The proposed amendments do not directly adversely affect small businesses.

**Localities<sup>8</sup> Affected.<sup>9</sup>** The proposed amendments neither introduce costs for localities nor disproportionately affect any locality.

**Projected Impact on Employment.** Although the addition of three new providers may affect provider-specific demand for labor, and repealing the 12-month active practice requirement for licensure by reciprocity may expand the pool of eligible applicants, the net impact on total employment is unknown but would likely be small.

**Effects on the Use and Value of Private Property.** The addition of three new DPOR-approved training providers may affect their asset values positively and the asset values of the 13 incumbent providers negatively. The remaining changes pertain to licensed examiners and generally would reduce compliance costs by small amounts. In addition, many licensed polygraph examiners are employed by state or local law enforcement agencies rather than private businesses. Thus, the impact of licensee related changes on asset values of polygraph businesses is unlikely to be significant. No impact on real estate development costs is expected.

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<sup>1</sup> Section 2.2-4007.04 of the Code of Virginia requires that such economic impact analyses determine the public benefits and costs of the proposed amendments. Further the analysis should include but not be limited to: (1) the projected number of businesses or other entities to whom the proposed regulatory action would apply, (2) the identity of any localities and types of businesses or other entities particularly affected, (3) the projected number of persons and employment positions to be affected, (4) the projected costs to

affected businesses or entities to implement or comply with the regulation, and (5) the impact on the use and value of private property.

<sup>2</sup> See 1.7.11 and 1.7.7 on page 6 at [https://www.polygraph.org/docs/APA\\_STANDARDS\\_OF\\_PRACTICE\\_amended\\_23\\_August\\_2024.pdf](https://www.polygraph.org/docs/APA_STANDARDS_OF_PRACTICE_amended_23_August_2024.pdf).

<sup>3</sup> Ibid. See page 1.

<sup>4</sup> Pursuant to § 2.2-4007.04 D: In the event this economic impact analysis reveals that the proposed regulation would have an adverse economic impact on businesses or would impose a significant adverse economic impact on a locality, business, or entity particularly affected, the Department of Planning and Budget shall advise the Joint Commission on Administrative Rules, the House Committee on Appropriations, and the Senate Committee on Finance. Statute does not define "adverse impact," state whether only Virginia entities should be considered, nor indicate whether an adverse impact results from regulatory requirements mandated by legislation.

<sup>5</sup> Statute does not define "adverse impact," state whether only Virginia entities should be considered, nor indicate whether an adverse impact results from regulatory requirements mandated by legislation. As a result, DPB has adopted a definition of adverse impact that assesses changes in net costs and benefits for each affected Virginia entity that directly results from discretionary changes to the regulation.

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

<sup>7</sup> If the proposed regulatory action may have an adverse effect on small businesses, § 2.2-4007.04 requires that such economic impact analyses include: (1) an identification and estimate of the number of small businesses subject to the proposed regulation, (2) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the proposed regulation, including the type of professional skills necessary for preparing required reports and other documents, (3) a statement of the probable effect of the proposed regulation on affected small businesses, and (4) a description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation. Additionally, pursuant to § 2.2-4007.1 of the Code of Virginia, if there is a finding that a proposed regulation may have an adverse impact on small business, the Joint Commission on Administrative Rules shall be notified.

<sup>8</sup> "Locality" can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulatory change are most likely to occur.

<sup>9</sup> Section 2.2-4007.04 defines "particularly affected" as bearing disproportionate material impact.

Agency's Response to Economic Impact Analysis: The Department of Professional and Occupational Regulation concurs with the economic impact analysis prepared by the Department of Planning and Budget.

Summary:

*The proposed amendments (i) expand the number of approved polygraphy training programs, (ii) remove the active practice requirement for polygraph examiner licensure by reciprocity, (iii) provide more flexibility in supervision of interns, (iv) conform two of the polygraph exam standards to industry benchmarks, and (v) allow electronic notification of licensee address changes to the department.*

**18VAC120-30-10. Definitions.**

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

"Advisory board" or "board" means the Polygraph ~~Examiner's~~ Examiners Advisory Board.

"Polygraph examination" means the entire period of contact between a licensee and an examiner.

"Polygraph test" means the part of the polygraph examination during which the examinee is connected to a polygraph instrument ~~which that~~ is continuously recording the examinee's reactions to questions.

"Reciprocity" means that any individual holding a current license in another jurisdiction may obtain a Virginia polygraph examiners license, provided the requirements and standards under which the license was issued are substantially equivalent to those established in this chapter and the individual meets all other board requirements for licensure in Virginia.

"Reinstatement" means having a license restored to effectiveness after the expiration date on the license has passed. ~~When a licensee fails to renew his license within one calendar month after its expiration date, the licensee is required to apply for reinstatement of the license. Six months after the expiration date on the license, reinstatement is no longer possible and the applicant must reapply and requalify for licensure.~~

"Relevant question" means a question asked of an examinee during a polygraph test ~~which that~~ concerns an issue identified to the examinee during the pretest and ~~which that~~ is to be reported by the licensee to any other person.

"Renewal" means continuing the effectiveness of a license for another period of time.

**18VAC120-30-20. Explanation of terms. (Repealed.)**

~~Each reference in this chapter to a person shall be deemed to refer, as appropriate, to the masculine and the feminine, to the singular and the plural, and to natural persons and organizations.~~

**18VAC120-30-30. Advisory board.**

A. The Polygraph Examiners Advisory Board, consisting of eight members appointed by the director, ~~shall~~ will exercise the authority delegated by the director consistent with § 2.2-2100 A of the Code of Virginia and advise the department on any matters relating to the practice of polygraphy and the licensure of polygraph examiners in the Commonwealth of Virginia.

B. The advisory board ~~shall~~ will be composed of three Virginia licensed polygraph examiners employed by ~~law enforcement~~ law-enforcement agencies of the Commonwealth; or any of its political subdivisions; three Virginia licensed polygraph examiners employed in private industry; and two citizen members as defined in §§ 54.1-107 and 54.1-200 of the Code of Virginia. All members must be residents of the Commonwealth of Virginia.

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C. Each member ~~shall~~ will serve a four-year term. No member ~~shall~~ will serve more than two consecutive four-year terms.

## **18VAC120-30-40. Basic qualifications for licensure and registration.**

A. Every applicant to the board for a license ~~shall~~ must provide information on ~~his~~ the application establishing that the applicant meets the following qualifications:

1. The applicant is at least 18 years ~~old~~ of age.
2. ~~The applicant is in good standing as a licensed polygraph examiner in every jurisdiction where licensed.~~ The applicant must disclose if ~~he~~ the applicant has had a license as a polygraph examiner ~~which that~~ was suspended, revoked, or surrendered in connection with a disciplinary action or ~~which that~~ has been the subject of discipline in any jurisdiction prior to applying for licensure in Virginia. At the time of application for licensure, the applicant must also disclose any disciplinary action taken in another jurisdiction in connection with the applicant's practice as a polygraph examiner ~~and whether he has been previously licensed in Virginia as a polygraph examiner.~~
3. ~~The applicant is fit and suited to engage in the profession of polygraphy.~~ The applicant must disclose if ~~he~~ the applicant has been convicted in any jurisdiction of a felony or misdemeanor involving lying, cheating, stealing, sexual offense, non-marijuana drug distribution, physical injury, or relating to the practice of the profession. ~~Any plea of not~~ contendere shall be considered a conviction for purposes of this subdivision. The record of a conviction authenticated in such form as to be admissible in the evidence under the laws of the jurisdiction where convicted shall be admissible as prima facie evidence of such conviction. The department, in its discretion, may deny licensure to any applicant in accordance with § 54.1-204 of the Code of Virginia.
4. The applicant has disclosed the applicant's physical address. A post office box is not acceptable.
5. ~~The nonresident applicant for a license has filed and maintained with the department an irrevocable consent for the department to serve as a service agent for all actions filed in any court in this Commonwealth.~~
6. 5. The applicant has signed, as part of the application, a statement certifying that the applicant has read and understands the Virginia polygraph examiner's license law and regulations.
7. 6. The applicant has submitted an application, provided by the department, ~~which shall~~ that must include criminal history record information from the Central Criminal Records Exchange, with a report date within 30 days of the date the application is received by the department.

B. The department may (i) make further inquiries and investigations with respect to the qualifications of the

applicant, or (ii) require a personal interview with the applicant, ~~or (iii) both.~~

C. The applicant ~~shall~~ must pass all parts of the polygraph examiners licensing examination approved by the department within one year from examination approval in order to be eligible for a polygraph examiners license.

## **18VAC120-30-50. Registration of polygraph examiner interns.**

A. A polygraph examiner intern registration ~~shall~~ will be issued to applicants who fulfill the requirements of 18VAC120-30-40 and the following:

1. The applicant has met the experience requirements by having a high school diploma or ~~its~~ equivalent and a minimum of five years of experience as an investigator or detective, or in a field acceptable to the department that demonstrates the ability to practice polygraphy.
  - a. The applicant will be credited two years of the five years of experience required in subdivision 1 of this subsection if ~~he~~ the applicant has an associate degree from an accredited college or university.
  - b. The applicant will be credited all five years of experience required in subdivision 1 of this subsection if ~~he~~ the applicant has a bachelor's degree from an accredited college or university.

2. The applicant has met the education requirements by either completing the required training in detection of deception at an accredited Polygraph Association Training Program or an equivalent polygraph school approved by the department, or by submitting evidence of satisfactory completion of substantially equivalent training if the polygraph school at which the applicant received the training in the detection of deception is not approved by the department.

B. An intern registration ~~shall~~ will be valid for 12 months from the date of issue as indicated on the registration.

C. Each intern ~~shall~~ must be supervised by a licensed polygraph examiner who meets the qualifications in 18VAC120-30-60.

D. A polygraph intern may apply for an extension of a polygraph intern registration after the expiration of the initial intern registration for no more than one year by submitting the fee referenced in 18VAC120-30-100. Additional extensions will be allowed if the individual repeats the education requirements set forth in subdivision A 2 of 18VAC120-30-50.

## **18VAC120-30-55. Qualifications for licensure by examination.**

A. A polygraph examiner license ~~shall~~ will be issued to applicants who fulfill the requirements of 18VAC120-30-40, 18VAC120-30-50, and subsections B and C of this section.

B. The applicant ~~shall~~ must have completed six months as a registered intern examiner under the ~~personal and direct on-~~

premise supervision of an examiner qualified under 18VAC120-30-60 who shall must supervise each and every polygraph examination administered by the intern. The internship need not be accomplished in Virginia. However, any internship conducted outside of Virginia must comply fully with this regulation. An intern shall may not be eligible to sit for the license examination until the intern's supervisor has submitted to the department a written statement that the internship has been satisfactorily completed. The department may waive the internship for any person who practiced polygraphy in a federal jurisdiction or the United States U.S. Military.

C. Upon submission of the completed application and fee, the applicant will be considered for the examination required by 18VAC120-30-110. Upon passing such examination, the applicant shall will be granted his a polygraph examiners license provided the applicant is otherwise qualified.

**18VAC120-30-60. Qualifications for licensed polygraph examiners to act as supervisors of polygraph interns.**

Each supervisor for a registered intern examiner shall must be currently licensed and have held a valid Virginia examiner's license for three two years or submit evidence satisfactory to the department that he the supervisor has qualifications that are substantially equivalent to those required herein in this chapter.

**18VAC120-30-70. Procedures for licensed polygraph examiners to certify the procedures to be used to supervise an intern during an internship.**

~~A. Each licensee supervising an intern shall file with the application of the intern a description of the following:~~

- ~~1. The frequency and duration of contact between the licensee and the intern;~~
- ~~2. The procedures to be employed by the licensee in reviewing and evaluating the intern's performance; and~~
- ~~3. The polygraph technique(s) to be used.~~

~~B. The A. Each licensee supervising the an intern shall must review the intern's charts for quality control and address any deficiencies found in the charts prior to the intern rendering an opinion or conclusion on any polygraph examination administered by the intern.~~

~~C. B. In the event the licensed supervisor is unable to continue, any review of experience shall will be at the discretion of the board.~~

**18VAC120-30-80. Qualifications for licensure by reciprocity.**

An individual who is currently licensed as a polygraph examiner in another jurisdiction may obtain a Virginia license, provided the requirements and standards under which the license was issued are substantially equivalent to those in Virginia.

An individual applying for licensure by reciprocity shall have been a licensed examiner engaged in the practice of polygraphy for at least 12 consecutive months prior to application.

**18VAC120-30-100. Fees.**

A. All application fees for licenses and registrations are nonrefundable and shall will not be prorated. The date of receipt by the department is the date that will be used to determine whether or not the fee is on time.

B. Application and examination fees must be submitted with the application for licensure. All other fees are discussed in greater detail in later sections of this chapter.

~~C. In the event that a check, money draft, or similar instrument for payment of a fee required by statute or regulation is not honored by the bank or financial institution named, the applicant or regulant shall be required to remit fees sufficient to cover the original fee, plus an additional processing charge set by the department.~~

~~D. 1. C. The following fees listed in the table apply:~~

FEE TYPE	AMOUNT DUE	WHEN DUE
Application for Examiner's License <u>by Examination</u>	<del>\$90</del> <u>\$200</u>	With application
Application for Examiner's License by Reciprocity	\$190	With application
Application for Intern Registration	\$75	With application
Application for Examiner's License <u>by Examination</u>	\$200	With application
Reexamination	\$200	With approval letter
Renewal	\$110	Up to the expiration date on the license
Reinstatement	\$150	From the expiration date to 24 calendar months after the expiration date on license

~~2. For renewal fees received on or before June 30, 2024, the fee shall be \$40.~~

**18VAC120-30-110. Examinations.**

All examinations required for licensure shall must be approved by the advisory board and provided by the

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department, a testing service acting on behalf of the advisory board, or another governmental agency or organization.

Applicants for licensure ~~shall~~ must pass a two-part licensing examination approved by the board, of which Part I is a written examination and Part II is an ~~Advisory Board Evaluation~~ advisory board evaluation. Applicants must pass the written examination in order to sit for the advisory board evaluation.

The applicant ~~shall~~ must follow all ~~the~~ rules established by the department with regard to conduct at the examination. Such rules ~~shall~~ include any written instructions communicated prior to the examination date and any instructions communicated at the site, either written or oral, on the date of the examination. Failure to comply with all rules established by the department with regard to conduct at the examination ~~shall~~ will be grounds for denial of application.

## **18VAC120-30-130. Procedures for renewal.**

The department will mail a renewal application form to the licensee at the last known address of department record. Failure to receive this notice ~~shall~~ does not relieve the licensee of the obligation to renew. Prior to the expiration date shown on the license, each licensee desiring to renew ~~his~~ a license must return to the department all required forms and the appropriate fee as referenced in 18VAC120-30-100. Any licensee who fails to submit the renewal payment on or prior to the expiration date ~~shall be required to~~ must apply for reinstatement.

## **18VAC120-30-160. Qualifications for renewal.**

A. Applicants for renewal of a license ~~shall~~ must continue to meet the standards for entry as set forth in subdivisions A 2 ~~through A 5, A 3, and A 4~~ of 18VAC120-30-40.

B. The department may deny renewal of a license for the same reasons as it may refuse initial licensure or discipline a licensee. The licensee has a right to ~~appeal~~ request further review of any such action by the department under the Virginia Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia).

C. Failure to timely pay any monetary penalty, reimbursement of cost, or other fee assessed by consent order or final order ~~shall~~ will result in delaying or withholding services provided by the department, such as renewal, reinstatement, ~~or~~ processing of a new application, or exam administration.

## **18VAC120-30-170. Reinstatement required.**

A. Any licensee who fails to renew ~~his~~ a license on or prior to the expiration date on the license ~~shall be required to~~ must apply for reinstatement and submit the proper fee referenced in 18VAC120-30-100.

B. Twenty-four calendar months after the expiration date on the license, reinstatement is no longer possible. To resume practice as a polygraph examiner, the former licensee must

apply as a new applicant for licensure, meeting all ~~then-current~~ then-current entry requirements at the time of reapplication, including retaking an examination.

C. Any examiner activity conducted subsequent to the expiration of the license may constitute unlicensed activity and may be subject to prosecution under § 54.1-111 of the Code of Virginia.

## **18VAC120-30-180. Qualifications for reinstatement.**

A. Applicants for reinstatement of a license ~~shall~~ must continue to meet the standards for entry as set forth in subdivisions A 2 ~~through A 5, A 3, and A 4~~ of 18VAC120-30-40.

B. The department may deny reinstatement of a license for the same reasons as it may refuse initial licensure or discipline a licensee. The licensee has a right to ~~appeal~~ request further review of any such action by the department under the Virginia Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia).

C. Failure to timely pay any monetary penalty, reimbursement of cost, or other fee assessed by consent order or final order ~~shall~~ will result in delaying or withholding services provided by the department, such as renewal, reinstatement, processing of a new application, or examination administration.

## **18VAC120-30-190. Status of a license during the period before reinstatement.**

A. When a license is reinstated, the licensee ~~shall~~ will continue to have the same license number and ~~shall~~ be assigned an expiration date two years from the previous expiration date of the license.

B. A licensee who reinstates ~~his~~ a license ~~shall~~ will be regarded as having been continually licensed without interruption. Therefore, the licensee ~~shall~~ will remain under the disciplinary authority of the department during this entire period. Nothing in this chapter ~~shall~~ divest ~~divests~~ the department of its authority to discipline a licensee for a violation of the law or regulations during the period of licensure.

## **18VAC120-30-200. Polygraph examination procedures.**

~~A. Each licensed polygraph examiner and registered polygraph examiner intern must post, in a conspicuous place for the examinee, his license or registration, or a legible copy of his license or registration to practice in Virginia.~~

~~B. A.~~ The examiner ~~shall~~ must provide the examinee with a written explanation of the provisions of 18VAC120-30-200, 18VAC120-30-210, and 18VAC120-30-220 at the beginning of each polygraph examination.

~~C. B.~~ The examinee may request a recording of the polygraph examination being administered. Each examiner ~~shall~~ must

maintain recording equipment and recording media adequate for such recording. The examiner ~~shall~~ must safeguard all examination recordings with the records ~~he~~ the examiner is required to keep pursuant to 18VAC120-30-230. All recordings ~~shall~~ must be made available to the department, the examinee, or the examinee's attorney upon request. The examiner may charge the examinee a fee not to exceed \$35 only if the examinee requests and receives a copy of an examination.

~~D. C.~~ The examinee ~~shall be~~ is entitled to a copy of all portions of any written report pertaining to ~~his~~ the examinee's examination that is prepared by the examiner and provided to any person or organization. The examinee ~~shall~~ must make ~~his~~ this request in writing to the examiner. The examiner ~~shall~~ must comply within 10 business days of providing the written report to any person or organization or receiving the examinee's written request, whichever occurs later. The examiner may collect not more than \$1.00 per page from the examinee for any copy provided.

~~E. D.~~ The provisions of subsections ~~A, B, and C, and D~~ of this section ~~shall are~~ not be applicable to any examination conducted by or on behalf of the Commonwealth or any of its political subdivisions when the examination is for the purpose of preventing or detecting crime or the enforcement of penal laws. However, examiners administering examinations as described in this section ~~shall~~ must comply with subsection ~~B~~ A of this section through a verbal explanation of the provisions of 18VAC120-30-210 and 18VAC120-30-220.

~~F. E.~~ The examiner must disclose to the examinee that the examination is subject to disclosure under the Virginia Freedom of Information Act (§ 2.2-3700 et seq. of the Code of Virginia).

**18VAC120-30-210. Examination pretest procedure.**

A. Prior to administering any polygraph test, the examiner ~~shall~~ must inform the prospective examinee of all the issues to be covered during the polygraph examination and of all the items to be reported by the examiner to any other person.

B. The examiner ~~shall~~ must obtain written permission from the prospective examinee to administer the examination after fulfilling the requirements of 18VAC120-30-200, and before proceeding further with the administration of the examination.

**18VAC120-30-220. Examination standards of practice.**

A. The examiner ~~shall~~ must comply with the following standards of practice and ~~shall~~ disclose to each examinee the provisions of this subsection and ~~shall~~ must not proceed to examine or continue the examination if it is or becomes apparent to the examiner that the examinee does not understand any of these disclosures:

1. All questions to be asked during the polygraph test(s) ~~shall~~ test must be reduced to writing and read to the examinee.

2. The examinee or the examiner may terminate the examination at any time.

3. If the examination is within the scope of § 40.1-51.4:3 of the Code of Virginia, the examiner ~~shall~~ must explain the provisions of that statute to the examinee.

4. No questions ~~shall~~ may be asked concerning any examinee's lawful religious affiliations, lawful political affiliations, or lawful labor activities. This provision ~~shall~~ does not apply to any such affiliation ~~which~~ that is inconsistent with the oath of office for public law-enforcement officers.

5. The examinee ~~shall~~ must be provided the full name of the examiner and the name, address, and telephone number of the department.

6. During no part of a preemployment polygraph examination ~~shall~~ may the examiner ask questions concerning an examinee's sexual preferences or sexual activities, except as in accordance with § 40.1-51.4:3 or 54.1-1806 of the Code of Virginia.

B. An examiner ~~shall not~~ must perform ~~no~~ more than 12 ~~five~~ polygraph examinations in any 24-hour period.

C. An examiner ~~shall not~~ must ask ~~no~~ more than 16 questions per chart on a single polygraph test. Nothing in this subsection ~~shall prohibit~~ prohibits an examiner from conducting more than one polygraph test during a polygraph examination.

D. An examiner ~~shall~~ must allow on every polygraph test a minimum time interval of ~~40~~ 20 seconds between the examinee's answer to a question and the start of the next question.

E. An examiner ~~shall~~ must record, at a minimum, the following information on each polygraph test chart produced:

1. The name of the examinee;
2. The date of the examination;
3. The time that each test begins;
4. The examiner's ~~initials~~ name;
5. Any adjustment made to component sensitivity;
6. The point at which each question begins and each answer is given;
7. Each question number; and
8. Each answer given by the examinee.

F. An examiner ~~shall~~ must render only three evaluations of polygraph tests:

1. ~~Deception indicated~~ Significant response;
2. No ~~deception indicated~~ significant response; or
3. Inconclusive.

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An examiner may include in ~~his~~ the examiner's report any information revealed by the examinee during the polygraph examination.

Nothing in this section ~~shall prohibit~~ prohibits an examiner from explaining the meaning of the above evaluations.

G. An examiner ~~shall~~ must not render a verbal or written report based upon polygraph test chart analysis without having conducted at least two polygraph charts. Each relevant question ~~shall~~ must have been asked at least once on each of at least two polygraph charts.

H. An examiner may make a hiring or retention recommendation for the examiner's employer, provided the hiring or retention decision is not based solely on the results of the polygraph examination.

## 18VAC120-30-230. Records.

The licensed polygraph examiner or registered polygraph examiner intern ~~shall~~ must maintain the following for at least one year from the date of each polygraph examination:

1. Polygraphic charts;
2. Questions asked during the examination;
3. A copy of the results and the conclusions drawn;
4. A copy of every written report provided in connection with the examination; and
5. Electronic recordings of examinations made in compliance with subsection ~~C~~ B of 18VAC120-30-200.

## 18VAC120-30-240. Prohibited acts.

The department may fine, deny, suspend, or revoke any license or registration, or deny or withdraw school approval upon a finding that the applicant, licensee, registrant, or school:

1. Has presented false or fraudulent information when applying for any license or registration, renewal of license or registration, or approval;
2. Has violated, aided, or abetted others to violate Chapters 1 (§ 54.1-100 et seq.) ~~through, 2 (§ 54.1-200 et seq.), or 3 (§ 54.1-300 et seq.)~~ of Title 54.1 or §§ 54.1-1800 through 54.1-1806 of the Code of Virginia, or of any other statute applicable to the practice of the profession ~~herein~~ regulated by this chapter, or of any provisions of this chapter;
3. Has been convicted or found guilty, regardless of the manner of adjudication, in any jurisdiction of the United States of any felony or non-marijuana misdemeanor. Review of convictions ~~shall will~~ be subject to the requirements of § 54.1-204 of the Code of Virginia. ~~Any pleas of nolo contendere shall be considered a conviction for the purposes of this subsection. The record of a conviction authenticated in such form as to be admissible in evidence under the laws of the jurisdiction where the conviction occurred shall be~~

~~forwarded to the board within 30 days of entry and shall be admissible as prima facie evidence of such conviction;~~

4. Has made, in the course of soliciting for or advertising a business or service licensed under ~~§ 54.1-1802~~ § 54.1-1802.1 of the Code of Virginia, a false, deceptive, or misleading statement orally, in writing, or in printed form;

5. Has allowed one's license or registration to be used by anyone else;

6. Has failed, within a reasonable period of time of 21 days, to provide any records or other information requested or demanded by the department;

7. Has displayed professional incompetence or negligence in the performance of polygraphy;

8. Has violated any provision of 18VAC120-30-220;

9. Has failed to maintain for a period of one year from the date of each administered polygraph examination a complete and legible copy of all documents relating to the polygraph examination including examination questions, results, conclusions drawn, and written or electronic reports;

10. Has failed to inform the ~~board~~ department in writing within 30 days that the regulant, school's owner, or instructor has pleaded guilty or nolo contendere or was convicted and found guilty of any felony or ~~of a Class 1 misdemeanor or any non-marijuana misdemeanor conviction for activities carried out while engaged in the practice of polygraphy;~~

11. Has refused or failed, upon request, to produce to the ~~board~~ department, or any of ~~its~~ the department's agents, any document, book, or record, or copy of ~~it~~ any document, book, or record in the regulant's or ~~school's~~ school owner's possession concerning all records for which the regulant, ~~school's~~ school owner, or instructor is required to maintain; or

12. Has failed to respond to an investigator or provides false, misleading, or incomplete information to an investigator seeking information in the investigation of a complaint filed with the ~~board~~ department against the regulant, ~~school's~~ school owner, or instructor.

## 18VAC120-30-250. Maintenance of license.

A. Notice in writing ~~shall~~ must be given to the department in the event of any change of name or address. Such notice ~~shall~~ must be mailed ~~made~~ to the department within 30 days of the change of the name or location. The department ~~shall~~ will not be responsible for the licensee's or registrant's failure to receive notices, communications ~~and, or~~ correspondence caused by the licensee's or registrant's failure to promptly notify the department in writing of any change of name or address.

B. All licensees or registrants ~~shall~~ must operate under the name in which the license or registration was issued.



**18VAC120-30-260. Approval of polygraph school curriculum.**

Schools seeking approval of ~~their~~ a polygraph curriculum ~~shall~~ must submit the application for approval of a polygraph school to the department for consideration. The application ~~shall~~ must include:

1. The name and address of the school;
2. The name and address of the proprietor, partnership, corporation, or association if different from the school name;
3. The owners of the school;
4. The names and qualifications of the instructors ~~which shall be indicated on instructor qualifications form; and in a format approved by the advisory board; and~~
5. The subject courses and the number of instruction hours assigned to each.

**18VAC120-30-280. Instructor minimum requirements.**

A. Any person teaching the subjects required by this ~~regulation shall~~ chapter must meet the following minimum requirements for the subjects to be taught:

1. Legal Aspects of Polygraph Examination. The instructor must be licensed as an attorney in a state or jurisdiction of the United States.
2. Polygraph Interrogation. The instructor must have five years of experience in the field of interrogation.
3. Physiological Aspects of Polygraphy. The instructor must have a degree in a ~~health-related~~ health-related science with coursework in physiology from an accredited institution of higher learning.
4. Psychological Aspects of Polygraphy. The instructor must have a degree in psychology from an accredited institution of higher learning.
5. All other courses ~~shall~~ must be taught by individuals having at least five years of experience as a polygraph examiner.

B. The department may make exception to the above qualifications when an instructor is otherwise qualified by education or experience and provides such evidence in writing to the department.

**18VAC120-30-290. Amendments and changes.**

Any change in the information provided by ~~the~~ a school to the department as required by 18VAC120-30-260, 18VAC120-30-270, or 18VAC120-30-280 ~~shall~~ must be reported to the department in writing within 30 days of such an occurrence.

VA.R. Doc. No. R24-7741; Filed March 21, 2025, 1:54 p.m.

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# GUIDANCE DOCUMENTS

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## PUBLIC COMMENT OPPORTUNITY

Pursuant to § 2.2-4002.1 of the Code of Virginia, a certified guidance document is subject to a 30-day public comment period after publication in the Virginia Register of Regulations and prior to the guidance document's effective date. During the public comment period, comments may be made through the Virginia Regulatory Town Hall website (<http://www.townhall.virginia.gov>) or sent to the agency contact. Under subsection C of § 2.2-4002.1, the effective date of the guidance document may be delayed for an additional period. The guidance document may also be withdrawn.

The following guidance documents have been submitted for publication by the listed agencies for a public comment period. Online users of this issue of the Virginia Register of Regulations may click on the name of a guidance document to access it. Guidance documents are also available on the Virginia Regulatory Town Hall (<http://www.townhall.virginia.gov>) or from the agency contact or may be viewed at the Office of the Registrar of Regulations, General Assembly Building, 201 North Ninth Street, Fourth Floor, Richmond, Virginia 23219.

### STATE BOARD OF HEALTH

Title of Document: [Guidance for Cyanobacteria Bloom Recreational Advisory Management.](#)

Public Comment Deadline: May 21, 2025.

Effective Date: May 22, 2025.

Agency Contact: Julie Henderson, Director of Environmental Health Services, Virginia Department of Health, 109 Governor Street, Richmond, VA 23235, telephone (804) 864-7455, or email [julie.henderson@vdh.virginia.gov](mailto:julie.henderson@vdh.virginia.gov).

### DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Titles of Documents: [Durable Medical Equipment Manual, Chapter Four.](#)

[Mental Health Services Manual, Chapter 11.](#)

Public Comment Deadline: May 21, 2025.

Effective Date: May 22, 2025.

Agency Contact: Syreeta Stewart, Regulatory Coordinator, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 298-3863, or email [syreeta.stewart@dmas.virginia.gov](mailto:syreeta.stewart@dmas.virginia.gov).

The following guidance documents have been submitted for deletion and the listed agency has opened up a 30-day public comment period. The listed agency previously identified these documents as certified guidance documents, pursuant to § 2.2-4002.1 of the Code of Virginia. Online users of this issue of the Virginia Register of Regulations may click on the name of a guidance document to view the deleted document and comment. This information is also available on the Virginia Regulatory Town Hall (<http://www.townhall.virginia.gov>) or from the agency contact.

### STATE BOARD OF EDUCATION

Titles of Documents: [Guidelines for Management of the Student's Scholastic Record.](#)

[Objectives for Personal Living and Finance.](#)

Public Comment Deadline: May 21, 2025.

Effective Date: May 22, 2025.

Agency Contact: Jim Chapman, Director of Board Relations, Department of Education, James Monroe Building, 101 North 14th Street, 25th Floor, Richmond, VA 23219, telephone (804) 750-8750, or email [jim.chapman@doe.virginia.gov](mailto:jim.chapman@doe.virginia.gov).

### DEPARTMENT OF GENERAL SERVICES

Title of Document: [Parking Policies and Procedures for Use of Parking Facilities.](#)

Public Comment Deadline: May 21, 2025.

Effective Date: May 22, 2025.

Agency Contact: Kimberly Freiberger, Policy Planning Specialist III, Department of General Services, 1100 Bank Street, Suite 420, Richmond, VA 23219, telephone (804) 786-3311, or email [kimberly.freiberger@dgs.virginia.gov](mailto:kimberly.freiberger@dgs.virginia.gov).

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# GENERAL NOTICES

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## DEPARTMENT OF ENVIRONMENTAL QUALITY

### Proposed Enforcement Action for Empire Services

The Virginia Department of Environmental Quality (DEQ) is proposing an enforcement action for Empire Services for violations of State Water Control Law and regulations at Empire Recycling in Norfolk, Virginia, and P-Town Recycling in Portsmouth, Virginia. The proposed order is available from the DEQ contact listed or at <https://www.deq.virginia.gov/permits/public-notices/enforcement-actions>. The DEQ contact will accept written comments from April 21, 2025, to May 21, 2025.

Contact Information: John Brandt, Enforcement Manager, Department of Environmental Quality, 5636 Southern Boulevard, Virginia Beach, VA 23462, or email [john.brandt@deq.virginia.gov](mailto:john.brandt@deq.virginia.gov).

### Proposed Enforcement Action for SWVA Biochar LLC

The Virginia Department of Environmental Quality (DEQ) is proposing an enforcement action for SWVA Biochar LLC at the Floyd Biochar Site for violations of the Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulations in Floyd, Virginia. The proposed order is available from the DEQ contact listed or online at <https://www.deq.virginia.gov/permits/public-notices/enforcement-actions>. The DEQ contact will accept comments by email or postal mail from April 21, 2025, through May 21, 2025.

Contact Information: Michael Puckett, Department of Environmental Quality, Blue Ridge Regional Office, 901 Russell Drive, Salem, VA 24153, telephone (540) 577-6719, or email [michael.puckett@deq.virginia.gov](mailto:michael.puckett@deq.virginia.gov).

### Public Hearing and Public Comment Opportunity for Air Quality Plan and Environmental Permit

Notice of action: The Department of Environmental Quality (DEQ) is seeking comments and announcing a public hearing on a proposed plan to improve sulfur dioxide (SO<sub>2</sub>) air quality in the Giles County partial 2010 SO<sub>2</sub> National Ambient Air Quality Standards (NAAQS) nonattainment area. This proposed plan includes a proposed permit for the Lhoist North America Kimballton Plant located in Giles County, Virginia. If adopted, the Commonwealth intends to submit the plan and permit as a revision to the Commonwealth of Virginia State Implementation Plan (SIP) in accordance with the federal Clean Air Act (42 USC § 7401 et seq.). The SIP is the plan developed by the Commonwealth to fulfill its responsibilities under the Clean Air Act to attain and maintain the NAAQS promulgated by the U.S. Environmental Protection Agency (EPA).

Purpose of notice: DEQ is seeking comments on the overall plan, including the proposed permit, and on the issue of whether the plan and permit will enable the Giles County partial 2010 SO<sub>2</sub> NAAQS nonattainment area to comply with and maintain compliance with the 2010 SO<sub>2</sub> NAAQS.

Public comment period: March 27, 2025, to May 22, 2025.

Public hearing: An informational briefing will be conducted at the DEQ Blue Ridge Regional Office, 901 Russell Drive, Salem, VA 24153 at 1 p.m. on May 16, 2025. A public hearing will be conducted immediately following the informational briefing and will commence no later than 2 p.m. on May 16, 2025, at the same location.

Description of proposal: Virginia is required to demonstrate in the proposed plan how the Giles County partial 2010 SO<sub>2</sub> NAAQS nonattainment area will attain the 2010 SO<sub>2</sub> NAAQS no later than April 30, 2026. The plan provides the following required elements:

2017 base year SO<sub>2</sub> emissions inventory for the area, 2026 attainment year SO<sub>2</sub> emissions inventory for the area, control strategies for compliance with the 2010 SO<sub>2</sub> NAAQS, air quality modeling analyses supporting the facility limitations in the proposed permit for the Lhoist North America Kimballton Plant, the proposed permit and supporting documentation limiting the emissions of SO<sub>2</sub> from the Lhoist North America Kimballton Plant, and a description of the SO<sub>2</sub> air quality monitoring network.

Federal information: This notice is being given to satisfy the public participation requirements of federal regulations (40 CFR 51.102). The proposal will be submitted as a revision to the Commonwealth of Virginia SIP under § 110(a) of the Clean Air Act in accordance with 40 CFR 51.104. It is planned to submit all provisions of the proposal as a revision to the Commonwealth of Virginia SIP.

How to comment: DEQ accepts written comments by hand delivery, email, and postal mail. In order to be considered, comments must include the full name, address, and telephone number of the person commenting and be received by DEQ on the last day of the comment period. Both oral and written comments are accepted at the public hearing. DEQ prefers that comments be provided in writing, along with any supporting documents or exhibits. All comments, exhibits, and documents received are part of the public record. This proposed plan is being concurrently reviewed by EPA.

To review proposal: The proposed plan, the proposed permit, and supporting documents are available on the DEQ website at <https://www.deq.virginia.gov/permits/public-notices/air>. The documents may also be obtained by contacting the DEQ representative listed. The public may schedule an appointment to review the documents between 8:30 a.m. and 4:30 p.m. of each business day until the close of the public comment period at the following DEQ locations:

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## General Notices

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1. Main Street Office, 22nd Floor, 1111 East Main Street, Richmond, VA 23218, telephone (804) 698-4000; and

2. Blue Ridge Regional Office, 901 Russell Drive, Salem, VA 24153, telephone (540) 562-6700.

Contact Information: Doris A. McLeod, Air Quality Planner, Air Planning Programs, Department of Environmental Quality, 1111 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 659-1990, or email [doris.mcleod@deq.virginia.gov](mailto:doris.mcleod@deq.virginia.gov).

### **Public Meeting and Opportunity for Public Comment for a Cleanup Study of Deep Run, Dover Creek, and Upham Brook Watersheds in Henrico County, Goochland County, and the City of Richmond**

Purpose of Notice: The Department of Environmental Quality (DEQ) seeks public comment on the development of a cleanup study, also known as a total maximum daily load (TMDL) report, for Deep Run, Dover Creek, and Upham Brook Watersheds in Henrico County, Goochland County, and the City of Richmond. These streams are listed as impaired because monitoring data indicate that the waters do not meet Virginia's water quality standards for aquatic life (benthics). Section 303(d) of the Clean Water Act and § 62.1-44.19:7 C of the Code of Virginia require DEQ to develop cleanup studies to address pollutants responsible for causing waters to be on Virginia's § 303(d) list of impaired waters. A component of a cleanup study is the wasteload allocation (WLA); therefore, this notice is provided pursuant to § 2.2-4006 A 14 of the Code of Virginia for adoption of the WLA into the Water Quality Management Planning Regulation (9VAC25-720) after completion of the study. The adoption of the WLA may require new or additional requirements for entities holding a Virginia Pollutant Discharge Elimination System (VPDES) permit in these watersheds.

A study has been completed for Deep Run, Dover Creek, and Upham Brook Watersheds to identify pollutant sources and recommend reductions needed from the sources to meet water quality standards. At the meeting, DEQ will present the results of the study and provide an overview of the draft report. Citizens are invited to provide comment on the study.

Cleanup Study Location: The cleanup study addresses the following impaired stream segments:

The Upham Brook stream segment, located in Henrico County and the City of Richmond, is 12.15 miles long and begins at the headwaters and continues to the confluence with the Chickahominy River.

The North Run stream segment, located in Henrico County, is 7.90 miles long and begins at the headwaters and continues to the confluence with the Upham Brook.

The Jordans Branch stream segment, located in Henrico County and the City of Richmond, is 2.19 miles long and

begins at the headwaters and continues to the confluence with Upham Brook.

The Deep Run stream segment, located in Henrico County, is 4.16 miles long and begins at the headwaters and continues to the pond at river mile 1.47.

The Stony Run stream segment, located in Henrico County, is 2.36 miles long and begins at the headwaters to the extent of backwater at the pond and continues from the dam of the pond downstream to the mouth at Deep Run.

The Stony Run UT stream segment, located in Henrico County, is 1.27 miles long and begins at the headwaters and continues to the mouth at Stony Run.

The Dover Creek stream segment, located in Goochland County, is 4.76 miles long and begins at the headwaters and continues to the upstream limit of Dover Lake.

TMDL Community Engagement Meetings: TMDL community engagement meetings to assist in development of this cleanup study were convened on June 10, 2023; February 29, 2024; and February 21, 2025.

Public Meeting: The final public meeting on the development of the cleanup study will be held at the Department of Environmental Quality, Piedmont Regional Office, Training Room, 4949-A Cox Road, Glen Allen, VA 23060, on May 8, 2025, at 5:30 p.m. In the event of inclement weather, the meeting will be held on May 12, 2025, at the same time and location.

Public Comment Period: May 8, 2025, to June 9, 2025.

How to Comment: DEQ accepts written comments by email or postal mail. All comments must be received by DEQ during the comment period. Submittals must include the name, organization represented (if any), mailing address, and telephone number of the commenter or requester.

The public may review the cleanup study at <https://www.deq.virginia.gov/our-programs/water/water-quality/tmdl-development/tmdls-under-development>.

Contact Information: Denise Moyer, TMDL Coordinator, Department of Environmental Quality, Piedmont Regional Office, 4949-A Cox Road, Glen Allen, VA 23060, telephone (804) 712-9538, or email [denise.moyer@deq.virginia.gov](mailto:denise.moyer@deq.virginia.gov).

### **Public Meeting and Opportunity for Public Comment for a Cleanup Plan for North Fork Rivanna River Watershed in Albemarle and Greene County**

Purpose of Notice: The Department of Environmental Quality (DEQ) seeks public comment on the development of a cleanup plan for impaired waters, also known as an implementation plan (IP), for North Fork Rivanna River watershed in Albemarle and Greene County. These streams are listed as impaired because monitoring data indicates that the waters do not meet Virginia's water quality standards for bacteria and

aquatic life (benthic). Section 303(d) of the Clean Water Act and § 62.1-44.19:7 C of the Code of Virginia requires DEQ to develop cleanup studies to address pollutants responsible for causing waters to be on Virginia's § 303(d) list of impaired waters. Once a cleanup study is developed, § 62.1-44.19:7 of the Code of Virginia outlines the requirements needed in a cleanup plan to address the pollutants contained in the study.

A cleanup plan has been completed for the North Fork Rivanna River Watershed that identifies corrective actions needed to improve water quality and discusses the associated costs and environmental benefits of the actions. A summary of the plan will be presented at the meeting. Citizens are invited to provide comment on the plan and will learn how to be part of implementing the plan to improve water quality in the watershed. Community engagement meetings to assist in development of this cleanup plan were convened on December 13, 2023, and September 24, 2024.

Cleanup Plan Location: The cleanup plan addresses the following impaired stream segments: Blue Run from the headwaters downstream to its confluence with Swift Run (8.72 miles) for failure to meet the general standard for aquatic life (benthic); Marsh Run from the headwaters downstream to its confluence with the North Fork Rivanna River (3.65 miles) for failure to support aquatic life; Preddy Creek from the headwaters downstream to its confluence with the North Fork Rivanna River (7.48 miles) for failing to support aquatic life and for exceedance in *E. coli*; Preddy Creek North Branch from the headwaters downstream to its confluence with Preddy Creek (6.24 miles) for failing to support aquatic life and for exceedance in *E. coli*; Quarter Creek for 1.58 miles of its length from the dam outfall at Jonquil Road downstream to its confluence with Swift Run for failing to support aquatic life; the North Fork Rivanna River for a total length of 7.33 miles from the confluence of the Lynch River downstream to the Rivanna Water and Sewer Authority North Fork Rivanna River Public Water Intake for failing to meet aquatic life use; the North Fork Rivanna River for 3.98 miles from the public water intake to the confluence of the Rivanna River for an exceedance in *E. coli*; Standardsville Run and its tributaries from the headwaters downstream to the confluence with Blue Run (5.71 miles) for failure to meet standards for aquatic life; Swift Run for 1.91 miles from its confluence with Welsh Run downstream to its confluence with the North Fork Rivanna River for failing to support aquatic life and for exceedance in *E. coli*; and the unnamed tributary to Flat Branch from its headwaters downstream to its confluence with Flat Branch (2.03 miles) for failing to support aquatic life.

Public Meeting: Greene County Public Library, 222 Main Street, Suite 101, Stanardsville, VA 22973 on May 5, 2025, at 5:30 p.m. In the event of inclement weather, the meeting will be held on May 12, 2025, at the same time and location.

Public Comment Period: May 5, 2025, to June 4, 2025.

How to Comment: DEQ accepts written comments by email or postal mail. All comments must be received by DEQ during the comment period. Submittals must include the name, organization represented (if any), mailing address, and telephone number of the commenter or requester.

Information about this plan will be posted throughout the development process at <https://www.deq.virginia.gov/our-programs/water/water-quality/implementation/implementation-plans-under-development>.

Contact Information: Madison Whitehurst, Department of Environmental Quality, Central Office, 1111 East Main Street, Suite 1400, Richmond, VA 23219, telephone (804) 489-8796, or email [madison.whitehurst@deq.virginia.gov](mailto:madison.whitehurst@deq.virginia.gov).

### STATE BOARD OF HEALTH

#### **Opportunity for Drinking Water Infrastructure Funding: State Revolving Fund Supplemental Appropriation**

The Virginia Department of Health (VDH) is pleased to announce a new opportunity for funding drinking water infrastructure. VDH will conduct one round of evaluations of applications submitted by the May 2, 2025, deadline. Funding is possible through the 2025 State Revolving Fund Supplemental Appropriation for Hurricanes Helene and Milton and the Hawai'i Wildfires (SA-HMW).

The fiscal year 2025 (FY 2025) Drinking Water State Revolving Funds (DWSRF) Intended Use Plan (IUP) will use stakeholder input for decision-making and include this SA-HMW funding.

Construction Fund Requests: Owners of community waterworks and nonprofit non-community waterworks with documented impacts from Hurricanes Helene or Milton are eligible to apply for construction funds. Eligible projects must reduce flood or fire damage risk and vulnerability or enhance resiliency to rapid hydrologic change or natural disaster. Further examples of eligible projects are available at <https://www.vdh.virginia.gov/drinking-water/fcap/drinking-water-funding-program/>. VDH makes selections based on criteria described in the DWSRF Program Design Manual, such as existing public health problems, noncompliance, affordability, regionalization, and the availability of matching funds. VDH anticipates a funding level of approximately \$23 million for SA-HMW funding.

The VDH's DWSRF Program Design Manual describes the features of the above opportunities for funding. After receiving public input, VDH will develop an IUP for public review and comment. The IUP will describe specific details for use of the funds. A public comment period is planned, and written comments will be accepted before submittal of a final version to the U.S. Environmental Protection Agency for approval.

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## General Notices

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Applications and information materials are available at <https://www.vdh.virginia.gov/drinking-water/fcap/drinking-water-funding-program/>.

Please direct questions, comments, and information to Anthony Hess, Division Director, Finance and Construction Assistance Program, telephone (804) 584-0413, or email [anthony.hess@vdh.virginia.gov](mailto:anthony.hess@vdh.virginia.gov) or to Theresa Hewlett, Virginia Department of Health, Office of Drinking Water, 109 Governor Street, Sixth Floor, Richmond, VA 23219.

**Contact Information:** Michael Capps, Senior Policy Analyst, Virginia Department of Health, James Madison Building, 109 Governor Street, Richmond, VA 23219, telephone (804) 864-7190, FAX (804) 864-7022, or email [michael.capps@vdh.virginia.gov](mailto:michael.capps@vdh.virginia.gov).

### **VIRGINIA CODE COMMISSION Notice to State Agencies**

**Contact Information:** *Mailing Address:* Virginia Code Commission, Pocahontas Building, 900 East Main Street, 8th Floor, Richmond, VA 23219; *Telephone:* (804) 698-1810; *Email:* [varegs@dls.virginia.gov](mailto:varegs@dls.virginia.gov).

**Meeting Notices:** Section 2.2-3707 C of the Code of Virginia requires state agencies to post meeting notices on their websites and on the Commonwealth Calendar at <https://commonwealthcalendar.virginia.gov>.

**Cumulative Table of Virginia Administrative Code Sections Adopted, Amended, or Repealed:** A table listing regulation sections that have been amended, added, or repealed in the *Virginia Register of Regulations* since the regulations were originally published or last supplemented in the print version of the Virginia Administrative Code is available at <http://register.dls.virginia.gov/documents/cumultab.pdf>.

**Filing Material for Publication in the *Virginia Register of Regulations*:** Agencies use the Regulation Information System (RIS) to file regulations and related items for publication in the *Virginia Register of Regulations*. The Registrar's office works closely with the Department of Planning and Budget (DPB) to coordinate the system with the Virginia Regulatory Town Hall. RIS and Town Hall complement and enhance one another by sharing pertinent regulatory information.