

# THE VIRGINIA REGISTER

OF REGULATIONS

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# INFORMATION ABOUT THE VIRGINIA REGISTER OF REGULATIONS

## VIRGINIA REGISTER

The *Virginia Register* is an official state publication issued every other week throughout the year. Indexes are published quarterly, and the last index of the year is cumulative.

The *Virginia Register* has several functions. The full text of all regulations, both as proposed and as finally adopted or changed by amendment are required by law to be published in the *Virginia Register of Regulations*.

In addition, the *Virginia Register* is a source of other information about state government, including all Emergency Regulations issued by the Governor, and Executive Orders, the *Virginia Tax Bulletin* issued monthly by the Department of Taxation, and notices of all public hearings and open meetings of state agencies.

## ADOPTION, AMENDMENT, AND REPEAL OF REGULATIONS

An agency wishing to adopt, amend, or repeal regulations must first publish in the *Virginia Register* a notice of proposed action; a basis, purpose, impact and summary statement; a notice giving the public an opportunity to comment on the proposal, and the text of the proposed regulations.

Under the provisions of the Administrative Process Act, the Registrar has the right to publish a summary, rather than the full text, of a regulation which is considered to be too lengthy. In such case, the full text of the regulation will be available for public inspection at the office of the Registrar and at the office of the promulgating agency.

Following publication of the proposal in the *Virginia Register*, sixty days must elapse before the agency may take action on the proposal.

During this time, the Governor and the General Assembly will review the proposed regulations. The Governor will transmit his comments on the regulations to the Registrar and the agency and such comments will be published in the *Virginia Register*.

Upon receipt of the Governor's comment on a proposed regulation, the agency (i) may adopt the proposed regulation, if the Governor has no objection to the regulation; (ii) may modify and adopt the proposed regulation after considering and incorporating the Governor's suggestions, or (iii) may adopt the regulation without changes despite the Governor's recommendations for change.

The appropriate standing committee of each branch of the General Assembly may meet during the promulgation or final adoption process and file an objection with the *Virginia Registrar* and the promulgating agency. The objection will be published in the *Virginia Register*. Within twenty-one days after receipt by the agency of a legislative objection, the agency shall file a response with the Registrar, the objecting legislative Committee, and the Governor.

When final action is taken, the promulgating agency must again publish the text of the regulation, as adopted, highlighting and explaining any substantial changes in the final regulation. A thirty-day final adoption period will commence upon publication in the *Virginia Register*.

The Governor will review the final regulation during this time and if he objects, forward his objection to the Registrar and the agency. His objection will be published in the *Virginia Register*. If the Governor finds that changes made to the proposed regulation are substantial, he may suspend the regulatory process for thirty days and require the agency to solicit additional public comment on the substantial changes.

A regulation becomes effective at the conclusion of this thirty-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 twenty-one day extension period; or (ii) the Governor exercises his authority to suspend the regulatory process for solicitation of additional public comment, in which event the regulation, unless withdrawn, becomes effective on the date specified which date shall be after the expiration of the period for which the Governor has suspended the regulatory process.

Proposed action on regulations may be withdrawn by the promulgating agency at any time before final action is taken.

## EMERGENCY REGULATIONS

If an agency determines that an emergency situation exists, it then requests the Governor to issue an emergency regulation. The emergency regulation becomes operative upon its adoption and filing with the Registrar of Regulations, unless a later date is specified. Emergency regulations are limited in time and cannot exceed a twelve-months duration. The emergency regulations will be published as quickly as possible in the *Virginia Register*.

During the time the emergency status is in effect, the agency may proceed with the adoption of permanent regulations through the usual procedures (See "Adoption, Amendment, and Repeal of Regulations," above). If the agency does not choose 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 of Chapter 1.1:1 (§§ 9-6.14:6 through 9-6.14:9) of the Code of Virginia be examined carefully.

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**Staff of the Virginia Register:** Joan W. Smith, *Registrar of Regulations*; Ann M. Brown, *Deputy Registrar of Regulations*.

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| Sept. 7                | Sept. 26 |
| Final Index - Volume 4 |          |

Volume 5 - 1988-89

|                    |              |
|--------------------|--------------|
| Sept. 21           | Oct. 10      |
| Oct. 5             | Oct. 24      |
| Oct. 19            | Nov. 7       |
| Nov. 2             | Nov. 21      |
| Nov. 16            | Dec. 5       |
| Nov. 30            | Dec. 19      |
| Dec. 14            | Jan. 2, 1989 |
| Index 1 - Volume 5 |              |

|                    |         |
|--------------------|---------|
| Dec. 28            | Jan. 16 |
| Jan. 11            | Jan. 30 |
| Jan. 25            | Feb. 13 |
| Feb. 8             | Feb. 27 |
| Feb. 22            | Mar. 13 |
| Mar. 8             | Mar. 27 |
| Index 2 - Volume 5 |         |

|                    |         |
|--------------------|---------|
| Mar. 22            | Apr. 10 |
| Apr. 5             | Apr. 24 |
| Apr. 19            | May 8   |
| May 3              | May 22  |
| May 17             | June 5  |
| May 31             | June 19 |
| Index 3 - Volume 5 |         |

|                        |          |
|------------------------|----------|
| June 14                | July 3   |
| June 28                | July 17  |
| July 12                | July 31  |
| July 26                | Aug. 14  |
| Aug. 9                 | Aug. 28  |
| Aug. 23                | Sept. 11 |
| Sept. 6                | Sept. 25 |
| Final Index - Volume 5 |          |

# TABLE OF CONTENTS

## PROPOSED REGULATIONS

### DEPARTMENT OF MEDICAL ASSISTANCE SERVICES (BOARD OF)

Home and Community Based Ventilation Services. (VR 460-04-8.2) ..... 2327

### DEPARTMENT OF SOCIAL SERVICES (BOARD OF)

Relocation Assistance - General Relief Program. (VR 615-01-24) ..... 2342

State Income Tax Intercept for Child Support. (VR 615-70-1) (Withdrawn) ..... 2343

Health Care Coverage. (VR 615-70-5) (Withdrawn) .... 2343

Posting of Security Bond Guarantee. (VR 615-70-7) (Withdrawn) ..... 2343

## FINAL REGULATIONS

### VIRGINIA EMPLOYMENT COMMISSION

Virginia Employment Commission Regulations and General Rules - Benefits. (VR 300-01-3) ..... 2344

Virginia Employment Commission Regulations and General Rules - Adjudication. (VR 300-01-4) ..... 2351

### DEPARTMENT OF HEALTH (STATE BOARD OF)

Rules and Regulations Governing Service Stations. (Repealed) ..... 2356

Notice of Reestablishment and Description of Shellfish Area Comdemnations. (VR 355-19-02) ..... 2356

### DEPARTMENT OF MEDICAL ASSISTANCE SERVICES (BOARD OF)

State Plan for Medical Assistance Relating to Rehabilitative Services. (VR 460-02-3.1114 and VR 460-02-3.1304) ..... 2358

State Plan for Medical Assistance Relating to Cost Report Filing Requirements.

Methods and Standards for Establishing Payment Rates - In-Patient Hospital Care. (VR 460-02-4.191) ..... 2366

Methods and Standards for Establishing Payment Rates - Other Types of Care. (VR 460-02-4.192) . 2369

Nursing Home Payment System. (VR 460-03-4.194) ..... 2370

State Plan for Medical Assistance Relating to Audit Requirements.

Methods and Standards for Establishing Payment Rates - Long-term Care. (VR 460-02-4.194) ..... 2375

Nursing Home Payment System. (VR 460-03-4.194) ..... 2376

### DEPARTMENT FOR RIGHTS OF THE DISABLED (BOARD FOR)

Public Participation Guidelines. (VR 602-01-1) ..... 2376

## EMERGENCY REGULATIONS

### DEPARTMENT OF COMMERCE

Asbestos Licensing Regulations. (VR 190-05-1) ..... 2378

### DEPARTMENT OF HEALTH

Regulations Governing Application Fees For Construction Permits For Onsite Sewage Disposal Systems and Private Wells. .... 2399

### DEPARTMENT OF MEDICAL ASSISTANCE SERVICES (BOARD OF)

Transfer of Assets. (VR 460-03-2.6109) ..... 2402

### VIRGINIA BOARD OF PROFESSIONAL COUNSELORS

Emergency Regulations of the Board of Professional Counselors (§ 2.2.B Supervised Experience). .... 2404

### DEPARTMENT OF SOCIAL SERVICES (BOARD OF)

Aid to Dependent Children - Unemployed Parent Demonstration (ADC-UP Demo) Project. (VR 615-01-15) ..... 2406

Policy for Child Support Enforcement. (VR 615-70-8) ..... 2409

### COMMISSION ON THE VIRGINIA ALCOHOL SAFETY ACTION PROGRAM

Commission on the Virginia Alcohol Safety Action Program Policy and Procedure Manual. (VR 647-01-2) ..... 2449

## STATE CORPORATION COMMISSION

### Bureau of Insurance

Rescind the Application of Administrative Letter 1988-10 to all Health Services Plans, Health



# Table of Contents

Maintenance Organizations, and Dental, Optometric or Legal Services Plans. (1988-11) ..... 2451

Promulgation of Rules Pursuant to the Securities Act, Take-Over-Bid Disclosure Act and Retail Franchising Act. (SEC880059) ..... 2451

## STATE LOTTERY DEPARTMENT

Guidelines for Public Participation in Regulation Development and Promulgation. (VR 447-01-1) ..... 2453

The State Lottery Regulations. (VR 447-02-1) ..... 2454

## GOVERNOR

### EXECUTIVE ORDERS

Creating the Position of State Geographer. (58-88) .... 2483

Continuing the Commission on the Tercentenary Observances of the College of William and Mary in Virginia. (59-88) ..... 2483

Continuing Certain Declarations of State of Emergency Due to Natural Disasters in the Commonwealth. (60-88) ..... 2483

Declaration of State of Emergency Arising from a Forest Fire in York County, Virginia. (61-88) ..... 2484

Declaration of State of Emergency Arising from a Fire in Rockbridge County, Virginia. (62-88) ..... 2484

### COMMENTS ON PROPOSED REGULATIONS

#### STATE WATER CONTROL BOARD

Water Quality Standards for Tributyltin in Surface Waters. (VR 680-21-01.13) ..... 2485

## GENERAL NOTICES/ERRATA

### NOTICES OF INTENDED REGULATORY ACTION

Notices of Intent ..... 2486

### GENERAL NOTICES

#### BUREAU OF CAPITAL OUTLAY MANAGEMENT

Procedures for the Receipt and Consideration of Written Public Comment on Survey Standards for Buildings Other Than School Buildings Developed Pursuant to Article 5.2 § 2.1-526.14 of Chapter 32 of Title 2.1 of the Code of Virginia. .... 2491

## BOARD OF HOUSING AND COMMUNITY DEVELOPMENT

Notice of Grant Program: Seed-Money for Nonprofit Organizations, Emergency Home Repair Grants, Homeless Facilities Expansion Program, and State Emergency Shelter Support Program. .... 2491

### NOTICE TO STATE AGENCIES

Forms for filing material on date for publication in the Virginia Register of Regulations ..... 2491

### ERRATA

## DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

Rules and Regulations - Official Standards for Enforcement of the Virginia Apples: Grading, Packing, and Marking Law. (VR 115-05-09) ..... 2492

## DEPARTMENT OF AIR POLLUTION CONTROL

Regulations for the Control and Abatement of Air Pollution - Documents Incorporated by Reference. (VR 120-01) ..... 2492

## CALENDAR OF EVENTS

### EXECUTIVE

Open Meetings and Public Hearings ..... 2493

### LEGISLATIVE MEETINGS

Open Meetings and Public Hearings ..... 2514

### CHRONOLOGICAL LIST

Open Meetings ..... 2516  
Public Hearings ..... 2518

# PROPOSED REGULATIONS

For information concerning Proposed Regulations, see information page.

## Symbol Key

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

## STATE LOTTERY DEPARTMENT

**EDITORS NOTE:** Please refer to the section heading "State Lottery Department" within the Register of Regulations for any and all regulations regarding the State Lottery Department.

## DEPARTMENT OF MEDICAL ASSISTANCE SERVICES (BOARD OF)

**Title of Regulation:** VR 460-04-8.2. Home and Community Based Ventilation Services.

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

**Public Hearing Date:** N/A  
(See Calendar of Events section for additional information)

### Summary:

*These proposed regulations provide for the services to certain ventilator-dependent individuals up to the age of 21 years who would otherwise remain in hospitals. The department is, concurrent with the public comment period on these proposed regulations, seeking federal approval of its § 2176 Waiver request from the Health Care Financing - Administration.*

VR 460-04-8.2. Home and Community Based Ventilation Services.

### § 1. Definitions.

*The following words and terms, when used in these regulations, shall have the following meanings unless the context clearly indicates otherwise:*

*"DMAS" means the Department of Medical Assistance Services.*

*"Health care coordinator" means the health care discipline, either nursing or social work, designated by the hospital as responsible for ensuring that the assessment, care planning, monitoring, and review activities as required by DMAS are accomplished.*

*"Health care coordination" means a comprehensive needs assessment and the coordination of the service efforts of multiple providers in order to avoid duplication of services and ensure the individual's access to and receipt of needed services.*

*"Medical equipment and supplies" means those articles prescribed by the attending physician, generally recognized as serving a diagnostic or therapeutic purpose and as being a medically necessary element of the home care plan. Items covered are those not already available under other services covered by the Plan.*

*"Plan of Care" means the written plan of services and supplies needed by the patient to ensure optimal health and safety for an extended period of time.*

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

*"Providers" means those individuals or facilities registered, licensed, or certified, as appropriate, and enrolled by DMAS to render services to Medicaid recipients eligible for services.*

*"Respite care services" means temporary skilled nursing services designed to relieve the family of the care of the ventilator dependent individual (up to age 21) for a short period(s) of time (a maximum of 15 days per year or 360 hours per 12-month period). Respite care shall be provided in the home of the individual's family or caretaker.*

*"Routine respiratory therapy" means services that can be provided on a regularly scheduled basis. Therapy interventions may include: (i) monitoring of oxygen in blood; (ii) evaluation of pulmonary functioning; and (iii) maintenance of respiratory equipment.*

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

### § 2. Coverage statement.

*A. Coverage shall be provided under the administration of the Department of Medical Assistance Services for certain ventilator dependent individuals up to the age of 21 years who would otherwise remain in hospitals.*

*B. The objective of this waiver is to provide for medically appropriate and cost-effective coverage of services necessary to maintain these individuals in the community.*

*C. Coverage shall not be provided for these services in board and care facilities.*

# Proposed Regulations

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D. Coverage shall be provided for private duty nursing, respite care, and medical supplies and equipment not otherwise available under the State Plan. All such services shall be covered only in the patient's home.

## § 3. Covered services and provider requirements.

A. Private duty nursing service shall be covered for individuals up to the age of 21 qualified for ventilator services. This service shall be provided only through a home health agency certified by the Virginia Department of Health for Medicaid participation, and with whom DMAS has a contract for private duty nursing. At a minimum the private duty nurse shall either be a licensed practical nurse or a registered nurse with a current and valid license issued by the Virginia State Board of Nursing.

1. During the first 30 days after the patient's discharge from the hospital, private duty nursing is covered for 24 hours per day if needed and appropriate to assist the family in adjustment to the care associated with ventilator dependency. After 30 days, private duty nursing shall be reimbursed for a maximum of 16 hours per 24 hour period. The department may grant individual exceptions to these maximum limits based on documented emergency needs of the individual and continued aggregate cost effectiveness of community services.

2. If the patient is weaned from the ventilator, reimbursement may be available for private duty nursing for a maximum of 16 hours per 24 hour period not to exceed two weeks from the date the attending physician certifies the cessation of ventilator dependency.

3. The hours of private duty nursing shall be limited by medical necessity and cost effectiveness.

B. Respite care service shall be covered for individuals up to the age of 21 who are qualified for ventilator services. This service shall be provided by skilled nursing staff (registered nurse or licensed practical nurse licensed to practice in the Commonwealth) under the direct supervision of a home health agency certified by the Virginia Department of Health for Medicaid participation and with which DMAS has a contract to provide private duty nursing.

C. Durable medical equipment and supplies, not otherwise covered in the State Plan, shall be provided for individuals qualified for ventilator services. This service shall be provided by persons qualified to render it.

1. Durable medical equipment and supplies shall be necessary to maintain the individual in the home environment.

a. Medical equipment and supplies shall be prescribed by the attending physician and included in the Plan of Care, and shall be generally

recognized as serving a diagnostic or therapeutic purpose and being medically necessary for the home care of the patient.

b. Vendors of durable medical equipment and supplies related to the ventilator shall have a contract with DMAS to provide services.

c. In addition to providing the ventilator and associated equipment and supplies, the vendor providing the ventilator shall ensure the following:

(1) 24 hour on-call for emergency services;

(2) Technicians to make regularly scheduled maintenance visits at least every 15 days and more often if called;

(3) Replacement or repair of equipment and supplies as required; and

(4) Respiratory therapist registered with the National Board for Respiratory Care (NBRC) on-call 24 hours per day and stationed within two hours of the patient's home to facilitate immediate response. The respiratory therapist shall be available for routine respiratory therapy as well as emergency care. In the event that the Commonwealth of Virginia Board of Health Professions implements through state law a regulation requiring registration, certification or licensure for respiratory therapists to practice in the Commonwealth, DMAS shall require all respiratory therapists providing services to this ventilator dependent population to be duly registered, licensed or certified.

2. Medical equipment and supplies include:

a. All durable medical equipment and supplies which are covered under the State Plan. See the attachment listing for specific items which are covered.

b. Apnea monitor.

## § 4. Provider reimbursement.

A. All private duty nursing services shall be reimbursed at an hourly negotiated fee.

B. Respite care shall be reimbursed at an hourly negotiated fee.

C. Prior approval by DMAS shall be required for all durable medical equipment and other medically related supplies furnished under this program before the individual's discharge from the hospital and before reimbursement. If additional equipment and supplies are needed following the patient's discharge from the hospital, the Health Care Coordinator shall notify DMAS and obtain DMAS' approval. This prior authorization requirement shall

# Proposed Regulations

apply to all durable medical equipment and supplies that are covered under the State Plan or the waiver.

## § 5. Patient eligibility requirements.

A. Medicaid eligible individuals, under 21 years of age, shall be entitled to this service based on the anticipated cost to Medicaid of home care being less than the anticipated cost to Medicaid of the individual remaining in the hospital and based on continued aggregate cost effectiveness of community services.

B. The individual shall have a live-in primary care giver who accepts responsibility for the patient's health and welfare.

C. These services shall not be available to inpatients of general acute care hospitals, skilled nursing facilities, intermediate care facilities, or intermediate care facilities for the mentally retarded.

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

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

2. Virginia will treat the income of an eligible individual who receives home and community-based care services under 42 CFR 435.217 using the methodology in 42 CFR 435.735 to reduce the agency's payment for home and community-based services. The following amounts from the individual's total income (including amounts disregarded in determining eligibility) will be deducted:

a. For the individual's maintenance needs, the current Supplemental Security Income (SSI) payment standard for one individual (the categorically needy income standard for one).\*

b. For an individual with a spouse living in the home, an additional amount for the maintenance needs of the spouse based upon a reasonable assessment of need but not to exceed the current Supplemental Security Income payment for one individual (the categorically needy income standard for one).

c. For an individual with a family at home, an

additional amount for the maintenance needs of the family based upon a reasonable assessment of need but not to exceed the medically needy income standard for a family of the same size.

d. Amounts for incurred expenses for Medicare and other health insurance premiums, deductibles, or coinsurance charges.

e. Amounts for incurred expenses for necessary medical or remedial care not subject to payment by a third party recognized under state law but not covered under the Commonwealth's Medicaid Plan within the same reasonable limits established under the State Plan for institutionalized individuals.

\* Although Virginia has elected to apply more restrictive eligibility requirements than SSI, Virginia does not apply a more restrictive income standard.

## E. Assessment and Plan of Care requirements.

1. The initial assessment and development of the Plan of Care shall be conducted by a hospital-based multidisciplinary team. The team shall include an attending physician, a nurse, and a social worker.

a. The physician shall be currently certified by the Board of Medicine and have a currently valid license to practice medicine in the Commonwealth. The physician shall have experience in the needs and care of ventilator dependent persons and the needs of children.

b. The nurse shall be a registered nurse currently and validly licensed to practice nursing in the Commonwealth. The nurse shall have experience in the needs and care of ventilator dependent persons and the needs of children.

c. The social worker shall have a master's degree in social work. The social worker shall have experience in the needs and care of ventilator dependent persons and the needs of children.

d. Other specialists who are currently and validly licensed, registered or certified to practice their specialty within the Commonwealth may participate in the assessment and care planning process. These other specialists shall have experience in the needs and care of ventilator dependent persons and the needs of children.

e. The Health Care Coordinator is responsible for ensuring that the assessment, care planning, monitoring, and review activities required by DMAS are accomplished. The Health Care Coordinator shall be either a nurse or a social worker meeting the requirements of subdivision b or c above.

2. Referral for waiver services and assessment.

# Proposed Regulations

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a. Service referrals shall originate from the clinical staff in the hospital where the individual is located.

b. The Health Care Coordinator shall meet with the family and representatives of the clinical patient care team to preliminarily assess the individual's needs.

c. Upon receiving parental or guardian consent to explore the possibility of home care, the Health Care Coordinator shall arrange for the assessment process for waiver services. The initial assessment and development of the Plan of Care for a potential waiver participant will be conducted by the hospital-based multidisciplinary team.

d. At the time of assessment, certification from the attending physician that the individual would otherwise require continued acute care or skilled nursing facility care will be necessary in order to continue the assessment process.

e. If the physician certifies the need for care and if the family desires community based care, the Health Care Coordinator shall continue the assessment process. The Health Care Coordinator shall perform a home visit to ensure suitability of the home environment for the individual's placement. Concurrently, the Health Care Coordinator or social worker of the multidisciplinary team shall conduct a family assessment to ensure the family's willingness and ability to participate in home care. Consideration shall also be given to the extent of family and community support available to meet the care needs of the ventilator dependent individual.

### 3. Development of the Plan of Care.

a. Upon completion of the medical/nursing/functional assessment and the family and home assessment, the Plan of Care is developed.

d. At minimum, the Plan of Care shall include:

(1) A statement of the appropriateness of the home in which the individual is to be placed.

(2) Identification of the type, frequency, and amount of nursing care needed. This shall include the name of the provider agency, whether the nurse is an RN or an LPN, and verification that the nurse is licensed to practice in the Commonwealth. This shall also contain documentation that the Health Care Coordinator has verified that the provider agency is an enrolled provider with DMAS to provide skilled nursing services for this population.

(3) Identification of all other services that are needed in order for the individual to be discharged

home. The statement shall include, as appropriate: speech therapy; occupational therapy; physical therapy; transportation; physician services; the frequency and amount of service needed; the provider of the service; and the payment source.

(4) A complete list of equipment and supply needs, and identification of the provider and source of payment.

(5) Identification of the type, frequency, and amount of care that the family or other informal caregivers shall provide.

(6) Identification of the anticipated utilization of respite care during the 12-month period post-hospital discharge.

(7) Other referrals for assessment for services (as needed and appropriate) to include: the school system; Women, Infants, and Children Program; child development clinic services; Early and Periodic Screening, Diagnosis and Treatment Program (EPSDT) services.

(8) Identification of the primary care physician in the community who has agreed to follow the recipient in the community.

(9) The appropriateness of the medical care, including a statement from the multidisciplinary team as well as the individual's primary care physician, to be signed by the legally responsible adult, attesting that the medical care the child is to receive in the home is agreed to by the legally responsible adult and is appropriate in the opinion of all involved parties.

### 4. Cost effectiveness computations.

a. These computations shall be completed by the Health Care Coordinator upon completion of the Plan of Care.

b. The Health Care Coordinator shall be required to document the anticipated cost to DMAS for the individual's waiver services for a 12-month period. The Health Care Coordinator shall then compare DMAS costs for the waiver to anticipated costs to DMAS for continued hospitalization of the individual.

### 5. Preauthorization for waiver services.

a. When the determination that the individual's needs can appropriately and cost-effectively be met in the community with these waiver services, the Health Care Coordinator shall give the legally responsible party the choice of waiver services or continued hospitalization.

b. If waiver services are chosen, the legally

responsible party will also be given the opportunity to choose the providers of service, if more than one provider is available to render the services.

6. DMAS shall review and approve the plan of care prior to the individual's hospital discharge to the community with waiver services, and prior to Medicaid payment for waiver services.

7. Reevaluation requirements and utilization review.

a. Reevaluations shall be conducted by the Health Care Coordinator at least every 30 days during the first three months post-hospital discharge and at any time when a change in the individual's condition indicates the need for reevaluation. After the first three months, the Health Care Coordinator shall conduct a home visit once every three months and more often if necessary.

b. DMAS is responsible for performing utilization review at least semi-annually and for the maintenance of supporting documentation. DMAS shall also maintain a copy of the Plan of Care, the initial evaluation, and each reevaluation for a minimum period of five years.

c. The Health Care Coordinator shall review the Plan of Care for appropriateness of the level, amount, type, and quality of services provided as well as for monitoring the cost effectiveness of the individual's care in the community.

d. Medical necessity of waiver services shall be reviewed by the Health Care Coordinator.

e. The Health Care Coordinator shall submit this information to DMAS.

f. During the six-month approval period, a DMAS utilization review analyst shall review the record and conduct a home visit. The purpose of this record review and home visit is to determine the correctness of the level of care; to ensure that the amount, duration, and scope of the services are appropriate; to ensure that the individual's health and welfare are being protected; and to ensure that cost effectiveness is being maintained.

§ 6. Appeal of denied coverage.

A. DMAS shall provide the opportunity for a fair hearing under 42 CFR Part 431, Subpart E, to individuals who are not given the choice of home and community-based services as an alternative to remaining in the hospital or entering a skilled nursing facility services or who are denied the service of their choice or the provider of their choice.

B. The individual shall be advised of the denial and of their right to appeal.

§ 7. Documentation requirements.

The Health Care Coordinator shall submit the following documentation to DMAS prior to the individual's discharge from the hospital:

1. All of the required assessment and documentation.
2. Certification of level of care.
3. Plan of Care.
4. Cost-effectiveness computation.
5. Agreement of legally responsible individual with the Plan of Care.
6. Choice of home and community-based care or hospital care.
7. Choice of waiver service providers, if waiver services are chosen.

#### ATTACHMENT LIST OF COVERED DURABLE MEDICAL EQUIPMENT

#### Medical Equipment and Supplies Covered Under State Plan.

1. Ventilator and necessary attachments.
2. Back-up portable ventilator and attachments.
3. Suction machine, stationary.
4. Suction machine, portable.
5. Ambu bag.
6. Patient lift.
7. Overbed table.
8. Commode, shower chair, or stretcher.
9. Environmental control unit.
10. Alternative communication devices.
11. Tracheostomy tubes.
12. Tracheostomy care kits or individual supplies normally found in the kit.
13. Gastrostomy tubes.
14. Feeding pumps.
15. Suction catheters.
16. Sterile water.

# Proposed Regulations

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17. *Sterile saline.*
18. *Special mattresses.*
19. *Oxygen and oxygen equipment.*
20. *Foley catheters.*
21. *Bed pans.*
22. *Antiseptic solution for cleaning of ventilator and respiratory supplies.*
23. *Wheelchair, manual or power, including adaptive seating devices to prevent contractures and skin breakdown.*
24. *Hospital bed.*
25. *Adaptive mobility transportation device (Mulholland chair).*
26. *Phrenic pacer (implant, transmitter box, antenna and battery).*
27. *Pharmacological preparation necessary for life sustaining nutritional management legend drug only).*
28. *Pulse oximeter.*

## Medical Equipment and Supplies Not Covered Under State Plan

1. *Apnea monitor.*

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Attachment 4.1

VENTILATOR-DEPENDENT INDIVIDUAL (UP TO THE AGE OF 21) HOME PROGRAM

Referral Sheet

Name of Patient \_\_\_\_\_

Name and address of Family \_\_\_\_\_  
 Telephone # \_\_\_\_\_

Age of Patient \_\_\_\_\_

Location of Patient at time of referral \_\_\_\_\_

Primary diagnosis \_\_\_\_\_

Reason for referral \_\_\_\_\_

Attending physician (hospital based) \_\_\_\_\_ Phone # \_\_\_\_\_

Social worker (hospital based) \_\_\_\_\_ Phone # \_\_\_\_\_

Signature of Individual making referral \_\_\_\_\_

Title \_\_\_\_\_

Telephone # \_\_\_\_\_

Date referral received by health care coordinator \_\_\_\_\_

Signature of Health Care Coordinator \_\_\_\_\_

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Attachment 4.2

MEDICAL/NURSING/FUNCTIONAL ASSESSMENT FOR VENTILATOR-DEPENDENT INDIVIDUALS

|  |  |  |   |  |  |
|--|--|--|---|--|--|
| Name of Patient  |  | Home Address   |   | Telephone Number   |  |
| Name of Primary Caretaker                              |  | Address of Primary Caretaker   |   | Telephone Number   |  |
| BIRTHDATE<br>Month   Day   Year                        |  | BIRTHPLACE (Specify State or County)<br>         <br><input type="checkbox"/> USA <input type="checkbox"/> Other |   | SEX <input type="checkbox"/> Male <input type="checkbox"/> Female  |  |
|  |  |  |   | MARITAL STATUS <input type="checkbox"/> Married <input type="checkbox"/> Single <input type="checkbox"/> Divorced <input type="checkbox"/> Separated <input type="checkbox"/> Widowed <input type="checkbox"/> Unknown |  |
|  |  |  |   | Length of time _____   |  |
| FAMILY INCOME  |  |  | USUAL LIVING ARRANGEMENTS                                   |  |  |
| <input type="checkbox"/> \$20,000 or More              |  |  | <input type="checkbox"/> Home/Apartment                     |  |  |
| <input type="checkbox"/> \$15,000 - 19,999             |  |  | <input type="checkbox"/> Rented Room(s)                     |  |  |
| <input type="checkbox"/> \$10,000 - 14,999             |  |  | <input type="checkbox"/> Domiciliary/Personal Care Facility |  |  |
| <input type="checkbox"/> \$5,000 - 9,999               |  |  | <input type="checkbox"/> Hospital Name _____                |  |  |
| <input type="checkbox"/> \$3,600 - \$4,999             |  |  | <input type="checkbox"/> Other _____                        |  |  |
| <input type="checkbox"/> \$2,600 - \$3,599             |  |  |   |  |  |
| <input type="checkbox"/> \$2,599 or LESS               |  |  |   |  |  |
| <input type="checkbox"/> UNKNOWN                       |  |  |   |  |  |
| EDUCATION (Ventilator Individual)                      |  |  | HEALTH CARE COVERAGE  |  |  |
| <input type="checkbox"/> Graduate                      |  |  | <input type="checkbox"/> Medicare # _____                   |  |  |
| <input type="checkbox"/> Undergraduate Degree or years |  |  | <input type="checkbox"/> MEDICAID # _____                   |  |  |
| <input type="checkbox"/> Trade, Technical Vocational   |  |  | <input type="checkbox"/> OTHER TYPE _____                   |  |  |
| <input type="checkbox"/> High School Diploma           |  |  | Name of Carrier _____                                       |  |  |
| <input type="checkbox"/> Grade level to enter          |  |  | SOCIAL SECURITY # _____                                     |  |  |
| <input type="checkbox"/> Unknown                       |  |  |   |  |  |



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Attachment 4.2  
Page 2

MEDICAL STATUS

MEDICAL STATUS

|         | Impairment |             | Compensation |         | Complete Loss | Date of Change (if any) |
|---------|------------|-------------|--------------|---------|---------------|-------------------------|
|         | No         | (Attempted) | No           | Specify |               |                         |
| SIGHT   |            |             |              |         |               |                         |
| HEARING |            |             |              |         |               |                         |

| DENTITION  | Type | None | Change | Age Appropriate Yes | Age Appropriate No |
|--|------|------|--------|---------------------|--------------------|
| <input type="checkbox"/> NO TEETH MISSING OR FEW TEETH MISSING |      |      |        |                     |                    |
| <input type="checkbox"/> SOME OPPOSING TEETH                   |      |      |        |                     |                    |
| <input type="checkbox"/> NO TEETH OR NO OPPOSING TEETH         |      |      |        |                     |                    |

| FRACTURES/DISLOCATIONS MISSING LIMBS | LOCATION/TREATMENT | PREVIOUS REHABILITATION PROGRAM |                     |                    |                  |
|--------------------------------------|--------------------|---------------------------------|---------------------|--------------------|------------------|
|                                      |                    | YES                             | NO OR NOT COMPLETED | MORE THAN ONE YEAR | ONE YEAR OR LESS |
| HIP                                  |                    |                                 |                     |                    |                  |
| FRACTURE(S)                          |                    |                                 |                     |                    |                  |
| OTHER                                |                    |                                 |                     |                    |                  |
| DISLOCATIONS(S)                      |                    |                                 |                     |                    |                  |

| FINGER(S) OR TOE(S) | LOCATION | PREVIOUS REHABILITATION PROGRAM |                     |                    |                  |
|---------------------|----------|---------------------------------|---------------------|--------------------|------------------|
|                     |          | YES                             | NO OR NOT COMPLETED | MORE THAN ONE YEAR | ONE YEAR OR LESS |
| BELOW ELBOW         |          |                                 |                     |                    |                  |
| ABOVE ELBOW         |          |                                 |                     |                    |                  |
| BELOW KNEE          |          |                                 |                     |                    |                  |
| ABOVE KNEE          |          |                                 |                     |                    |                  |

| PARALYSIS/PARESIS            | LOCATION | PREVIOUS REHABILITATION PROGRAM |                     |                    |                  |
|------------------------------|----------|---------------------------------|---------------------|--------------------|------------------|
|                              |          | YES                             | NO OR NOT COMPLETED | MORE THAN ONE YEAR | ONE YEAR OR LESS |
| MONOPLEGIC/PARESIS           |          |                                 |                     |                    |                  |
| HEMIPLEGIA/PARESIS           |          |                                 |                     |                    |                  |
| PARAPLEGIA/PARESIS           |          |                                 |                     |                    |                  |
| TRIPLEGIA/PARESIS            |          |                                 |                     |                    |                  |
| BILATERAL HEMIPLEGIA/PARESIS |          |                                 |                     |                    |                  |
| QUADRIPLEGIA/PARESIS         |          |                                 |                     |                    |                  |

ALLERGIES-SPECIFY

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Attachment 4.2  
Page 3

MEDICAL STATUS

| Number | DIAGNOSES | DATE OF ONSET |
|--------|-----------|---------------|
|        |           |               |
|        |           |               |
|        |           |               |
|        |           |               |
|        |           |               |
|        |           |               |
|        |           |               |
|        |           |               |
|        |           |               |
|        |           |               |

RISK FACTOR MEASUREMENTS/OTHER TESTS

|                          | (RECORD DATE AND READING) |
|--------------------------|---------------------------|
| HEIGHT                   |                           |
| WEIGHT                   |                           |
| IDEAL                    |                           |
| BLOOD PRESSURE           |                           |
| BLOOD CHOLESTEROL        |                           |
| BUN                      |                           |
| ALBUMINURIA              |                           |
| BLOOD SUGAR SPECIFY TEST |                           |
| HEMOGLOBIN OR HEMATOCRIT |                           |
| DIG LEVEL SPECIFY TEST   |                           |
| PROTHROMBIN TIME         |                           |
| SERUM POTASSIUM          |                           |
| CHEST X-RAY              |                           |
| OTHER                    |                           |

A. VENTILATOR (Describe or define, as appropriate)

- Model \_\_\_\_\_
- FI02 \_\_\_\_\_
- Rate \_\_\_\_\_
- Tidal Volume \_\_\_\_\_
- PEEP \_\_\_\_\_
- Hours of use per day \_\_\_\_\_
- Schedule of ventilator use \_\_\_\_\_

B. Oxygen

C. Nutrition

- Diet \_\_\_\_\_  
 po intake (check ones that are appropriate)  
 G-tube \_\_\_\_\_  
 J-tube \_\_\_\_\_  
 N-G tube \_\_\_\_\_
- Supplement \_\_\_\_\_  
 po intake (check ones that are appropriate)  
 G-tube \_\_\_\_\_  
 J-tube \_\_\_\_\_  
 N-G tube \_\_\_\_\_

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Attachment 4.2  
Page 4

MEDICAL STATUS CONTINUED

JOINT MOTION

|                         | DATE |  |  |  |
|-------------------------|------|--|--|--|
| WITHIN NORMAL LIMITS    |      |  |  |  |
| LIMITED MOTION          |      |  |  |  |
| INSTABILITY CORRECTED   |      |  |  |  |
| INSTABILITY UNCORRECTED |      |  |  |  |
| IMMOBILITY              |      |  |  |  |

FAMILY HISTORY

\_\_\_\_\_ (name of individual) requires the level of care:

- hospital
- skilled nursing facility (not available)
- other, explain \_\_\_\_\_

Signature of Physician \_\_\_\_\_

Date \_\_\_\_\_

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Attachment 4.2  
Page 5

FUNCTIONAL STATUS

|                    | Independent | Requires Assistive Device | Requires Human Assistance | Dependent | Age Appropriate Motorically | Age Appropriate Cognitively | Not Applicable |  |
|--------------------|-------------|---------------------------|---------------------------|-----------|-----------------------------|-----------------------------|----------------|--|
|                    |             |                           |                           |           |                             |                             |                | Describe necessary assistance or assistive devices |
| Bathing            |             |                           |                           |           |                             |                             |                |  |
| Dressing           |             |                           |                           |           |                             |                             |                |  |
| Toileting          |             |                           |                           |           |                             |                             |                |  |
| Transfers          |             |                           |                           |           |                             |                             |                |  |
| Bowel Management   |             |                           |                           |           |                             |                             |                |  |
| Bladder Management |             |                           |                           |           |                             |                             |                |  |
| Eating             |             |                           |                           |           |                             |                             |                |  |
| Meal Preparation   |             |                           |                           |           |                             |                             |                |  |
| Ambulation         |             |                           |                           |           |                             |                             |                |  |
|                    |             |                           |                           |           |                             |                             |                | level surfaces                                     |
|                    |             |                           |                           |           |                             |                             |                | uneven surface                                     |
| Assistive Devices  |             |                           |                           |           |                             |                             |                |  |
|                    |             |                           |                           |           |                             |                             |                | wheelchair   |
|                    |             |                           |                           |           |                             |                             |                | prosthetic device                                  |
|                    |             |                           |                           |           |                             |                             |                | orthotic device                                    |
|                    |             |                           |                           |           |                             |                             |                | communication                                      |
|                    |             |                           |                           |           |                             |                             |                | ventilator   |
|                    |             |                           |                           |           |                             |                             |                | suction machine                                    |
|                    |             |                           |                           |           |                             |                             |                | other  |

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Attachment 4.2  
Page 6

Functioning Status

Communication (circle one)

no impairment, is verbal, speaks \_\_\_\_\_ language.  
 Impairment: \_\_\_\_\_ musculature, \_\_\_\_\_ linguistic  
 non-verbal \_\_\_\_\_  
 requires assistive device (explain) \_\_\_\_\_

Orientation (circle one)

oriented \_\_\_\_\_  
 confused, sometime \_\_\_\_\_  
 confused, all time \_\_\_\_\_  
 disoriented, some time \_\_\_\_\_  
 disoriented, all time \_\_\_\_\_  
 comatose: coma level \_\_\_\_\_

Behavior (circle one)

appropriate \_\_\_\_\_  
 wanders, passive, depressed \_\_\_\_\_  
 aggressive \_\_\_\_\_  
 abusive: \_\_\_\_\_ physical, \_\_\_\_\_ verbal  
 manipulative \_\_\_\_\_  
 inappropriate (explain) \_\_\_\_\_

Special Nursing Procedures

A. Trach care (describe)

size \_\_\_\_\_  
 style (model) \_\_\_\_\_  
 changed q \_\_\_\_\_ days  
 suction q \_\_\_\_\_ hours

B. Wound care (describe)

location \_\_\_\_\_  
 size \_\_\_\_\_  
 treatment \_\_\_\_\_

C. Ostomy (describe)

type \_\_\_\_\_  
 treatment \_\_\_\_\_

D. Restraints (describe)

type \_\_\_\_\_  
 duration \_\_\_\_\_  
 reason \_\_\_\_\_

E. Urinary management (circle one)

continent \_\_\_\_\_  
 diapers \_\_\_\_\_  
 foley catheter \_\_\_\_\_  
 intermittent catheterization q \_\_\_\_\_ hours  
 bladder retraining (explain) \_\_\_\_\_

F. Bowel management (circle one)

continent \_\_\_\_\_  
 incontinent \_\_\_\_\_  
 bowel program q \_\_\_\_\_ day (explain) \_\_\_\_\_

G. Medications: (list name, route of administration, dosage, and frequency)

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

H. Other

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Attachment 4.2  
Page 7

PROFESSIONAL AND ANCILLARY SERVICES

|                       | Currently Receiving | Recommended for Discharge | Discharge Recommendations (include frequency of visits and purpose of intervention) |
|-----------------------|---------------------|---------------------------|---|
| Attending Physician   |                     |                           |   |
| Consulting Physician  |                     |                           |   |
| Skilled Nursing       |                     |                           |   |
| Respiratory Therapy   |                     |                           |   |
| Occupational Therapy  |                     |                           |   |
| Physical Therapy      |                     |                           |   |
| Speech Therapy        |                     |                           |   |
| Psychological Therapy |                     |                           |   |
| Social Work Services  |                     |                           |   |
| Educational Therapy   |                     |                           |   |
| Dietary Therapy       |                     |                           |   |
| Other                 |                     |                           |   |

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Attachment 4.3

PRE-DISCHARGE HOME EVALUATION

1. Name of parent or caretaker \_\_\_\_\_
2. Address \_\_\_\_\_
3. Directions to home \_\_\_\_\_
4. Type of home: Apartment \_\_\_\_\_  
 House \_\_\_\_\_  
 One floor \_\_\_\_\_  
 Two or more floors \_\_\_\_\_

Physical Facility Checklist for the Home

Physical Facility Standards for the Home      Satisfactory      Unsatisfactory

| <u>Physical Facility Standards for the Home</u>  | Satisfactory | Unsatisfactory |
|--|--------------|----------------|
| <p>5. <u>Accessibility</u></p> <p>Physical facility can accommodate the individual's specific disability (to include equipment necessary for facilitating mobility and/or transport) to provide access with single caretaker assistance.</p>   |              |                |
| <p>6. Where applicable, physical facility does not restrict delivery of large or heavy medical equipment.</p>  |              |                |
| <p><u>Storage</u></p> <p>7. <u>Immediate access</u>, e.g., night stand--used to store equipment/supplies with utilization frequency of 8 hours or less, e.g., suction catheters, suction machine, gloves, dropper bottle.</p> <p>8. <u>Proximal access</u>, e.g., closet--used to store equipment/supplies with utilization frequency of 24 hours or less, e.g., infant scale, water bottles, specimen cups, and immediate access items in small volumes of oxygen replacement. The proximal access storage area is in close proximity to the individual's room.</p> |              |                |

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Attachment 4.3  
Page 2

Physical Facility Standards for the Home      Satisfactory      Unsatisfactory

|  |  |  |
|--|--|--|
| <p>9. Bulk storage, e.g., basement or garage--must be large enough to accommodate 1 month's equipment/supplies and at least 1 week's oxygen supply.</p> <p>Storage areas must be free from excessive dampness. The temperature must not permit water to freeze. Storage areas must not contain toxic chemicals, e.g., cleaning solutions, fertilizer.</p>                      |  |  |
| <p><u>Space Requirements/Other</u></p> <p>10. Individual's room must have minimum square footage area 9 ft. x 9 ft.</p> <p>Note: Any living area in the house may be designated as the "child's room" (e.g., bedroom, dining room, recreation room).</p>   |  |  |
| <p>11. Location of child's room: First floor _____<br/>                     Second floor _____</p>   |  |  |
| <p>12. A qualified electrician has evaluated the physical facility for ability to accommodate the individual's electrical supply needs.</p>  |  |  |
| <p>13. The physical facility is supplied by a minimum of 100 amp. electrical service.</p>  |  |  |
| <p>14. A minimum of two separate 15 amp. branch circuits supply the individual's room.</p>   |  |  |
| <p>15. If the main distribution panel utilizes fuses, four spare fuses of appropriate capacity are available for a total of eight duplex outlets in the individual's room.</p>   |  |  |
| <p>16. A minimum of four duplex electrical outlets on each of the two 15 amp. branch circuits is available for a total of eight duplex outlets in the individual's room.</p> <p>Note: this is in addition to the usual and customary installation. Therefore, this requirement is not to be interpreted as the total number of outlets required for the individual's room.</p> |  |  |

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Attachment 4.3  
Page 3

DRAFT

Attachment 4.4

PRE-DISCHARGE FAMILY ASSESSMENT

| Physical Facility Standards for the Home  | Satisfactory | Dissatisfactory |
|---|--------------|-----------------|
| <u>Special Equipment</u>  |              |                 |
| 17. A telephone is at the individual's bedside.   |              |                 |
| 18. A mechanical whistle is at the individual's bedside.  |              |                 |
| 19. A battery-powered fluorescent flood light is at the individual's bedside.   |              |                 |
| 20. Power failure alarm/light is plugged into the same house electrical circuit as the ventilator.                                      |              |                 |
| 21. One smoke alarm and one five pound CO <sub>2</sub> fire extinguisher is located on each level of the home (including the basement). |              |                 |
| <u>Ventilation</u>  |              |                 |
| 22. Ventilation is adequate to permit safe recharging of wet cell marine type batteries.  |              |                 |
| 23. Oxygen storage areas has adequate ventilation.  |              |                 |
| <u>General</u>  |              |                 |
| 24. The house meets local safety, sanitation, and building requirements.  |              |                 |
| <u>Other considerations</u>   |              |                 |
| 25.   |              |                 |
| 26. Summary of equipment/home modifications necessary for safe discharge home:  |              |                 |
| 27. Name of person(s) (outside of immediate household) to notify in case of emergency, i.e., friend, neighbor, relation.                |              |                 |
| (Adopted from Children's Home Health Network of Illinois)   |              |                 |

1. Name of primary caregiver \_\_\_\_\_
2. Relationship to patient \_\_\_\_\_
3. Name of secondary caregiver \_\_\_\_\_
4. Relationship to patient \_\_\_\_\_
5. Current employment of household members:
  - Mother
  - Name of employer \_\_\_\_\_
  - Address of employer \_\_\_\_\_
  - Phone # of employer \_\_\_\_\_
  - Work hours (am/pm) \_\_\_\_\_
  - Father
  - Name of employer \_\_\_\_\_
  - Address of employer \_\_\_\_\_
  - Phone # of employer \_\_\_\_\_
  - Work hours (am/pm) \_\_\_\_\_
6. Names and ages of siblings: \_\_\_\_\_
7. Educational level of mother (highest grade completed or degree earned) \_\_\_\_\_  
 Educational level of father: \_\_\_\_\_
8. Does the family understand the 24-hour commitment to home care that will be required? \_\_\_\_\_
9. Is the family willing to participate in learning procedures for home care? \_\_\_\_\_

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Attachment 4.4  
Page 2

- 10. Does the family desire home care? \_\_\_\_\_
- 11. How does the individual's disability affect the family's normal activities?  
\_\_\_\_\_  
\_\_\_\_\_
- 12. Describe family's perception of assisted ventilation. \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
- 13. Describe the effect of the individual's ventilatory support on family relationships. \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
- 14. Who will be making major family decisions? \_\_\_\_\_  
Is this a change? \_\_\_\_\_
- 15. Describe the family's strengths. \_\_\_\_\_  
\_\_\_\_\_
- 16. Describe the role patterns of the family constellation. \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
- 17. Do open communication patterns exist among all family members? \_\_\_\_\_  
\_\_\_\_\_
- 18. What strategies does the family use in solving problems? \_\_\_\_\_  
\_\_\_\_\_
- 19. How involved are family members in the community? \_\_\_\_\_  
\_\_\_\_\_
- 20. What aspects of the individual's care cause concern to the family?  
\_\_\_\_\_  
\_\_\_\_\_

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Attachment 4.4  
Page 3

- 21. Describe the family's understanding of the individual's disease process?  
\_\_\_\_\_
- 22. What normal and abnormal behaviors are the siblings exhibiting in reaction to the handicapped individual? \_\_\_\_\_  
\_\_\_\_\_
- 23. Describe parent/child interaction. \_\_\_\_\_  
\_\_\_\_\_
- 24. How do the siblings interact with the disabled individual? \_\_\_\_\_  
\_\_\_\_\_
- 25. 

| Support Available                          | Hours/Day* | Specify Caregiver | Unmet Need |
|--|------------|-------------------|------------|
| 1. Activities of Daily Living              | _____      | _____             | _____      |
| 2. Skilled Care Needs                      | _____      | _____             | _____      |
| Tube feedings                              | _____      | _____             | _____      |
| Trach care                                 | _____      | _____             | _____      |
| Respiratory therapy                        | _____      | _____             | _____      |
| Ventilator support                         | _____      | _____             | _____      |
| Medication administration                  | _____      | _____             | _____      |
| Physical assessment                        | _____      | _____             | _____      |
| 3. Supervision                             | _____      | _____             | _____      |
| 4. Instrumental Activities of Daily Living | _____      | _____             | _____      |
| 5. Transportation                          | _____      | _____             | _____      |
| 6. Other                                   | _____      | _____             | _____      |
- \* Indicate if variation during week (i.e., 8 hrs/day M-F, 16 hrs/day S-Su).
- 26. Does family anticipate a need for respite care?  Yes  No  
If yes, explain \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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Attachment 4.4  
Page 4

27. Home care recommended?  Why? \_\_\_\_\_

Home care denied?  Why? \_\_\_\_\_

Signature of person completing the assessment \_\_\_\_\_ Date of assessment \_\_\_\_\_

Title \_\_\_\_\_

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Attachment 4.5

PLAN OF CARE

VENTILATOR-DEPENDENT INDIVIDUAL (Up to the Age of 21)

Name \_\_\_\_\_ Address \_\_\_\_\_

Social Security # \_\_\_\_\_ Medicaid # \_\_\_\_\_

URSING NEEDS

CAREGIVER AND SCHEDULE

|   | LPN                      | Hrs/Day | Days/Wk | RN                       | Hrs/Day | Days/Wk | Family                   | Hrs/Day | Day/wk |
|---|--------------------------|---------|---------|--------------------------|---------|---------|--------------------------|---------|--------|
| Respiratory Therapy/<br>Ventilatory Support | <input type="checkbox"/> | Day     | _____   | <input type="checkbox"/> | Day     | _____   | <input type="checkbox"/> | Day     | _____  |
|   |                          | Even    | _____   |                          | Even    | _____   |                          | Even    | _____  |
|   |                          | Nite    | _____   |                          | Nite    | _____   |                          | Nite    | _____  |
| Tracheostomy Care                           | <input type="checkbox"/> | Day     | _____   | <input type="checkbox"/> | Day     | _____   | <input type="checkbox"/> | Day     | _____  |
|   |                          | Even    | _____   |                          | Even    | _____   |                          | Even    | _____  |
|   |                          | Nite    | _____   |                          | Nite    | _____   |                          | Nite    | _____  |
| Medication<br>Administration                | <input type="checkbox"/> | Day     | _____   | <input type="checkbox"/> | Day     | _____   | <input type="checkbox"/> | Day     | _____  |
|   |                          | Even    | _____   |                          | Even    | _____   |                          | Even    | _____  |
|   |                          | Nite    | _____   |                          | Nite    | _____   |                          | Nite    | _____  |
| Nutritional Support                         | <input type="checkbox"/> | Day     | _____   | <input type="checkbox"/> | Day     | _____   | <input type="checkbox"/> | Day     | _____  |
|   |                          | Even    | _____   |                          | Even    | _____   |                          | Even    | _____  |
|   |                          | Nite    | _____   |                          | Nite    | _____   |                          | Nite    | _____  |

Name of Approved Provider \_\_\_\_\_ Telephone # \_\_\_\_\_

DURABLE MEDICAL EQUIPMENT    TOTAL COST    MONTHLY COST    ACCESSORIES/SUPPLIES

| <u>DURABLE MEDICAL EQUIPMENT</u> | <u>TOTAL COST</u> | <u>MONTHLY COST</u> | <u>ACCESSORIES/SUPPLIES</u> |
|----------------------------------|-------------------|---------------------|-----------------------------|
|                                  |                   |                     |                             |
|                                  |                   |                     |                             |

Name of Approved Provider \_\_\_\_\_ Telephone # \_\_\_\_\_

RESPITE CARE

Anticipated Need \_\_\_\_\_

Name of Approved Provider \_\_\_\_\_ Telephone # \_\_\_\_\_

DRAFT

Attachment 4.5  
Page 2

HOME CARE NEEDS

CAREGIVER

Activities of Daily Living \_\_\_\_\_  
 Instrumental Activities of Daily Living \_\_\_\_\_  
 Supervision \_\_\_\_\_  
 Transportation \_\_\_\_\_

ANCILLARY NEEDS

PROVIDER (Name/Telephone #)    REFERRAL MADE    SERVICE PROVIDED

|                          |  |  |
|--------------------------|--|--|
| Home Health              |  |  |
| PT                       |  |  |
| OT                       |  |  |
| Speech                   |  |  |
| Dental                   |  |  |
| Respiratory              |  |  |
| Rehabilitation           |  |  |
| Developmental training   |  |  |
| Education (school)       |  |  |
| Nutritional              |  |  |
| Counseling/support group |  |  |

EMERGENCY SUPPORT

Emergency procedures have been established with:

Name of rescue squad and telephone number \_\_\_\_\_

Name of power company, contact persons, and telephone number \_\_\_\_\_

Name of community physician and telephone # \_\_\_\_\_

Name of family support person who can provide support in absence of caregiver and telephone # \_\_\_\_\_

Has this person been trained in caregiving to a ventilator-dependent individual? \_\_\_\_\_

DRAFT

Attachment 4.5  
Page 3

Home Care Is Approved Home care for this ventilator-dependent individual is appropriate to adequately meet the recipient's needs and assures that all other resources have been explored prior to Medicaid authorization for this recipient.

- \_\_\_ Home environment is found to be safe and therapeutic, including necessary home modifications.
- \_\_\_ Family has completed required training.
- \_\_\_ Community resources are available to support the service needs of the child.
- \_\_\_ Plan of care is cost effective.

Home Care Is Not Approved

- \_\_\_ Appropriate Plan of Care could not be developed. Reason \_\_\_\_\_
- \_\_\_ Plan of Care not cost effective.
- \_\_\_ No provider agency available.
- \_\_\_ Other \_\_\_\_\_

Home Care Offered, But Refused

This section refers only to those individuals who were offered Home Care and refused.

- \_\_\_ Patient/family not interested.
- \_\_\_ Could not afford patient pay.
- \_\_\_ Other: \_\_\_\_\_

Hospital Attending Physician \_\_\_\_\_ Date \_\_\_\_\_ Health Care Coordinator \_\_\_\_\_ Date \_\_\_\_\_

Registered Nurse \_\_\_\_\_ Date \_\_\_\_\_ Social Worker \_\_\_\_\_ Date \_\_\_\_\_

Community Attending Physician \_\_\_\_\_ Date \_\_\_\_\_

FREEDOM OF CHOICE

In accordance with the policies and procedures of the Department of Medical Assistance Services I have been informed by (hospital) \_\_\_\_\_  
 Pre-Admission Screening Team of the Medicaid-funded, options available to me and I choose:

Home care     Hospital Care

I have been given a choice of the available providers. \_\_\_ Yes \_\_\_ No

I understand and approve the prescribed plan of care for (name) \_\_\_\_\_  
 I agree to assume responsibility for maintaining a safe and therapeutic environment that supports this plan of care. In addition, I agree to perform those tasks designated in the plan of care as my responsibility. I also agree to assume responsibility for all required services in the event of an emergency.



# Proposed Regulations

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## DEPARTMENT OF SOCIAL SERVICES (BOARD OF)

**Title of Regulation:** VR 615-01-24. Relocation Assistance - General Relief Program.

**Statutory Authority:** § 63.1-25 of the Code of Virginia.

**Public Hearing Date:** N/A  
(See Calendar of Events section for additional information)

### Summary:

This regulation allows a local department of social services to expand assistance provided under an approved General Relief Plan to include a relocation component. The regulation sets forth eligibility requirements for the component, items covered by relocation assistance, provisions regarding maximum payments, and the types of eligible assistance units the agency may specify. As with all General Relief components, the locality may decide whether to provide the assistance but shall follow the state regulations regarding eligibility if the component is selected.

VR 615-01-24. Relocation Assistance - General Relief Program.

### § 1. Definitions.

The following words and terms, when used in these regulations, shall have the following meaning unless the context clearly indicates otherwise:

*"Aid to Dependent Children (ADC)" means the program administered by the Virginia Department of Social Services that provides support to a relative for eligible children.*

*"Agency" means the local department of social services.*

*"Assistance unit" means the individual or group of individuals whose income and resources are considered in determining eligibility for a component.*

*"Component" means a specific type of assistance provided under the General Relief Program.*

*"General Relief Plan" means the Plan completed by a local department of social services which identifies the components provided under General Relief in the locality.*

*"General Relief Program" means a state (62.5%) and local (37.5%) funded program that assists individuals who do not qualify for aid in a federal category (ADC or SSI).*

*"Local-only" means the state does not reimburse this portion of the money spent by an agency for an assistance unit.*

*"Locality" means the area served by a local department*

*of social services.*

*"Reimbursable maximum: means the highest amount an assistance unit can receive per month for which the state/local match is available.*

*"Supplemental Security Income (SSI)" means a federal program that assists eligible aged, disabled, and blind individuals.*

### § 2. Relocation assistance component.

As part of the General Relief Program this component will provide assistance to eligible assistance units for relocation.

#### A. Eligibility requirements.

To be eligible for assistance:

1. The applicant and each member of the assistance unit shall be residing in the locality where assistance is being requested and the component shall be part of the agency's approved General Relief Plan;
2. The assistance unit shall need and be unable to obtain through other resources the item(s) for which assistance is sought;
3. The need for the item(s) shall be the result of a change in circumstances over which the assistance unit had no control;
4. Each individual included in the assistance unit shall be ineligible for aid in a federal category (ADC or SSI);
5. Each individual included in the assistance unit shall be a citizen of the United States, an alien lawfully admitted for a permanent residence, or an alien permanently residing in the U.S. under color of law;
6. A member of the assistance unit shall have a job or a job offer and the job site shall be located more than a two-hour round trip from the present residence of the assistance unit by reasonably available public or private transportation, exclusive of time necessary to transport children to and from a child care facility, unless normal round trip commuting time in the area is more than two hours, in which case the round trip commuting time shall not exceed the generally accepted standards; and
7. Income from the job shall be sufficient to preclude eligibility for public assistance.

#### B. Covered items.

The following list of items that may be covered by relocation assistance can be expanded by the agency. Covered items will be specified in the General Relief Plan

and include:

1. *Moving expenses for the assistance unit and belongings of the unit;*
2. *The first month's rent; and*
3. *Deposits for utilities and rental housing.*

**C. Maximum payments.**

*An agency providing the component will specify in its General Relief Plan the maximum assistance that will be provided per assistance unit and may elect to use local-only funds to supplement the \$500 reimbursable maximum.*

**D. Eligible assistance units.**

*An agency providing the component will specify in its General Relief Plan the types of eligible assistance units. The types are:*

1. *Assistance units with parents and minor children;*
2. *Assistance units with a parent and minor children;*
3. *Assistance units with a married couple and no children; and*
4. *Assistance units with one individual.*

\* \* \* \* \*

**Title of Regulations:**

**VR 615-70-1. State Income Tax Intercept for Child Support.**

**VR 615-70-5. Health Care Coverage.**

**VR 615-70-7. Posting of Security Bond Guarantee.**

**WITHDRAWAL OF PROPOSED REGULATIONS**

The Department of Social Services is requesting that proposed regulations VR 615-70-1, State Income Tax Intercept for Child Support, published in Volume 3, Issue 5 of the Virginia Register on September 15, 1986; VR 615-70-5, Health Care Coverage, published in Volume 3, Issue 5 of the Virginia Register on November 10, 1986; and VR 615-70-7, Posting of Security Bond or Guarantee, published in Volume 2, Issue 25 of the Virginia Register on September 15, 1986, be **withdrawn** as the intent of these proposed regulations is incorporated in the proposed VR 615-70-8, Policy for Child Support Enforcement, that is being promulgated through the emergency procedures of the Administrative Process Act with an effective date of July 1, 1988.

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# FINAL REGULATIONS

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For information concerning Final Regulations, see information page.

## Symbol Key

Roman type indicates existing text of regulations. *Italic type* indicates new text. Language which has been stricken indicates text to be deleted. [Bracketed language] indicates a substantial change from the proposed text of the regulations.

## VIRGINIA EMPLOYMENT COMMISSION

**REGISTRAR'S NOTICE:** This regulation is excluded from Article 2 of the Administrative Process Act in accordance with § 9-6.14:4.1 C.2 of the Code of Virginia, which excludes from Article 2 regulations which establish or prescribe agency organization, internal practice or procedures, including delegations of authority, and in accordance with § 9-6.14:4.1 C.3 of the Code of Virginia, which excludes from Article 2 regulations which consist only of changes in style or form or corrections of technical errors. The Virginia Employment Commission will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.

**Title of Regulation:** VR 300-01-3. Virginia Employment Commission Regulations and General Rules - Benefits.

**Statutory Authority:** § 60.2-111 of the Code of Virginia.

**Effective Date:** August 31, 1988.

### Summary:

*The agency regulatory review committee held its annual meeting and recommended that certain technical corrections be made in this regulation. They consist of a typographical correction where the word "consecutive" is erroneously hyphenated, and the substitution of the word "forms" for the word "cards." This second correction reflects a technical internal agency practice change whereby the preprinted computer cards formerly used by claimants for unemployment insurance have been supplanted by forms which are computer printed individually as needed.*

VR 300-01-3. Virginia Employment Commission Regulations and General Rules - Benefits.

### PART I.

#### TOTAL AND PART-TOTAL UNEMPLOYMENT.

##### § 1.1. Claimant and employer responsibilities.

###### A. Week of total or part-total unemployment.

1. An individual's week of total or part-total unemployment shall consist of the seven-consecutive-day period beginning with the Sunday prior to the first day he files his claim and registers at an employment office, except as provided in paragraphs 2 and 3 of this subsection; and,

thereafter, the seven-consecutive-day period following any week of such unemployment, provided the individual reports as required by subsection C of this section.

2. A week of total or part-total unemployment of an individual located in an area served only by the itinerant service of the Commission shall consist of the seven-consecutive-day period beginning with the Sunday prior to the first day of such individual's unemployment, provided that such individual registers in person with such itinerant service at the first available opportunity next following the commencement of his total or part-total unemployment except as provided in paragraph 3 of this subsection; and, thereafter, the seven-consecutive-day period following any week of such unemployment provided the individual reports as required by subsection C of this section.

3. A week of total or part-total unemployment of an individual affected by a mass separation or a labor dispute with respect to which arrangements are made for group reporting by the employer shall consist of the seven-consecutive-day period beginning with the Sunday prior to the first day of his unemployment provided that the group reporting is conducted within 13 days next following the first day of unemployment.

B. Employer to furnish employment separation and wage reports upon request of the Commission.

1. Cases of total unemployment. Whenever an employing unit receives an Employer's Report of Separation and Wage Information form from the Commission informing it that an individual has filed a claim for benefits, such employing unit shall within five calendar days after receipt of such information form complete the report and return it to the office from which the informatory notice was sent. That portion of the Employer's Report of Separation and Wage Information to be completed by the employing unit shall set forth:

- a. The date the worker began working;
- b. The last day on which he actually worked;
- c. A check mark in the block indicating the reason for separation and a brief statement of the reason for the separation;
- d. Such other information as is required by such form. The employing unit's official name and

account number, if any, assigned to the employing unit by the Commission shall appear on the signed report.

e. The name and title of the official signing the report shall be provided as well as certification that the information contained in the report is accurate and complete to the best knowledge of that official.

## 2. Cases involving a mass separation.

a. In lieu of furnishing the Commission an individual separation report for each employee filing a claim as otherwise provided in this section, an employer shall file a list of workers involved in the mass separation with the office nearest such workers' place of employment within 24 hours of the date of separation (except as provided in subdivision b below). Such list shall include the workers' social security account numbers.

b. Where the total unemployment is due to a labor dispute, the employer shall file with the Commission unemployment insurance office nearest his place of business, in lieu of a mass separation notice or individual workers separation notices, a notice setting forth the existence of such dispute and the approximate number of workers affected. Upon request by the Commission, such employer shall furnish to the Commission, the names and social security account numbers of the worker ordinarily attached to the department or the establishment where unemployment is caused by a labor dispute.

## C. Procedure for worker to follow in filing a claim for benefits.

1. Each claimant shall appear personally at the Commission unemployment insurance office most accessible to him or at a location designated by the Commission, and shall there file a claim for benefits setting forth (i) his unemployment and that he claims benefits, (ii) that he is able to work and is available for work, and (iii) such other information as is required. A claim for benefits, when filed, may also constitute the individual's registration for work.

2. Except as otherwise provided in this section the claimant shall continue to report as directed during a continuous period of unemployment. The Commission, however, for reasons found to constitute good cause for any claimant's inability to continue to report to the office at which he registered and filed his claim for benefits, may permit such claimant to report to any other unemployment insurance office.

The Commission shall permit continued claims to be filed by mail unless special conditions require in-person reporting. Such special conditions may include:

a. When a claimant is reporting back to claim his first week(s) after filing an initial, additional, or reopened claim and he has not returned to work in the meantime;

b. When a claimant needs assistance in order to completely and accurately fill out his claim forms so as to avoid delays in processing his claims by mail;

c. When, in the opinion of the local unemployment insurance manager or deputy, there is a question of eligibility or qualification which must be resolved through an in-person interview;

d. When a claimant who would normally be reporting by mail receives no additional claim ~~cards~~ forms and he wishes to continue claiming benefits.

e. When a claimant requests to report in person due to problems associated with the receipt of mail.

3. Late filing of total or part-total claims. All initial total or part-total unemployment claims shall be effective on the Sunday of the week in which an individual reports to a Commission local office or a location designated by the Commission to file a claim. The only exceptions to the above are:

a. The Commission is at fault due to a representative of the Commission giving inadequate or misleading information to an individual about filing a claim;

b. A previous claim was filed against a wrong liable state;

c. Filing delayed due to circumstances attributable to the Commission;

d. Transitional claim filed within 14 days from the date the Notice of Exhaustion, Form VEC-B-3(a), was mailed to the claimant by the Commission;

e. When claiming benefits under any special unemployment insurance program, the claimant becomes eligible for regular unemployment insurance when the calendar quarter changes;

f. When the wrong type of claim was taken by a local office.

g. With respect to reopened or additional claims only, when the claimant can show circumstances beyond his control which prevented or prohibited him from reporting earlier.

4. Late filing of continued total and part-total claims. An individual who shall be deemed to have reported at the proper time if he claims benefit rights within 28 days after the calendar week ending date of his

# Final Regulations

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last continued claim filed, or the calendar date on which the initial claim was filed. If the 28th day falls upon a date when the local unemployment insurance office is closed, the final date for late filing shall be extended to the next day the office is open. Failure to file within the time limit shall automatically suspend the claim series and the claimant must file an additional or reopened claim in accordance with subdivision C 3 of this section in order to begin a new claim series.

## D. Work search requirement.

Normally, all claimants whose unemployment is total or part-total must make an active search for work by contacting prospective employers in an effort to find work during each week claimed in order to meet the eligibility requirements of § 60.2-612 of the Code of Virginia. A claimant who is temporarily unemployed with an expected return to work date within a reasonable period of time as determined by the Commission which can be verified from employer information may be considered attached to his regular employer so as to meet the requirement that he be actively seeking and unable to find suitable work if he performs all suitable work which his regular employer has for him during the week or weeks claimed while attached. Attachment will end if the claimant does not return to work as scheduled or if changed circumstances indicate he has become separated.

## E. Adjustment to work search requirement.

In areas of high unemployment as determined by the Commission, defined in § 1 of VR 300-01-1 the Commission has the authority, in the absence of federal law to the contrary, to adjust the work search requirement of the Virginia Unemployment Compensation Act (§ 60.2-100 et seq.) of the Code of Virginia. Any adjustment will be made quarterly within the designated area of high unemployment as follows:

1. The adjustment will be implemented by requiring claimants filing claims for benefits through the full-service unemployment insurance office serving an area experiencing a total unemployment rate of 10% - 19.9% to make one job contact with an employer each week.
2. The adjustment will be implemented by waiving the search for work requirement of all claimants filing claims for benefits through the full-service unemployment insurance office serving an area experiencing a total unemployment rate of 20% or more.
3. No adjustment will be made for claimants filing claims for benefits through the full-service unemployment insurance office serving an area experiencing a total unemployment rate below 10% .

## PART II.

## PARTIAL UNEMPLOYMENT.

### § 2.1. Claimant and employer responsibilities.

#### A. Week of partial unemployment.

With respect to a partially unemployed individual a week of partial unemployment shall consist of a calendar week beginning on Sunday and ending at midnight on Saturday. Total wages payable to partially unemployed workers are to be reported on a calendar week basis.

#### B. Employer responsibility after the initiation of a first claim for partial benefits.

Upon filing of a new claim for partial benefits in each claimant's benefit year the Commission shall promptly notify the employer of such claimant's weekly benefit amount, the date on which his benefit year commenced, and the effective date of the claim for partial benefits. Similar notice shall likewise be given at least once during the claimant's benefit year to each subsequent employer to whom the claimant is attached during a period of partial unemployment for which he claims benefits. Upon receipt of the notice the employer shall record this information for use in the preparation of the evidence he is required to furnish periodically as required in subsection C below.

#### C. Employer to furnish evidence of partial unemployment.

1. After the employer has been notified of the benefit year, the weekly benefit amount, and the effective date of the claim for partial benefits of any worker in his employ (subsection B above) the employer shall, within seven days, furnish the employee with written evidence concerning any week or weeks of partial unemployment which ended on or before the receipt of such notice and which began on or after the effective date of the employee's claim for partial benefits. The employer, until otherwise notified, shall, within 14 days after the termination of any pay period which includes a week or weeks of partial unemployment, and which ends after the date of receipt of such notification, furnish the employee with written evidence concerning his partial unemployment with respect to such week or weeks. Written evidence of partial unemployment required by this subsection shall be furnished by means of a Statement of Partial Unemployment, Form VEC-B-31, or other suitable medium approved by the Commission.

Such evidence need not be furnished, however, where the worker's earnings for a week of partial unemployment equals or exceeds his weekly benefit amount.

2. The information contained on such medium shall be in ink or typewritten and shall show:

- a. The name of the employer and employer account number;

b. The name and social security account number of the worker;

c. The date delivered to worker;

d. The calendar week ending date;

e. The gross amount of wages earned in such week, by day;

f. The reason and the number of days or hours involved where the worker's earnings were reduced for any cause other than lack of work;

g. The following certification, or one similar:

"During the week or weeks covered by this report, the worker whose name is entered worked less than full-time and earned less than his weekly benefit amount for total unemployment because of lack of work, or otherwise shown. I certify that to the best of my knowledge, this information is true and correct";

h. A signature (actual or facsimile) by the employer to the above certification or other identification of the authority supplying the evidence.

#### D. Registration and filing of claim for partial unemployment.

The new claim for benefits for partial unemployment shall be dated to the first day of the beginning of the individual's week of partial unemployment as defined in subsection A of this section. However, in no event shall such new claim be backdated to include a week which ended more than 28 days prior to the date the individual was furnished the Statement of Partial Unemployment, or other written evidence concerning his partial unemployment as provided in subsection C, by the employer.

#### E. Claimant to present evidence of partial unemployment.

1. Upon filing a claim as specified in subsection D, the Commission shall cause the notice referred to in subsection B to be sent to the employer. Thereafter, the employer shall make available to the claimant the Statement of Partial Unemployment, Form VEC-B-31, or other written evidence concerning his partial unemployment, as provided in subsection C. Such written evidence of partial unemployment shall be presented to the local office within 14 days after it is delivered to him by the employer, and failure to do so, within that time, shall render the claim invalid as to the week or weeks to which the statement or other evidence relates.

2. For each subsequent week the partial claim is continued the employer shall furnish the claimant with

the evidence of partial unemployment as provided in subsection C and the claimant shall continue to present such evidence to the local office within 14 days after it is delivered to him by the employer. Failure to do so shall render the claim invalid with respect to the week or weeks to which the statement or other evidence relates.

3. Notwithstanding the provisions of paragraphs 1 and 2 of this subsection, the Commission shall permit the claimant to file a continued claim by mail in the same circumstances applicable to a claimant for total or part-total unemployment compensation.

#### F. Claimant's search for work.

With respect to any week claimed, a partially unemployed claimant shall be deemed to be actively seeking work if he performs all suitable work offered to him by his regular employer.

### PART III. INTERSTATE CLAIMS.

#### § 3.1. Cooperative agreement.

A. This section shall govern the Commission in its administrative cooperation with other states adopting a similar regulation for the payment of benefits to interstate claimants.

#### B. Week of unemployment.

A week of unemployment for an interstate claimant shall consist of any week of unemployment as defined in the law of the liable state from which benefits with respect to such week are claimed.

#### C. Registration for work.

1. Each interstate claimant shall be registered for work through any public employment office in the agent state when and as required by the law, regulations, and procedures of the agent state. Such registration shall be accepted as meeting the registration requirements of the liable state.

2. Each agent state shall duly report to the liable state in question whether each interstate claimant meets the registration requirements of the agent state.

#### D. Benefit rights of interstate claimants.

If a claimant files a claim against any state and it is determined by such state that the claimant has available benefit credits in such state, then claims shall be filed only against such state as long as benefit credits are available in that state. Thereafter, the claimant may file claims against any other state in which there are available benefit credits. For the purposes of this regulation, benefit credits shall be deemed to be unavailable whenever

# Final Regulations

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benefits have been exhausted, terminated, or postponed for an indefinite period or for the entire period in which benefits would otherwise be payable or whenever benefits are affected by the application of a seasonal restriction.

## E. Claims for benefits.

1. Claims for benefits or a waiting period shall be filed by interstate claimants on uniform interstate claim forms and in accordance with uniform procedures developed pursuant to the Interstate Benefit Payment Plan. Claims shall be filed and processed in accordance with the type of week in use in the agent state.

2. Claims shall be filed in accordance with agent state regulations for intrastate claims in local unemployment insurance offices or at an itinerant point or by mail.

a. With respect to claims for weeks of unemployment in which an individual was not working for his regular employer, the liable state shall, under circumstances which it considers good cause, accept a continued claim filed up to one week or one reporting period late. If a claimant files more than one reporting period late, an initial claim shall be used to begin a claim series and no continued claim for a past period shall be accepted.

b. With respect to weeks of unemployment during which an individual is attached to his regular employer, the liable state shall accept any claim which is filed within the time limit applicable to such claims under the law of the agent state.

## F. Determination of claims.

1. The agent state shall, in connection with each claim filed by an interstate claimant, ascertain and report to the claimant's availability for work and eligibility for benefits as are readily determinable in and by the agent state. The liable state may utilize the telephone or mail to directly ascertain facts from the parties.

2. The agent state's responsibility and authority in connection with the determination of interstate claims shall be limited to investigation and reporting of relevant facts. The agent state shall not refuse to take an interstate claim.

## G. Interstate appeals.

1. The agent state shall afford all reasonable cooperation in the holding of hearings in connection with appealed interstate benefit claims.

2. With respect to the time limits imposed by the law of a liable state upon the filing of an appeal in connection with a disputed benefit claim, an appeal made by an interstate claimant shall be deemed to have been made and communicated to the liable state

on the date when it is received by any qualified officer of the agent state, or the date it was mailed by the claimant, whichever is earlier.

H. Extension of interstate benefit payment to include claims taken in and for Canada.

This section shall apply in all its provisions to claims taken in and for Canada.

## PART IV. COMBINING WAGE CREDITS OF MULTI-STATE CLAIMANTS.

### § 4.1 Interstate cooperation.

A. This section, approved by the Secretary of Labor pursuant to § 3304(a) (9) (B), Federal Unemployment Tax Act, and adopted under § 60.2-609 of the Code of Virginia shall govern the Virginia Employment Commission in its administrative cooperation with other states relating to the Interstate Arrangement for Combining Employment and Wages.

#### B. Filing of claims.

A claim for benefits shall be filed by a combined-wage claimant in the same manner as by a claimant who is eligible for benefits under the Unemployment Insurance Law of the paying state.

#### C. Liability for payment of benefits.

Benefits, in all cases, shall be paid to a combined-wage claimant from the unemployment insurance fund of the paying state.

#### D. Determination of claims.

1. Wages paid to a claimant during the paying state's applicable base period, and wages reported for that period by a transferring state as available for the payment of benefits under the arrangement, shall be included by the paying state in determining such claimant's benefit rights.

2. Wages, once they have been transferred and used in a determination which established monetary eligibility for benefits in the paying state, shall be unavailable for determining monetary eligibility for benefits under the Unemployment Insurance Law of the transferring state, except to the extent that wages are usable for redetermination purposes.

3. A combined-wage claimant's monetary and nonmonetary benefit rights shall be determined by the paying state as provided by its Unemployment Insurance Law.

#### E. Reports.

Each state, with respect to any combined-wage claimant, in utilizing forms approved by the Interstate Benefit Payment Committee, shall:

1. Promptly request each state in which the claimant has worked to furnish a report of the claimant's unused covered wages during the base period of the paying state for a combined-wage claimant, and on his current eligibility under the law of such state.

2. When acting as the transferring state, report promptly upon the request of any state the following:

a. The claimant's unused covered wages during the base period of the paying state without restriction for the payment of benefits under the provisions of the paying state's law.

b. The current monetary eligibility of the claimant under the law of the transferring state.

3. When acting as the paying state, send to each transferring state a copy of the initial determination, together with an explanatory statement.

4. When acting as the paying state, send to the claimant a copy of the initial determination, noting his rights to appeal.

5. When acting as the paying state, send to each transferring state a statement of the benefits chargeable to each state. This is done at the end of each quarter in which any benefits have been paid, and each statement shall include the benefits paid during such quarter to such state as to each combined-wage claimant. Each such charge shall bear the same ratio to total benefits paid to the combined-wage claimant by the paying state as his wages reported by the transferring state and used in the paying state's monetary determination bear to the total wages used in such determination.

#### F. Reimbursement of paying state.

A transferring state shall, as soon as practicable after receipt of a statement as set forth in subsection E, reimburse the paying state accordingly.

#### G. Exception to combining wages.

A claimant's wages shall not be combined, notwithstanding any other provision of this arrangement, if the paying state finds that based on combined wages the claimant would be ineligible for benefits. Wages reported by the transferring state shall in such event be returned to and reinstated by such state. The provisions of the Interstate Benefit payment arrangement shall apply to each claimant.

#### H. Relation to interstate benefits payment procedures.

Whenever this plan applies, it will supersede any inconsistent provision of the Interstate Benefit Payment Plan and the regulation thereunder.

### PART V. MISCELLANEOUS BENEFIT PROVISIONS.

§ 5.1. Disposition of benefit checks payable to a deceased claimant.

If a claimant has met the eligibility requirements of the Virginia Unemployment Compensation Act (§ 60.2-100 et seq.) of the Code of Virginia and completed all forms prescribed by the Commission prior to his death, upon proof thereof, the check(s) for all benefits due shall be payable to the decedent's estate.

§ 5.2. Commission approval of training other than that under § 303 of the Job Training and Partnership Act or § 236 of the Trade Readjustment Act.

A. Training shall be approved for an eligible claimant under the provisions of § 60.2-613 of the Code of Virginia only if the Commission finds that:

1. Prospects for continuing employment for which the claimant is fitted by training and experience are minimal and are not likely to improve in the foreseeable future in the locality in which he resides or is claiming benefits;

2. The proposed training course of instruction is vocational or technical training or retraining in schools or classes that are conducted as programs designed to prepare an individual for gainful employment in the occupation for which training is applicable. The training course shall require a minimum of 30 hours attendance each week;

3. The proposed training course has been approved by an appropriate accrediting agency or, if none exist in the state, the training complies with quality and supervision standards established by the Commission, or is licensed by an agency of the state in which it is being given.

4. The claimant has the required qualifications and aptitude to complete the course successfully.

5. The training does not include programs of instructions for an individual which are primarily intended to lead toward a baccalaureate or higher degree from institutions of higher education.

B. Benefits may be paid to an otherwise eligible claimant while he is attending training only if the Commission finds with respect to each week that the claimant is enrolled in and regularly attending the course of instruction approved for him by the Commission.

C. A claimant shall request training approval on forms



# Final Regulations

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provided by the Commission. The claimant's enrollment and attendance shall be reported to the Commission periodically as directed by the local office to which he reports.

**REGISTRAR'S NOTICE:** Due to the large number of forms filed by the Virginia Employment Commission, the forms are not being published in the Virginia Register. However, each form referenced in the regulation is listed below and is available for public inspection at the office of the Registrar of Regulations and at the Virginia Employment Commission, 703 East Main Street, Richmond, Virginia 23219.

B-3 (*Revised 1/88*)

Continued Claim for Benefits

B-3a

Notice of Exhaustion

B-10a

Claim for Benefits

B-10D

Claimant Notice of Predetermination Proceeding

B-10E

Employer Notice of Predetermination Proceeding

B-10-ADDM/P

Claim for Benefits (Mass/Partial)

B-11

Claimant Questionnaire

B-29

Notice to Workers Poster

B-30

Monetary Determination

B-31

Statement of Part. Unemployment (Card)

B-40

UI Programs in Virginia (Pamphlet)

B-54d / B-54dd / B-54e

Notice of Deputy Determination

Record of Fact forms

B-60.1 - Voluntary Quit

B-60.2 - Discharge

B-60.3 - Domestic Responsibility

B-60.4 - Pregnancy

B-60.5 - Able and Available

B-60.6 - Job Refusal/Referral

B-60.7 - Training Approval

B-60.8 - Voluntary Quit - Illness

B-46

Quarterly Charge Statement

B-47

Reimbursable Statement

ES-931

Information - Ex-federal Employees

BPC-45A

Request for Wage Information

BPC-65

Form Letter - Verification of Wages

BPC-54

Deputy's Determination - Overpayment

IVB-1/IB-1A

Initial Interstate Claim

IB-1SF

Instructions for Self-filing Interstate Claim

IB-1C

Interstate Claim Continuation

IB-2 Green

Continued Interstate Claim

IB-2 Buff

Continued Interstate Claim (Transient)

IB-2 Trans.

Continued Interstate Claim

IB-3

Claimant/Employer Separation Statement

IB-4

Request for Transfer of Wages

IB-7

Interstate-Internet Information Sheet

IB-10

Interstate Claim Supplement

IB-7A

Instructions for Completing IB-2

IB-10B

Job Search Verification

IB-11

Fact Finding Report

IB-11S

Separation Fact Finding Report

IB-12

Interstate Tracer

- IB-13 Interstate Memorandum
- IB-14 Request for Reconsideration for Monetary Determination/Wage Credits
- IB-15 Request for Claim Status Information
- IB-16 Interstate Change of Address
- IB-101 Notice of Interstate Appeal
- CW-30 Notice of Combined Wage Claimants
- CW-54 Notice of Wage Transfer Determination

\* \* \* \* \*

**REGISTRAR'S NOTICE:** This regulation is excluded from Article 2 of the Administrative Process Act in accordance with § 9-6.14:4.1 C.3 of the Code of Virginia, which excludes from Article 2 regulations which consist only of changes in style or form or corrections of technical errors. The Virginia Employment Commission will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.

**Title of Regulation:** VR 300-01-4. Virginia Employment Commission Regulations and General Rules - Adjudication.

**Statutory Authority:** § 60.2-111 of the Code of Virginia.

**Effective Date:** August 31, 1988.

**Summary:**

*The agency regulatory review committee held its annual meeting and recommended that a technical correction be made in this regulation. In going through the review process last year to completely rewrite the agency's regulations, a technical editorial error was made in subsection F of § 2. The language as it presently exists in this subsection is incomplete and potentially confusing to readers. The agency is correcting this technical error for the purpose of clarity.*

VR 300-01-4. Virginia Employment Commission Regulations and General Rules - Adjudication.

§ 1. Deputy's determinations.

A. Investigation of issues.

Whenever, after a claim is filed, a deputy obtains information from a claimant, employer, or a third party which could affect the claimant's entitlement to benefits, further investigation shall be initiated. The deputy may contact the parties in person or by telephone 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 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. Predetermination factfinding proceedings.

A predetermination factfinding proceeding may be scheduled by the deputy whenever a request is made by the claimant, his last 30-day employing unit, or his interested subsequent employing unit for the purpose of gathering information to determine benefit eligibility or qualification. Notice of the date, time and location will be mailed to the parties five days before the scheduled proceeding, but such notice may be waived with the parties' consent.

The proceeding may be conducted telephonically or in-person 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. The parties may also ask questions of each other and the 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. Determinations.

As soon as possible following the acquisition of facts necessary to make a determination, either from the parties' submissions or from a predetermination proceeding, the deputy shall render a determination 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 is based, and the reasons for the determination together with information concerning the filing of an appeal. This determination shall be promptly mailed to the parties at their last known addresses.

§ 2. Lower authority appeals.

A. Filing an appeal.

# Final Regulations

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The claimant, his last 30-day employing unit, or his subsequent employing unit which is directly interested in a particular issue may appeal from an adverse deputy's determination as specified in § 60.2-619 of the Code of Virginia.

Appeals shall be filed with the Commission through the local unemployment insurance office where the claim was filed or at the administrative office of the Commission in Richmond either personally or by mail. Appeals shall be in writing and should set forth the grounds upon which they are sought as well as the social security account number of the claimant; however, any document in writing submitted by a party or the authorized representative of a party which expresses a desire to appeal shall be sufficient to initiate an appeal. Agency personnel shall furnish an appellant or his authorized representative whatever assistance is necessary to file an appeal.

## B. Scheduling of hearings.

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. Should evidence indicate that the appeal was not filed within the time prescribed by law, the issue of whether the appeal was timely filed or whether good cause exists for extending the appeal period shall be listed as a statutory issue to be considered at the hearing prior to any issues concerning the merits of the case.

An in-person hearing shall be scheduled in the local unemployment insurance office where the claim was filed or at any other convenient place as may be arranged, but shall not be located at such a distance from the claimant's residence as to cause undue hardship or unreasonable traveling expenses. A telephonic hearing in which parties participate by way of a conference call shall be scheduled in cases where the claimant resides outside of Virginia and has filed an interstate claim unless the claimant agrees to appear at an in-person hearing in Virginia. Telephone hearings may also be scheduled in lieu of in-person hearings so long as permission is obtained from the parties. Notice of the time and place of the hearing shall be mailed to the parties and their known authorized representatives at least seven days before the date of the hearing. When the hearing is to be held by telephone, special instructions as to telephonic participation shall be included with the notice. If circumstances requiring telephonic participation arise after the notice of an in-person hearing has been sent, the parties and their known authorized representatives shall be informed of the telephonic procedures orally or by mail as soon as possible.

The notice of hearing shall set forth the particular statutory provisions and points at issue which must be considered to resolve the case. The appeals examiner, when hearing an appeal, may consider any other applicable issues which might be 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 statutory notice requirement with respect to such new issue. The appeals examiner may refer a new issue back to the deputy if it has not been ruled upon at that level and may, upon his own motion, postpone or continue the case if a new issue has become evident and it is necessary to give proper statutory notice of it in order to proceed.

## C. Postponement of hearings.

The Office of Lower Authority 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 need not always be honored. Requests to postpone a scheduled hearing will not be granted unless it is shown that material and substantial harm may result from requiring the scheduled appearance. Any party or authorized representative who feels he cannot attend a hearing must inform the Office of Lower Authority Appeals as soon as possible. Unless specifically informed that a postponement has been granted, all parties and their authorized representatives should prepare to present evidence at the time and place as scheduled. Postponements may be granted only by the Chief Appeals Examiner, the Clerk of the Commission-Lower Authority, the examiner assigned to hear the case, or by an appeals examiner acting in charge of the Office of Lower Authority Appeals, although they 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. Continuing a hearing.

Once a hearing has commenced, it can be continued only by the presiding appeals examiner either upon his 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 which 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. Withdrawal of an appeal.

If the appellant wishes to withdraw his appeal, a request together with the reasons therefor must be made in writing and sent to the Clerk of the Commission-Lower Authority at the Commission's administrative office in Richmond. The request will be granted only if 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, or potential overpayment;

2. The request is not the result of any coercion, collusion, or illegal waiver of benefits pursuant to § 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 can show that the appeal should be reinstated because one of the three criteria for withdrawal was incorrectly applied.

#### F. Conduct of hearing.

In any hearing before an appeals examiner, all testimony shall be taken under oath or affirmation and a record of the proceeding 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, Chapter 1 (§ 60.2-100 et seq.) of Title 60.2 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. Where a party is unrepresented, the appeals examiner shall assist that party in presenting his case and testing the case of the opposing party.

At any hearing before an appeals examiner, an interested party may appear in person, by counsel, or by an authorized representative. Persons in these categories will be permitted to attend the entire hearing. An employer shall be permitted one representative in addition to counsel or duly authorized agent who can 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. 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 alone, documents already in a claimant's file or obtained during the course of a hearing may be

admitted into the record as exhibits. 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 argument.

#### G. Appeals examiner's decision.

The decision of the appeals examiner shall be reduced to writing and shall state the issues, the findings of fact, opinion or reasons for the decision, and final judgment of the examiner. A copy of the decision shall be mailed 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. Challenge to the interest of the appeals examiner.

If any party believes that the appeals examiner is not impartial with respect to the 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. Unless made at the hearing, such challenge shall be set forth in writing and the reasons therefor, and sent to the Chief Appeals Examiner at the administrative office of the Commission in Richmond. If the Chief Appeals Examiner does not disqualify the challenged appeals examiner, the appeals examiner shall continue to participate in the hearing and render a decision in the case. Failure to disqualify 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. If the challenged appeals examiner is disqualified, or chooses to withdraw, the case shall be heard and decided by another appeals examiner.

#### I. Right of reopening.

Any party to an appeal who was unable to appear for the scheduled hearing or who appeared, but wishes to present additional evidence can request a reopening of the case; and reopening will be granted if good cause is shown. The request, together with the reasons for reopening shall be made in writing and sent to the Chief Appeals Examiner in the administrative office of the Commission in Richmond. Where a request for reopening is made before the decision of the appeals examiner is rendered, the appeals examiner shall withhold the decision on the merits of the case. The appeals examiner shall set a hearing at a time and place convenient to the interested parties so that the parties may give reasons to support or oppose such reopening. If the appeals examiner should decide that reopening is not warranted, he shall render such decision along with the decision on the merits of the case. If the appeals examiner should decide that reopening is warranted, then he shall reopen the case for additional taking of evidence. In any event, the decision concerning

# Final Regulations

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the issue of reopening shall be subject to review by the Commission on appeal by the aggrieved party from the appeals examiner's decision on the merits of the case.

A request for reopening after the appeals examiner has rendered his decision on the merits of the case but within the appeal period shall be mailed to the Office of Commission Appeals and shall set forth in writing the reasons for the reopening. 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. 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. 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 part. In the discretion of the Commission, a hearing on the issue of reopening may be held.

## § 3. Commission review.

### A. How jurisdiction is acquired.

1. Appeal. Any party to the hearing before an appeals examiner, may appeal the decision within the limit set forth in § 60.2-620 of the Code of Virginia after the date of notification or mailing of such decision. The party appealing shall file with the Commission, through the local office where the claim was filed or at the administrative office of the Commission in Richmond, Virginia, either personally or by mail, a notice of appeal which shall be in writing and should set forth the grounds upon which the appeal is sought.

2. Removal. 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 the same 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 and as shown by the record or may direct the taking of additional evidence before the Commission or the appeals examiner, but such additional evidence may not be taken unless notice of the time and place of the taking thereof has been mailed to all parties to the case at least seven days before the time fixed for the taking of such evidence.

3. Untimely appeals to the Commission. 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, the appeal shall be dismissed and the decision of the appeals examiner shall become the final decision of the Commission.

### B. Request for hearings before the Commission.

Except as otherwise provided by this rule, 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 affirmatively 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 it is likely to produce a different result at a new hearing; or

2. The record of 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 shall make a written request to the Office of Commission Appeals within 14 days from the date of delivery or mailing of the Notice of Appeal. The Commission shall notify the parties of the 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 seven days in advance of the scheduled hearing. A request to present additional evidence will be granted only if the aforementioned guidelines are met. A request for oral argument will be automatically granted provided it is made in a timely fashion and is not thereafter withdrawn in writing by the party requesting it.

### C. Postponements, continuances, and withdrawals.

Postponements, continuances and withdrawals of appeals before the Commission shall be handled in the same manner as previously outlined in this part pertaining to lower authority appeals, 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. Conduct of hearings before the Commission.

Prior to a hearing before the Commission for the purpose of taking additional evidence or for oral argument and upon the request of an interested party, a transcript of the hearing held before the appeals examiner shall be furnished to all interested parties. Where no request for a

transcript is made and the hearing lasted less than 45 minutes, the tape may be replayed for the parties prior to the Commission hearing in lieu of furnishing a transcript. A hearing before the Commission for additional evidence shall be conducted under the same rules as outlined in subsection F of § 2 of this regulation for the conduct of hearings at the lower authority level, except that the party which is 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. Commission decisions.

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. Right of reopening.

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 it shall set forth the reasons for the reopening. 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 cannot thereafter be reopened for any reason.

#### G. Challenge to the interest of the Commission.

A challenge to the interest of the Commission may be made orally during a hearing or in writing before or after a hearing, but, if after, only prior to the date the Commission's decision becomes final. The Commission shall promptly hear the challenge, and proceedings with respect to the matter at issue shall not continue until the challenge is decided. In case of a written challenge, the challenge should be addressed to the Office of Commission Appeals, at the Commission's administrative office in Richmond, Virginia.

#### § 4. Oaths and subpoenas.

##### A. Authority.

The special examiner, the appeals examiner, and the Clerk of the Commission shall have the power to administer oaths, take depositions, certify to official acts,

issue subpoenas, compel the attendance of witnesses and the production of books, papers, correspondence, memoranda, and other records, and to take such action as may be necessary in any hearing.

##### B. Issuance of subpoenas.

Subpoenas requiring the attendance of witnesses or the production of books, papers, correspondence, memoranda, and other records at any designated time and place fixed by the special examiner or the appeals examiner for the hearing of a claim or any issue or question involved therein may be issued by the Clerk of the Commission as is appropriate in the name of the Commission and upon the request of any party to the proceeding. Requests for subpoenas duces tecum shall be in writing and specify with reasonable certainty the books, papers, correspondence, memoranda, or other records desired.

A request for a subpoena may be denied if there is no showing of relevance to the subject of the appeal; if it appears that the request would only produce cumulative evidence or testimony; or if it appears that the request would not serve the interest of the party making it. If a subpoena request is denied, it may be renewed at the hearing and a proffer of evidence of testimony may be made. The appeals examiner or special examiner hearing the case shall continue it if it appears that the subpoena should be issued.

##### C. Witness expenses.

Witnesses subpoenaed for appeals before the appeals examiner or the Commission, or both, shall, upon request, be allowed expenses as provided in § 14.1-190 of the Code of Virginia.

**REGISTRAR'S NOTICE:** Due to the large number of forms filed by the Virginia Employment Commission, the forms are not being published in the Virginia Register. However, each form referenced in the regulation is listed below and is available for public inspection at the office of the Registrar of Regulations and at the Virginia Employment Commission, 703 East Main Street, Richmond, Virginia 23219.

Order

Notice to Claimant

VEC-C-1

Notice of Commission Hearing for Oral Argument

VEC-C-1A

Notice of Commission Hearing for Additional Evidence

Decision of Commission

AE-1

Notice of Hearing

# Final Regulations

AE-2 Notice of Intrastate Appeal

AE-1A Notice of Telephonic Hearing

AE-7 Notice of Hearing

AE-10 Request for Withdrawal of Appeal

*construction criteria including toilet facilities are governed under the Virginia Uniform Statewide Building Code.*

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## DEPARTMENT OF HEALTH (STATE BOARD OF)

**REGISTRAR'S NOTICE:** This regulation is excluded from Article 2 of the Administrative Process Act in accordance with § 9-6.14:4.1 C 4(a) of the Code of Virginia, which excludes from Article 2 regulations which are necessary to conform to changes in this Code where no agency discretion is involved. The Department of Health will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.

**REGISTRAR'S NOTICE:** This regulation is excluded from Article 2 of the Administrative Process Act in accordance with § 9-6.14:4.1 C.6 of the Code of Virginia, which excludes from Article 2 Department of Health orders condemning or closing any shellfish, finfish, or crustacea growing area and the shellfish, finfish or crustacea located thereon pursuant to Chapter 7 (§ 28.1-175 et seq.) of Title 28.1. The Department of Health will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.

**NOTICE:** Due to its length the Notice of Reestablishment and Description of Shellfish Area Condemnations filed by the Department of Health is not being published. However, in accordance with § 9-6.14:22 of the Code of Virginia, a summary, in lieu of full text, explaining the adopted amendments is being published. The full texts of the regulations is available for public inspection at the office of the Registrar of Regulations and the Department of Health.

The Department of Health has **REPEALED** the following regulation:

**Title of Regulation:** Rules and Regulations Governing Service Stations.

**Statutory Authority:** §§ 32.1-12 and 32.1-200 of the Code of Virginia.

**Effective Date:** July 1, 1988

### Summary:

*House Bill No. 191 of the 1988 General Assembly Session which repealed § 32.1-199 of the Code of Virginia relating to the regulation of service stations, removes the obligation for the Board of Health to establish rules and regulations governing service stations. Inspections of service stations will no longer be performed by the Department of Health.*

*The availability, operating condition and cleanliness of toilet facilities at service stations are primarily conveniences to the public and do not pose a major threat to public health. While the public convenience and clean surroundings are important to customer satisfaction, scarce public resources must be reallocated to address more serious health problems.*

*The department will still regulate the construction of public water supplies and sewage disposal facilities. The Uniform Statewide Building Code has established the minimum plumbing fixtures for different users of buildings constructed in the Commonwealth. The type and number of toilet facilities required for service stations are covered by this criteria. Other*

**Title of Regulation:** VR 355-19-02. Notice of Reestablishment and Description of Shellfish Area Condemnations.

**Statutory Authority:** §§ 28.1-177 and 32.1-20 of the Code of Virginia.

**Effective Date:** August 31, 1988

### Summary:

*The Virginia Department of Health (VDH) has 122 current shellfish area condemnations. Emergency Orders for condemned shellfish areas were signed April 11, 1988, and May 26, 1988. Although these condemnations were established by VDH, they are posted and patrolled by the Virginia Marine Resources Commission. Recently cases have been dismissed by various courts because the shellfish condemnations were not properly adopted under the Administrative Process Act.*

*The Notice of Reestablishment and Description of Shellfish Area Condemnations is issued to reestablish existing shellfish condemnations. This will allow conviction of shellfish harvesters working illegally in condemned shellfish growing areas. If this is not done, there is a very real possibility of contaminated shellfish getting on the market and causing an epidemic.*

VR 355-19-02. Notice of Reestablishment and Description of Shellfish Area Condemnations.

Pursuant to §§ 28.1-175 through 28.1-177, 32.1-20 and 9-6.14:4.1 C.6 of the Code of Virginia:

1. Accompanying this notice is a list of current numbered shellfish area condemnations with their last effective date. Numbered notices giving a description of each such area and maps showing the boundaries of each such area (except there is no map for condemnation area No. 147, Virginia Potomac River Tributaries Upstream of Mathias Point) are available for inspection at the office of the Registrar of Regulations or the Department of Health.

2. The current numbered shellfish area condemnations shown on the attached list are cancelled.

3. Each numbered shellfish area condemnation shown on the attached list is reestablished effective July 1, 1988.

4. Pursuant to § 28.1-179 of the Code of Virginia, it is unlawful for any person, firm or corporation to take shellfish from any shellfish condemnation area for any purpose except by permit granted by the Marine Resources Commission as provided in § 28.1-179.

**Attachments:**

List of 121 Shellfish Condemnations  
Individual Notices and Descriptions

**SHELLFISH AREA CONDEMNATIONS**

| No. | Name   | Date              |
|-----|--|-------------------|
| 1   | Monroe Creek, Monroe Bay and Mattox Creek          | 31 March 1987     |
| 2   | Cockrell Creek                                     | 10 July 1987      |
| 3   | York River: Timberneck Creek                       | 12 December 1986  |
| 4   | Upper York River                                   | 14 March 1986     |
| 5   | Put In Creek                                       | 7 December 1987   |
| 6   | York River and Wormley Creek                       | 30 September 1983 |
| 7   | Hampton Roads                                      | 16 February 1988  |
| 8   | Nansemond River                                    | 6 October 1986    |
| 11  | Chesapeake Bay, Opposite Cape Charles              | 19 August 1987    |
| 12  | Oyster Harbor                                      | 1 May 1982        |
| 13  | Onancock Creek                                     | 21 November 1986  |
| 14  | Parting Creek                                      | 19 August 1987    |
| 15  | Chesapeake Bay at Entrance to Hampton Roads        | 27 October 1987   |
| 17  | Little Creek                                       | 25 August 1987    |
| 18  | Streeter Creek                                     | 12 June 1987      |
| 19  | Hoffler Creek                                      | 12 June 1987      |
| 20  | Chincoteague Island - Adjacent Areas               | 3 January 1984    |
| 21  | Back River   | 17 November 1986  |
| 22  | Dividing Creek                                     | 20 July 1984      |
| 23  | James River - Opposite Fort Eustis                 | 25 March 1987     |
| 24  | Dymer Creek  | 16 February 1977  |
| 25  | Lynnhaven, Broad and Linkhorn Bays and Tributaries | 12 May 1987       |
| 26  | Horn Harbor  | 24 February 1984  |
| 28  | Yeocomico River                                    | 8 September 1986  |
| 32  | Little Mosquito Creek                              | 18 May 1987       |
| 33  | Pocomoke Sound and Pocomoke River                  | 15 December 1964  |
| 34  | Warwick River                                      | 27 February 1987  |
| 35  | York River: Queen Creek                            | 10 September 1977 |
| 36  | Upper Machodoc Creek                               | 2 July 1987       |
| 38  | Broad Creek - Middlesex County                     | 11 October 1965   |
| 39  | York River at Cheatham Annex                       | 24 June 1985      |
| 40  | York River at Naval Weapons Station                | 7 November 1986   |
| 41  | Carter Creek                                       | 7 June 1985       |
| 42  | Urbanna Creek                                      | 25 August 1987    |
| 43  | Ocohanock Creek                                    | 6 October 1986    |
| 46  | Nansemond River: Bennett Creek                     | 11 June 1987      |
| 48  | Warehouse Creek                                    | 22 March 1972     |
| 51  | Rappahannock River: Below Urbanna                  | 7 October 1983    |
| 52  | Sarah Creek  | 3 May 1985        |
| 53  | Rappahannock River, Adjoining Windmill             | 10 November 1965  |
| 54  | Thorntons Creek, Southwest Branch, Severn River    | 30 January 1986   |
| 57  | Indian Creek                                       | 20 February 1986  |
| 58  | Eastern Branch of Corrotoman River                 | 17 June 1987      |
| 60  | Chesapeake Bay-Adjoining Little Creek              | 20 March 1969     |
| 61  | Stutts Creek                                       | 30 May 1985       |
| 64  | Pagan River and Jones Creek                        | 10 March 1988     |
| 67  | James River - Opposite Tribell Shoal Channel       | 17 January 1972   |
| 68  | Upper Rappahannock River                           | 1 December 1987   |
| 69  | Upper James River                                  | 22 April 1987     |
| 70  | Farnham Creek                                      | 10 May 1985       |
| 71  | Totuskey and Richardson Creeks                     | 10 April 1981     |
| 72  | York River - Fox Creek                             | 7 March 1972      |
| 73  | York River: Ware Creek                             | 16 March 1977     |
| 74  | Rudee Inlet  | 9 March 1972      |
| 76  | Upper Piankatank River                             | 12 August 1985    |
| 77  | Nansemond River: Knotts Creek                      | 9 March 1972      |
| 78  | York River: Aberdeen Creek                         | 7 March 1972      |
| 79  | York River: Carter Creek                           | 7 March 1972      |
| 80  | Chauckatuck Creek                                  | 18 March 1988     |
| 81  | Perrin River                                       | 10 March 1972     |
| 82  | Nomini Creek                                       | 14 March 1986     |
| 83  | Lower Machodoc Creek                               | 17 December 1984  |
| 84  | Jackson Creek                                      | 23 February 1981  |
| 85  | Davis Creek  | 17 December 1982  |
| 86  | Tangier Island                                     | 7 November 1983   |
| 87  | York River: Skimino Creek                          | 22 March 1972     |
| 88  | Rosier Creek                                       | 6 May 1977        |
| 89  | Great Wicomico River                               | 12 April 1988     |
| 90  | Rappahannock River: Parrotts Creek                 | 23 September 1986 |
| 94  | Rappahannock River: Greenvale Creek                | 6 March 1985      |
| 96  | Ware River   | 11 April 1972     |
| 97  | Swans Gut Creek                                    | 8 December 1986   |
| 98  | Parker Creek                                       | 11 April 1972     |
| 99  | Queens Creek - Milford Haven                       | 30 September 1982 |
| 103 | Rappahannock River: Mill Creek                     | 17 December 1984  |
| 104 | Rappahannock River: Sturgeon Creek                 | 18 March 1985     |
| 105 | Little Wicomico River                              | 10 July 1987      |
| 107 | York River - North Shore, Carter Creek             | 14 March 1986     |
| 108 | York River: Cedarbush Creek                        | 12 December 1986  |
| 109 | Rappahannock River: Bush Park Creek                | 21 April 1972     |
| 110 | Nassawadox Creek                                   | 21 April 1972     |
| 112 | Chesconessex Creek                                 | 21 April 1972     |
| 114 | Rappahannock River: Paynes Creek                   | 27 April 1972     |
| 115 | York River: Jones Creek                            | 27 April 1972     |
| 118 | Starling Creek                                     | 27 April 1972     |
| 119 | Pungoteague Creek                                  | 13 April 1984     |
| 120 | Lancaster and Mulberry Creeks                      | 29 October 1986   |
| 123 | Mill Creek   | 1 April 1988      |
| 126 | Piankatank River: Wilton Creek                     | 17 December 1986  |
| 127 | Lagrange Creek                                     | 18 March 1985     |
| 128 | Poropotank River and Adams Creek                   | 12 December 1986  |
| 129 | Piankatank River: Healy Creek                      | 20 April 1983     |
| 132 | Western Branch of Corrotoman River                 | 17 June 1987      |



# Final Regulations

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| 133 | Tabbs Creek  | 24 February 1984 |
| 134 | York River: King & Felgates Creeks                           | 24 June 1985     |
| 135 | Assawoman, Hog, and Little Cat Creeks                        | 30 June 1987     |
| 136 | Jacobus and Mattawoman Creeks                                | 6 May 1977       |
| 137 | Poquoson River   | 24 December 1987 |
| 138 | Hunting and Deep Creeks                                      | 27 December 1984 |
| 139 | Cherrystone Inlet: Kings Creek                               | 8 April 1977     |
| 140 | Potomac River: Presely Creek                                 | 30 May 1986      |
| 141 | Potomac River: Cod Creek                                     | 15 December 1987 |
| 142 | Potomac River: Hull Creek                                    | 30 May 1986      |
| 144 | Potomac River: Jackson Creek                                 | 25 April 1986    |
| 145 | Coan River and The Glebe                                     | 14 October 1986  |
| 146 | Potomac River: Popes Creek                                   | 23 May 1972      |
| 147 | Virginia Potomac River Tributaries Upstream of Mathias Point | 28 July 1972     |
| 151 | Back Creek - York County                                     | 21 February 1975 |
| 153 | Greenbackville Harbor  | 7 November 1983  |
| 157 | North River: Back Creek                                      | 2 October 1986   |
| 158 | Back River: Long and Grunland Creeks                         | 15 April 1982    |
| 159 | Bonum Creek  | 15 February 1983 |
| 160 | Nandua Creek   | 20 May 1983      |
| 161 | Potomac River: Hack Creek                                    | 8 February 1985  |
| 162 | Atlantic Ocean   | 25 October 1983  |
| 163 | South Thimble Island, Chesapeake Bay Bridge - Tunnel         | 20 December 1983 |
| 164 | Kings and Ballards Marsh Creeks                              | 15 August 1986   |
| 165 | Cabin Point Creek  | 24 February 1984 |
| 166 | York River: Taskinas Creek                                   | 27 February 1984 |
| 167 | Messongo Creek   | 9 May 1986       |
| 168 | Potomac River: Cubitt Creek                                  | 30 May 1986      |

## DEPARTMENT OF MEDICAL ASSISTANCE SERVICES (BOARD OF)

**NOTICE:** Due to its length, the State Plan for Medical Assistance is not being published. The proposed amendments to the Plan are set out below. The full text of the Plan is available for public inspection at the office of the Registrar of Regulations and the Department of Medical Assistance Services.

**Title of Regulations:** State Plan for Medical Assistance Relating to Rehabilitative Services; VR 460-02-3.1114 and VR 460-02-3.1304.

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

**Effective Date:** September 1, 1988

### Summary:

*The amendments to the final regulations clarify certain regulations, delete requirements for outpatient admission authorization, add criteria for rehabilitative nursing, correct the title of "speech therapist" to parallel the licensure status, and make various technical changes.*

**VR 460-02-3.1114. Rehabilitative Services.**

### PART I. REHABILITATIVE SERVICES.

§ 1.1. Medicaid covers intensive inpatient rehabilitation services as defined in § 2.1 in facilities certified as rehabilitation hospitals or rehabilitation units in acute care hospitals which have been certified by the Department of Health to meet the requirements to be excluded from the Medicare Prospective Payment System.

§ 1.2. Medicaid covers intensive outpatient rehabilitation services as defined in § 2.1 in facilities which are certified as Comprehensive Outpatient Rehabilitation Facilities (CORFs), or when the outpatient program is administered by a rehabilitation hospital or an exempted rehabilitation unit of an acute care hospital certified and participating in Medicaid.

§ 1.3. These facilities are excluded from the 21-day limit otherwise applicable to inpatient hospital services. Cost reimbursement principles are defined in Attachment 4.19-A.

### PART II. COVERED REHABILITATION PROGRAM.

§ 2.1. An intensive rehabilitation program provides intensive skilled rehabilitation nursing, physical therapy, occupational therapy, and, if needed, speech therapy, cognitive rehabilitation, prosthetic-orthotic services, psychology, social work, and therapeutic recreation. The nursing staff ~~must~~ shall support the other disciplines in carrying out the activities of daily living, utilizing correctly the training received in therapy and furnishing other needed nursing services. The day-to-day activities ~~must~~ shall be carried out under the continuing direct supervision of a physician with special training or experience in the field of rehabilitation.

**VR 460-02-3.1304. Rehabilitative Services.**

### PART I. ADMISSION CRITERIA FOR REHABILITATIVE SERVICES.

§ 1.1. A patient qualifies for intensive inpatient or outpatient rehabilitation if:

A. Adequate treatment of his medical condition requires an intensive rehabilitation program consisting of a multi-disciplinary coordinated team approach to upgrade his ability to function as independently as possible; and

B. It has been established that the rehabilitation program cannot be safely and adequately carried out in a less intense setting.

§ 1.2. In addition to the initial disability requirement, participants ~~must~~ shall meet the following criteria:

A. Require at least two of the listed therapies in addition to rehabilitative nursing:

1. Occupational Therapy

2. Physical Therapy
3. Cognitive Rehabilitation
4. [ ~~Speech~~ *Speech-Language* ] Therapy

B. Medical condition stable and compatible with an active rehabilitation program.

## PART II. INPATIENT ADMISSION AUTHORIZATION.

§ 2.1. Within 72 hours of a patient's admission to a *an inpatient* rehabilitation program, or within 72 hours of notification to the facility of the patient's Medicaid eligibility, the facility ~~must~~ *shall* notify the Department of Medical Assistance Services in writing of the patient's admission. This notification ~~must~~ *shall* include a description of the admitting diagnoses, plan of treatment, expected progress and a physician's certification that the patient meets the admission criteria. The Department of Medical Assistance Services will make a determination as to the appropriateness of the admission for Medicaid payment and notify the facility of its decision. If payment is approved, the Department will establish and notify the facility of an approved length of stay. Additional lengths of stay ~~must~~ *shall* be requested in writing and approved by the Department. Admissions or lengths of stay not authorized by the Department of Medical Assistance Services will not be approved for payment.

## PART III. DOCUMENTATION REQUIREMENTS.

§ 3.1. Documentation of rehabilitation services ~~must~~ *shall*, at a minimum:

A. Describe the clinical signs and symptoms of the patient necessitating admission to the rehabilitation program;

B. Describe any prior treatment and attempts to rehabilitate the patient;

C. Document an accurate and complete chronological picture of the patient's clinical course and progress in treatment;

D. Document that a *multi-disciplinary coordinated* treatment plan specifically designed for the patient has been developed;

E. Document in detail all treatment rendered to the patient in accordance with the plan with specific attention to frequency, duration, modality, response to treatment, and identify who provided such treatment;

F. Document each change in each of the patient's conditions;

G. Describe responses to and the outcome of treatment;

and

H. Describe a discharge plan which includes the anticipated improvements in functional levels, the time frames necessary to meet these goals, and the patient's discharge destination.

§ 3.2. Services not specifically documented in the patient's medical record as having been rendered will be deemed not to have been rendered and no coverage will be provided.

## PART IV. INPATIENT REHABILITATION EVALUATION.

§ 4.1. For a patient with a potential for rehabilitation for which an outpatient assessment cannot be adequately performed, an inpatient evaluation of no more than seven calendar days will be allowed. A comprehensive assessment will be made of the patient's medical condition, functional limitations, prognosis, possible need for corrective surgery, attitude toward rehabilitation, and the existence of any social problems affecting rehabilitation. After these assessments have been made, the physician, in consultation with the rehabilitation team, ~~must~~ *shall* determine and justify the level of care required to achieve the stated goals.

§ 4.2. If during a previous hospital stay an individual completed a rehabilitation program for essentially the same condition for which inpatient hospital care is now being considered, reimbursement for the evaluation will not be covered unless there is a justifiable intervening circumstance which necessitates a re-evaluation.

§ 4.3. Admissions for evaluation and/or training for solely vocational or educational purposes *or for developmental or behavioral assessments* are not covered services.

## PART V. CONTINUING EVALUATION.

§ 5.1. Team conferences ~~must~~ *shall* be held as needed but at least every two weeks to assess and document the patient's progress or problems impeding progress. The team ~~must~~ *shall* periodically assess the validity of the rehabilitation goals established at the time of the initial evaluation, and make appropriate adjustments in the rehabilitation goals and the prescribed treatment program. A review by the various team members of each others' notes does not constitute a team conference. A summary of the conferences, noting the team members present, ~~must~~ *shall* be recorded in the clinical record and reflect the reassessments of the various contributors.

§ 5.2. Rehabilitation care is to be terminated, regardless of the approved length of stay, when further progress toward the established rehabilitation goal is unlikely or further rehabilitation can be achieved in a less intensive setting.

## PART VI.

# Final Regulations

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## THERAPEUTIC FURLOUGH DAYS.

§ 6.1. Properly documented medical reasons for furlough may be included as part of an overall rehabilitation program. Unoccupied beds (or days) resulting from an overnight therapeutic furlough will not be reimbursed by the Department of Medical Assistance Services.

## PART VII. DISCHARGE PLANNING.

§ 7.1. Discharge planning ~~must~~ *shall* be an integral part of the overall treatment plan which is developed at the time of admission to the program. The plan shall identify the anticipated improvements in functional abilities and the probable discharge destination. The patient, unless unable to do so, or the responsible party shall participate in the discharge planning. Notations concerning changes in the discharge plan shall be entered into the record at least every two weeks, as a part of the team conference.

## PART VIII. REHABILITATION SERVICES TO PATIENTS.

§ 8.1. Rehabilitation services are medically prescribed treatment for improving or restoring functions which have been impaired by illness or injury or, where function has been permanently lost or reduced by illness or injury, to improve the individual's ability to perform those tasks required for independent functioning. The rules pertaining to them are:

### A. Rehabilitative nursing.

*Rehabilitative nursing requires education, training, or experience that provides special knowledge and clinical skills to diagnose [ nursing needs ] and treat individuals who have health problems characterized by alteration in cognitive and functional ability.*

*Rehabilitative nursing are those services furnished a patient which meet all of the following conditions:*

- 1. The services shall be directly and specifically related to an active written treatment plan approved by a physician after any needed consultation with a registered nurse who is experienced in rehabilitation;*
- 2. The services shall be of a level of complexity and sophistication, or the condition of the patient shall be of a nature that the services can only be performed by a registered nurse or licensed professional nurse, nursing assistant, or rehabilitation technician under the direct supervision of a registered nurse who is experienced in rehabilitation;*
- 3. The services shall be provided with the expectation, based on the assessment made by the physician of the patient's rehabilitation potential, that the condition of the patient will improve significantly in a reasonable and generally predictable period of*

*time, or shall be necessary to the establishment of a safe and effective maintenance program required in connection with a specific diagnosis; and*

*4. The service shall be specific and provide effective treatment for the patient's condition in accordance with accepted standards of medical practice and include the intensity of rehabilitative nursing services which can only be provided in an intensive rehabilitation setting.*

### A. B. Physical therapy.

1. Physical therapy services are those services furnished a patient which meet all of the following conditions:

a. The services ~~must~~ *shall* be directly and specifically related to an active written treatment plan designed by a physician after any needed consultation with a ~~qualified~~ physical therapist *licensed by the Board of Medicine* ;

b. The services ~~must~~ *shall* be of a level of complexity and sophistication, or the condition of the patient ~~must~~ *shall* be of a nature that the services can only be performed by a ~~qualified~~ physical therapist *licensed by the Board of Medicine*, or a ~~qualified~~ physical therapy assistant who is [ *licensed by the Board of Medicine and* ] under the direct supervision of a qualified physical therapist *licensed by the Board of Medicine* ;

c. The services ~~must~~ *shall* be provided with the expectation, based on the assessment made by the physician of the patient's rehabilitation potential, that the condition of the patient will improve significantly in a reasonable and generally predictable period of time, or ~~must~~ *shall* be necessary to the establishment of a safe and effective maintenance program required in connection with a specific diagnosis; and

d. The services ~~must~~ *shall* be specific and provide effective treatment for the patient's condition in accordance with accepted standards of medical practice; this includes the requirement that the amount, frequency and duration of the services ~~must~~ *shall* be reasonable.

### B. C. Occupational therapy.

1. Occupational therapy services are those services furnished a patient which meet all of the following conditions:

a. The services ~~must~~ *shall* be directly and specifically related to an active written treatment plan designed by the physician after any needed consultation with a ~~qualified~~ an occupational therapist *registered and certified by the American*

## *Occupational Therapy Certification Board ;*

b. The services ~~must shall~~ be of a level of complexity and sophistication, or the condition of the patient ~~must shall~~ be of a nature, that the services can only be performed by a ~~qualified an~~ occupational therapist ~~registered and certified by the American Occupational Therapy Certification Board~~ or a ~~qualified an~~ occupational therapy assistant ~~certified by the American Occupational Therapy Certification Board~~ under the direct supervision of a qualified occupational therapist [ *as defined above* ] ;

c. The services ~~must shall~~ be provided with the expectation, based on the assessment made by the physician of the patient's rehabilitation potential, that the condition of the patient will improve significantly in a reasonable and generally predictable period of time, or ~~must shall~~ be necessary to the establishment of a safe and effective maintenance program required in connection with a specific diagnosis; and

d. The services ~~must shall~~ be specific and provide effective treatment for the patient's condition in accordance with accepted standards of medical practice; this includes the requirement that the amount, frequency and duration of the services ~~must shall~~ be reasonable.

## *C. D. Speech -Language therapy.*

1. [ ~~Speech Speech-Language~~ ] therapy services are those services furnished a patient which meet all of the following conditions:

a. The services ~~must shall~~ be directly and specifically related to an active written treatment plan designed by a physician after any needed consultation with a ~~qualified speech therapist~~ ~~speech-language pathologist licensed by the Board of~~ [ ~~Medicine Audiology and Speech Pathology~~ ] ;

b. The services ~~must shall~~ be of a level of complexity and sophistication, or the condition of the patient ~~must shall~~ be of a nature that the services can only be performed by a ~~qualified speech therapist~~ ~~speech-language pathologist licensed by the Board of~~ [ ~~Medicine Audiology and Speech Pathology~~ ] ;

c. The services ~~must shall~~ be provided with the expectation, based on the assessment made by the physician of the patient's rehabilitation potential, that the condition of the patient will improve significantly in a reasonable and generally predictable period of time, or ~~must shall~~ be necessary to the establishment of a safe and effective maintenance program required in connection with a specific diagnosis; and

d. The services ~~must shall~~ be specific and provide effective treatment for the patient's condition in accordance with accepted standards of medical practice; this includes the requirement that the amount, frequency and duration of the services ~~must shall~~ be reasonable.

## *D. E. Cognitive rehabilitation.*

1. Cognitive rehabilitation services are those services furnished a patient which meet all of the following conditions:

a. The services ~~must shall~~ be directly and specifically related to an active written treatment plan designed by the physician after any needed consultation with a ~~qualified cognitive rehabilitation therapist clinical psychologist~~ [ ~~experienced in working with the neurologically impaired and~~ ] ~~licensed by the Board of Medicine~~ ;

b. The services ~~must shall~~ be of a level of complexity and sophistication, or the condition of the patient ~~must shall~~ be of a nature, that the services ~~can only be performed by, or under the direct supervision of a qualified cognitive rehabilitation therapist.~~ A ~~qualified cognitive rehabilitation therapist~~ is a ~~Virginia Board of Medicine licensed clinical psychologist~~ ~~can only be rendered after a neuropsychological evaluation administered by a clinical psychologist or physician~~ [ ~~experienced in the administration of neuropsychological assessments and~~ ] ~~licensed by the Board of Medicine and in accordance with a plan of care based on the findings of the neuropsychological evaluation~~ ;

c. Cognitive rehabilitation therapy services may be provided by occupational therapists, ~~speech and language therapists,~~ ~~speech-language pathologists,~~ and psychologists [ ~~with who have~~ ] experience in working with the neurologically impaired when provided under a plan ~~developed and supervised recommended and coordinated by a qualified cognitive rehabilitation therapist physician or clinical psychologist licensed by the Board of Medicine~~ ;

d. The cognitive rehabilitation services ~~must shall~~ be an integrated part of the total patient care plan and ~~must shall~~ relate to information processing deficits which are a consequence of and related to a neurologic event;

e. The services include activities to improve a variety of cognitive functions such as orientation, attention/concentration, reasoning, memory, discrimination and behavior; and

f. The services ~~must shall~~ be provided with the expectation, based on the assessment made by the physician of the patient's rehabilitation potential,

# Final Regulations

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that the condition of the patient will improve significantly in a reasonable and generally predictable period of time, or ~~must~~ *shall* be necessary to the establishment of a safe and effective maintenance program required in connection with a specific diagnosis.

## E. F. Psychology.

1. Psychology services are those services furnished a patient which meet all of the following conditions:

a. The services ~~must~~ *shall* be directly and specifically related to an active written treatment plan ordered by a physician;

b. The services ~~must~~ *shall* be of a level of complexity and sophistication, or the condition of the patient ~~must~~ *shall* be of a nature that the services can only be performed by a qualified psychologist as required by state law;

c. The services ~~must~~ *shall* be provided with the expectation, based on the assessment made by the physician of the patient's rehabilitation potential, that the condition of the patient will improve significantly in a reasonable and generally predictable period of time, or ~~must~~ *shall* be necessary to the establishment of a safe and effective maintenance program required in connection with a specific diagnosis; and

d. The services ~~must~~ *shall* be specific and provide effective treatment for the patient's condition in accordance with accepted standards of medical practice; this includes the requirement that the amount, frequency and duration of the services ~~must~~ *shall* be reasonable.

## F. G. Social work.

1. Social work services are those services furnished a patient which meet all of the following conditions:

a. The services ~~must~~ *shall* be directly and specifically related to an active written treatment plan ordered by a physician;

b. The services ~~must~~ *shall* be of a level of complexity and sophistication, or the condition of the patient ~~must~~ *shall* be of a nature that the services can only be performed by a qualified social worker as required by state law;

c. The services ~~must~~ *shall* be provided with the expectation, based on the assessment made by the physician of the patient's rehabilitation potential, that the condition of the patient will improve significantly in a reasonable and generally predictable period of time, or ~~must~~ *shall* be necessary to the establishment of a safe and

effective maintenance program required in connection with a specific diagnosis; and

d. The services ~~must~~ *shall* be specific and provide effective treatment for the patient's condition in accordance with accepted standards of practice; this includes the requirement that the amount, frequency and duration of the services ~~must~~ *shall* be reasonable.

## G. H. Recreational therapy.

1. Recreational therapy are those services furnished a patient which meet all of the following conditions:

a. The services ~~must~~ *shall* be directly and specifically related to an active written treatment plan ordered by a physician;

b. The services ~~must~~ *shall* be of a level of complexity and sophistication, or the condition of the patient ~~must~~ *shall* be of a nature that the services are performed as an integrated part of a comprehensive rehabilitation plan of care by a recreation therapist certified with the National Council for Therapeutic Recreation at the professional level;

c. The services ~~must~~ *shall* be provided with the expectation, based on the assessment made by the physician of the patient's rehabilitation potential, that the condition of the patient will improve significantly in a reasonable and generally predictable period of time, or ~~must~~ *shall* be necessary to the establishment of a safe and effective maintenance program required in connection with a specific diagnosis; and

d. The services ~~must~~ *shall* be specific and provide effective treatment for the patient's condition in accordance with accepted standards of practice; this includes the requirement that the amount, frequency and duration of the services ~~must~~ *shall* be reasonable.

## H. I. Prosthetic/orthotic services.

1. Prosthetic services furnished to a patient include prosthetic devices that replace all or part of an external body member, and services necessary to design the device, including measuring, fitting, and instructing the patient in its use;

2. Orthotic device services furnished to a patient include orthotic devices that support or align extremities to prevent or correct deformities, or to improve functioning, and services necessary to design the device, including measuring, fitting and instructing the patient in its use; and

3. Prosthetic/orthotic services must be ordered by the

physician and shall be necessary to carry out the rehabilitation plan. Maxillofacial prosthetic and related dental services are those services that are specifically related to the improvement of oral function not to include routine oral and dental care.

4. The services shall be directly and specifically related to an active written treatment plan approved by a physician after consultation with a prosthetist, orthotist, or a licensed, board eligible prosthodontist, certified in Maxillofacial prosthetics.

5. The services shall be provided with the expectation, based on the assessment made by physician of the patient's rehabilitation potential, that the condition of the patient will improve significantly in a reasonable and predictable period of time, or shall be necessary to establish an improved functional state of maintenance.

6. The services shall be specific and provide effective treatment for the patient's condition in accordance with accepted standards of medical and dental practice; this includes the requirement that the amount, frequency, and duration of the services be reasonable.

## **I. J. Durable medical equipment.**

1. Durable medical equipment furnished the patient receiving approved covered rehabilitation services is covered when the equipment is necessary to carry out an approved plan of rehabilitation. A rehabilitation hospital or a rehabilitation unit of a hospital enrolled with Medicaid under a separate provider agreement for rehabilitative services may supply the durable medical equipment. The provision of the equipment is to be billed as an outpatient service. All durable medical equipment over \$1,000 ~~must~~ shall be preauthorized by the department; however, all durable medical equipment is subject to justification of need. Durable medical equipment normally supplied by the hospital for inpatient care is not covered by this provision.

# Final Regulations

## INPATIENT REHABILITATION CERTIFICATION FORM

|   |   |
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| <p>(1) (PATIENT) LAST FIRST I. DATE OF BIRTH</p> <p>(2) MEDICAID NUMBER (12 DIGIT) MEDICARE NUMBER OTHER INSURANCE</p> <p>(3) (RESPONSIBLE PARTY) NAME ADDRESS RELATIONSHIP</p> <p>(4) Prior Hospitalization(s) (Include Hospital Name, Dates, Reason)</p> <p>(5) Admitting Diagnosis (Include Date of Onset)</p> <p>(6) Description of Functional Status</p> <p>(7) Plan of Care (Therapies, Frequency, Duration, Measurable Goals)</p> <p>(8) Anticipated Progress and Discharge Plan</p> <p>This Patient Requires Intensive Rehabilitation Services</p> <p>(9) Name of Physician Signature of Physician Date</p> | <p>(10) Provider Name</p> <p>Provider Number Telephone</p> <p>Provider Address</p> <p>City/State Zip Code</p> <p>(11) Contact Person Telephone</p> <p>(12) Admission Date (Anticipated)<br/>Admission Date (Actual)<br/>Anticipated Length of Stay</p> <p>(13) REQUEST APPROVAL FOR:<br/>( ) 1. Admission<br/>( ) 2. Extension of Stay<br/>( ) 3. Reconsideration</p> <p>FOR OFFICE USE ONLY</p> <p>(14) TREATMENT AUTHORIZATION NO.<br/>(A) Approved: (B) Denied<br/>Admission Admission<br/>Initial Days Extension<br/>Extended Days<br/>Total Days (C) Pending</p> <p>Initial Dates of Services to<br/>Dates of Extension to<br/>Dates of Extension to</p> <p>Comments:<br/>(Send Discharge Summary)</p> |
|---|---|

IF ADDITIONAL SPACE IS REQUIRED, ATTACH ADDITIONAL SHEETS

## REQUEST FOR DURABLE MEDICAL EQUIPMENT FORM

|  |   |
|--|---|
| <p>(1) (PATIENT) LAST FIRST I. DATE OF BIRTH</p> <p>(2) MEDICAID NUMBER (12 DIGIT) MEDICARE NUMBER OTHER INSURANCE</p> <p>(3) (RESPONSIBLE PARTY) NAME ADDRESS RELATIONSHIP</p> <p>(4) DIAGNOSIS</p> <p>(5) FUNCTIONAL LIMITATIONS</p> <p>(6) ITEMS REQUESTED (INCLUDE ALL ADAPTATIONS AND MODIFICATIONS) NOTE PURCHASE/RENTAL COST OF EACH ITEM</p> <p>(7) THERAPEUTIC VALUE OF EQUIPMENT</p> <p>(8) EQUIPMENT WILL BE NEEDED FOR _____ months</p> <p>(9) DISCHARGE PLAN (include patient prognosis, discharge date, destination, and care giver)</p> <p>I certify that the requested equipment is medically necessary for the care and treatment of the above patient.<br/>I certify that the patient is cognitively and functionally able to utilize the requested equipment.</p> <p>(10) Name of Physician Signature of Physician Date</p> | <p>(11) Provider Name</p> <p>Provider Number</p> <p>Provider Address</p> <p>City/State Zip Code</p> <p>(12) Contact Person Telephone</p> <p>FOR OFFICE USE ONLY</p> <p>(13) Approved _____<br/>Denied _____<br/>Pending _____</p> <p>COMMENTS:</p> <p>Reviewer Signature Date</p> |
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7/7/87- 202

IF ADDITIONAL SPACE IS REQUIRED, ATTACH ADDITIONAL SHEET

## REQUEST FOR DURABLE MEDICAL EQUIPMENT FORM-DMAS-122R INSTRUCTIONS FOR COMPLETION

A DMAS 122-R must be completed and submitted to the Department Medical Assistance Services for reimbursement approval for durable medical equipment. A separate DMAS 122-R must be completed for each piece of equipment requested. A staff member designated by the physician may complete the form but the physician must sign and date the form in his own handwriting. Initials and rubber stamps will not be accepted in lieu of the physician's signature.

- NUMBER 1. REQUIRED- Enter patient's name and date of Birth.
- NUMBER 2. REQUIRED- Enter Medicaid number (12 digits), Medicare number and any other insurance.
- NUMBER 3. REQUIRED- Enter responsible party name, address and relationship to patient.
- NUMBER 4. REQUIRED- List all current diagnoses and date of onset.
- NUMBER 5. REQUIRED- Detailed description of current Level of Functional Status.
- NUMBER 6. REQUIRED- Detailed description of equipment to include all adaptations and modifications. Include purchase/rental cost for each item.
- NUMBER 7. REQUIRED- Describe purpose of and therapeutic value of equipment.
- NUMBER 8. REQUIRED- Enter length of time that equipment will be needed.
- NUMBER 9. REQUIRED- Describe discharge plan to include anticipated/actual discharge date and destination. If patient is not independent, identify plan for assistive care giver. Include patient prognosis.
- NUMBER 10. REQUIRED- Signature of the physician and date signed must be in the physicians handwriting.
- NUMBER 11. REQUIRED- Complete provider name, address, phone number and seven digit rehabilitation provider number assigned by the Department of Medical Assistance Services.
- NUMBER 12. REQUIRED- List contact person and telephone number for additional information or clarification.
- NUMBER 13. FOR OFFICE USE ONLY- Will be completed by the Department of Medical Assistance Services.

7/7/87-Rehab



# Final Regulations

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**Title of Regulations:** State Plan for Medical Assistance Relating to Cost Report Filing Requirements.

**VR 460-02-4.191. Methods and Standards for Establishing Payments Rates - In-Patient Hospital Care.**

**VR 460-02-4.192. Methods and Standards for Establishing Payment Rates - Other Types of Care.**

**VR 460-03-4.194. Nursing Home Payment System.**

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

**Effective Date:** September 1, 1988.

**Summary:**

*These final regulations establish uniform cost report filing requirements across all institutional provider types. Uniform cost reporting by participating providers is required by the Health Care Financing Administration, the federal funding agency for Medicaid.*

**VR 460-02-4.191. Methods and Standards for Establishing Payment Rates - In-Patient Hospital Care.**

The state agency will pay the reasonable cost of inpatient hospital services provided under the Plan. In reimbursing hospitals for the cost of inpatient hospital services provided to recipients of medical assistance.

I. For each hospital also participating in the Health Insurance for the Aged Program under Title XVIII of the Social Security Act, the state agency will apply the same standards, cost reporting period, cost reimbursement principles, and method of cost apportionment currently used in computing reimbursement to such a hospital under Title XVIII of the Act, except that the inpatient routine services costs for medical assistance recipients will be determined subsequent to the application of the Title XVIII method of apportionment, and the calculation will exclude the applicable Title XVIII inpatient routing service charges or patient days as well as Title XVIII inpatient routine service cost.

II. For each hospital not participating in the Program under Title XVIII of the Act, the state agency will apply the standards and principles described in 42 CFR 447.250 and either (a) one of the available alternative cost apportionment methods in 42 CFR 447.250, or (b) the "Gross RCCAC method" of cost apportionment applied as follows: For a reporting period, the total allowable hospital inpatient charges; the resulting percentage is applied to the bill of each inpatient under the Medical Assistance Program.

III. For either participating or nonparticipating facilities, the Medical Assistance Program will pay no more in the aggregate for inpatient hospital services than the amount it is estimated would be paid for the services under the Medicare principles of reimbursement, as set forth in 42

CFR 447.253(b)(2), and/or [ ~~lesser~~ *lesser* ] of reasonable cost or customary charges in 42 CFR 447.250.

IV. The state agency will apply the standards and principles as described in the state's reimbursement plan approved by the [ ~~secretary~~ *Secretary, HHS* ] on a demonstration or experimental basis for the payment of reasonable costs by methods other than those described in paragraphs (a) and (b) above.

V. The reimbursement system for hospitals includes the following components:

(1) Hospitals should be grouped by classes according to number of beds and urban versus rural. (Three groupings for rural—less than 100 beds, 101 to 170 beds, and over 171 beds; four groupings for urban—less than 100, 100 to 400, 401 to 600, and over 601 beds.) Groupings are similar to those used by the Health Care Financing Administration (HCFA) in determining routine cost limitations.

(2) Prospective reimbursement ceilings on allowable operating costs should be established as of July 1, 1982, for each grouping. Hospitals with a fiscal year end after June 30, 1982 shall be subject to the new reimbursement ceilings.

The calculation of the initial group ceilings as of July 1, 1982, should be based on available, allowable cost data for all hospitals in calendar year 1981. Individual hospital operating costs should be advanced by a reimbursement escalator from the hospital's year end to July 1, 1982. After this advancement, the operating costs should be standardized using SMSA wage indices, and median should be determined for each group. These medians should be readjusted by the wage index to set an actual cost ceiling for each SMSA. Therefore, each hospital grouping should have a series of ceilings representing one of each SMSA area. The wage index should be based on those used by HCFA in computing its Market Basket Index for routine cost limitations.

Effective July 1, 1986, providers subject to the prospective payment system of reimbursement will have their prospective operating cost rate and prospective operating cost ceiling computed using a new methodology. This method will use an allowance for inflation based on the percent of change in the quarterly average of the Medical Care Index of the Chase Econometrics - Standard Forecast determined in the quarter in which the provider's new fiscal year begins.

The prospective operating cost rate will be based on the provider's allowable cost from the most recent filed cost report, plus the inflation percentage add-on.

The prospective operating cost ceiling will be determined by using the base that was in effect for

the provider's fiscal year that began between July 1, 1985, and June 1, 1986. The medical care index percent of change for the quarter in which the provider's new fiscal year began will be added to this base to determine the new operating cost ceiling. This new ceiling is to be effective for all providers on July 1, 1986. For subsequent cost reporting periods beginning on or after July 1, 1986, the last prospective operating rate ceiling determined under this new methodology will become the base for computing the next prospective year ceiling.

The new method will still require comparison of the prospective operating cost rate to the prospective operating ceiling. The provider is allowed the lower of the two amounts subject to the lower of cost or charges principles.

(3) Subsequent to June 30, 1982, the group ceilings should not be recalculated on allowable costs, but should be updated by the escalator.

(4) Prospective rates for each hospital should be based upon the hospital's allowable costs plus the escalator, or the appropriate ceilings, or charges; whichever is lower. Except to eliminate costs that are found to be unallowable, no retrospective adjustment should be made to prospective rates.

Depreciation, capital interest, and education costs approved pursuant to HIM-15 (Sec. 400), should be considered as pass throughs and not part of the calculation.

(5) Hospitals which have a disproportionately higher level of Medicaid patients and which exceed the ceiling should be allowed a higher ceiling based on the individual hospital's Medicaid utilization. This should be measured by the percent of Medicaid patient days to total hospital patient days. Each hospital with a Medicaid utilization of over 8.0% should receive an adjustment to its ceiling. The adjustment should be set at a percent added to the ceiling for each percent of utilization up to 30%.

(6) There will be special consideration for exception to the median operating cost limits in those instances where extensive neonatal care is provided.

(7) An incentive plan should be established whereby a hospital will be paid on a sliding scale, percentage for percentage, up to 25% of the difference between allowable operating costs and the appropriate per diem group ceiling when the operating costs are below the ceilings. The incentive should be calculated based on the annual cost report.

The table below presents three examples under the new plan:

| Hospital's | Difference | Sliding Scale |
|------------|------------|---------------|
|------------|------------|---------------|

| Group Ceiling | Allowable Cost Per Day \$ | % of Ceiling | Incentive % of Difference |
|---------------|---------------------------|--------------|---------------------------|
| \$230         | \$230                     | -0-          | -0-                       |
| \$230         | 207                       | 23.00        | 2.30                      |
| \$230         | 172                       | 57.50        | 14.38                     |
| \$230         | 143                       | 76.00        | 19.00                     |

VI. In accordance with the requirements of section 1902(a)(13)(A) of the Social Security Act and in accordance with the regulations at 42CFR 447.250 through 447.272, the Virginia Medical Assistance Program will continue using the Medicare retrospective cost system guidelines to determine allowable costs for Virginia's prospective payment system. Virginia adheres to the Medicare principles in effect prior to October 1, 1983. In accordance with Title 42 §§ 447.250 through 447.272 of the Code of Federal Regulations which implements § 1902(a)(13)(A) of the Social Security Act, the Department of Medical Assistance Services ("DMAS") establishes payment rates for services that are reasonable and adequate to meet the costs that shall be incurred by efficiently and economically operated facilities to provide services in conformity with state and federal laws, regulations, and quality and safety standards. To establish these rates Virginia uses the Medicare principles of cost reimbursement in determining the allowable costs for Virginia's prospective payment system. Allowable costs will be determined from the filing of a uniform cost report by participating providers. The cost reports are due not later than 90 days after the provider's fiscal year end. If a complete cost report is not received within 90 days after the end of the provider's fiscal year, the Program shall take action in accordance with its policies [ to assure ] that an overpayment is not being made. The cost report will be judged complete when DMAS has all of the following:

1. Completed cost reporting form(s) provided by DMAS, with signed certification(s);
2. The provider's trial balance showing adjusting journal entries;
3. The provider's financial statements including, but not limited to, a balance sheet, a statement of income and [ expense expenses ], a statement of retained earnings (or found balance), a statement of changes in financial position, and footnotes to the financial statements;
4. Schedules which reconcile financial statements and trial balance to expenses claimed in the cost report;
5. Home office cost report, if applicable; and
6. Such other analytical information or supporting documents requested by DMAS when [ sending ] the cost reporting forms [ are sent ] to the provider.

Although utilizing the cost apportionment and cost

# Final Regulations

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*finding methods of the Medicare Program, Virginia does not adopt the prospective payment system of the Medicare Program enacted October 1, 1983.*

## VII. Revaluation of assets.

A. Effective October 1, 1984, the valuation of an asset of a hospital or long-term care facility which has undergone a change of ownership on or after July 18, 1984, shall be the lesser of the allowable acquisition cost to the owner of record as of July 18, 1984, or the acquisition cost to the new owner.

B. In the case of an asset not in existence as of July 18, 1984, the valuation of an asset of a hospital or long-term care facility shall be the lesser of the first owner of record, or the acquisition cost to the new owner.

C. In establishing an appropriate allowance for depreciation, interest on capital indebtedness, and return on equity (if applicable prior to July 1, 1986) the base to be used for such computations shall be limited to A or B above.

D. Costs (including legal fees, accounting and administrative costs, travel costs, and feasibility studies) attributable to the negotiation or settlement of the sale or purchase of any capital asset (by acquisition or merger) shall be reimbursable only to the extent that they have not been previously reimbursed by Medicaid.

E. The recapture of depreciation up to the full value of the asset is required.

F. Rental charges in sale and leaseback agreements shall be restricted to the depreciation, mortgage interest and (if applicable prior to July 1, 1986) return on equity based on cost of ownership as determined in accordance with A and B above.

## VIII. Refund of overpayments-Effective July 1, 1986.

A. Lump sum payment. When the provider files a cost report indicating that an overpayment has occurred, full refund is to be remitted with the cost report, or, in cases where DMAS discovers an overpayment during desk review, field audit, or final settlement, DMAS will immediately send the first demand letter requesting a lump sum refund. Recovery will be undertaken even though the provider disputes in whole or in part DMAS's determination of the overpayment.

B. Payment schedule. If the provider cannot refund the total amount of the overpayment within ~~thirty~~ 30 days after receiving the letter, the provider should immediately request an extended repayment schedule. DMAS may establish a repayment schedule of up to ~~twelve~~ 12 months to recover all or part of an overpayment.

It ~~must~~ shall offset any money owned to the provider prior to establishing a repayment plan. When a repayment

schedule is used to recover only part of an overpayment, the remaining amount should be recovered by the reduction of interim payments to the provider or by lump sum payments.

C. Extension request documentation. The provider ~~must~~ shall document its need for extended (beyond ~~thirty~~ 30 days) repayment and submit a written proposal scheduling the dates and amounts of repayments. The Program will send the provider written notification of the approved repayment schedule, which will be in effect from the date the provider submits the proposal. If an audit later uncovers an additional overpayment, the provider ~~must~~ shall submit further documentation if it wishes to request an extended repayment schedule for the additional amount.

D. Interest charge on extended repayment. Interest will be charged to the provider at the rate specified in § 32.1-313 of the Code of Virginia ~~(1950)~~ as amended, on the unpaid balance of the approved repayment schedule. Interest will accrue from the date the overpayment is determined. Interest will not be charged or accrued during the period of the Program's administrative review. Interest will be charged on any unpaid balance from the date of the director's final administrative determination.

In any case in which any initial determination of overpayment has been reversed in a subsequent judicial proceeding, the provider shall be reimbursed that portion of the payment to which he is entitled, plus any applicable interest paid.

IX. Effective October 1, 1986, hospitals that have obtained Medicare certification as inpatient rehabilitation hospitals or rehabilitation units in acute care hospitals, which are exempted from the Medicare Prospective Payment System (DRG), shall be reimbursed in accordance with the current Medicaid Prospective Payment System as described in the preceding sections I, II, III, IV, V, VI, VII, VIII and excluding V(6). Additionally, rehabilitation hospitals and rehabilitation units of acute care hospitals which are exempt from the Medicare Prospective Payment System will be required to maintain separate cost accounting records, and to file separate cost reports annually utilizing the applicable Medicare cost reporting forms (HCFA 2552 series) and the Medicaid forms (MAP-783 series).

A new facility shall have an interim rate determined using a pro forma cost report or detailed budget prepared by the provider and accepted by the DMAS, which represents its anticipated allowable cost for the first cost reporting period of participation. For the first cost reporting period, the provider will be held to the lesser of its actual operating cost or its peer group ceiling. Subsequent rates will be determined in accordance with the current Medicaid Prospective Payment System as noted in the preceding paragraph of IX.

X. Item 398 D of the 1987 Appropriations Act (as

amended), effective April 8, 1987, eliminated reimbursement of return on equity capital to proprietary providers.

## **VR 460-02-4.192. Methods and Standards for Establishing Payment Rates - Other Types of Care.**

The policy and the method to be used in establishing payment rates for each type of care or service (other than inpatient hospitalization, skilled nursing and intermediate care facilities) listed in § 1905(a) of the Social Security Act and included in this State Plan for Medical Assistance are described in the following paragraphs:

a. Reimbursement and payment criteria will be established which are designed to enlist participation of a sufficient number of providers of services in the program so that eligible persons can receive the medical care and services included in the Plan at least to the extent these are available to the general population.

b. Participation in the program will be limited to providers of services who accept, as payment in full, the state's payment plus any copayment required under the State Plan.

c. Payment for care or service will not exceed the amounts indicated to be reimbursed in accord with the policy and methods described in this Plan and payments will not be made in excess of the upper limits described in 42 CFR 447.304(a). The state agency has continuing access to data identifying the maximum charges allowed: such data will be made available to the Secretary, HHS, upon request.

d. Payments for services listed below shall be on the basis of reasonable cost following the standards and principles applicable to the Title XVIII Program. The upper limit for reimbursement shall be no higher than payments for Medicare patients on a facility by facility basis in accordance with 42 CFR 447.321 and 42 CFR 447.325. In no instance, however, shall charges for beneficiaries of the program be in excess of charges for private patients receiving services from the provider. The professional component for emergency room physicians shall continue to be uncovered as a component of the payment to the facility.

*Reasonable costs will be determined from the filing of a uniform cost report by participating providers. The cost reports are due not later than 90 days after the provider's fiscal year end. If a complete cost report is not received within 90 days after the end of the provider's fiscal year, the Program shall take action in accordance with its policies [ to assure ] that an overpayment is not being made. The cost report will be judged complete when DMAS has all of the following:*

*1. Completed cost reporting form(s) provided by DMAS, with signed certification(s);*

*2. The provider's trial balance showing adjusting journal entries;*

*3. The provider's financial statements including, but not limited to, a balance sheet, a statement of income and [ ~~expense~~ expenses ], a statement of retained earnings (or fund balance), [ and ] a statement of changes in financial position [ ; and footnotes to the financial statements ];*

*4. Schedules which reconcile financial statements and trial balance to expenses claimed in the cost report;*

*5. Depreciation schedule or summary;*

*6. Home office cost report, if applicable; and*

*7. Such other analytical information or supporting documents requested by DMAS when [ sending ] the cost reporting forms [ are sent ] to the provider.*

Item 398 D of the 1987 Appropriation Act (as amended), effective April 8, 1987, eliminated reimbursement of return on equity capital to proprietary providers.

*The services that are cost reimbursed are:*

(1) Inpatient hospital services to persons over 65 years of age in tuberculosis and mental disease hospitals

(2) Home health care services

(3) Outpatient hospital services excluding laboratory

(4) Rural health clinic services

(5) Rehabilitation agencies

(6) Comprehensive outpatient rehabilitation facilities

(7) Rehabilitation hospital outpatient services.

e. Payment for the following services shall be the lowest of: State agency fee schedule, actual charge, or Medicare (Title XVIII) allowances:

(1) Physicians' services

(2) Dentists' services

(3) Mental health services including:

Community mental health services

Services of a licensed clinical psychologist

Mental health services provided by a physician

(4) Podiatry

(5) Nurse-midwife services

# Final Regulations

- (6) Durable medical equipment
  - (7) Local health services
  - (8) Laboratory services (Other than inpatient hospital)
  - (9) Payments to physicians who handle laboratory specimens, but do not perform laboratory analysis (limited to payment for handling)
  - (10) X-Ray services
  - (11) Optometry services
  - (12) Medical supplies and equipment.
- f. Payment for pharmacy services shall be the lowest of:

(1) Whichever is applicable below (except that (a) and (b) are not applied for prescriptions certified as brand necessary by the prescribing physician, if the brand cost is higher than the FMAC or VMAC cost):

(a) The Federal Maximum Allowable Cost (FMAC), determined by the Pharmaceutical Reimbursement Board, Health Care Financing Administration, plus the dispensing fee established by the state agency, or

(b) For other specific multiple source legend drugs listed in the Virginia Voluntary Formulary, a Virginia Maximum Allowable Cost (VMAC) shall be established, plus a dispensing fee, or

(c) For other legend drug, with the exception of oral contraceptives, the estimated acquisition cost determined by the state agency plus the dispensing fee established by the state agency, or

(d) For covered nonlegend drugs and oral contraceptives, a markup allowance determined by the state agency, or

(2) The provider's usual and customary charges to the public, as identified by the claim charge.

Payment for pharmacy services to patients of skilled or intermediate care facilities will be as described above; however, payments for legend drugs will include the allowed cost of the drugs plus only one dispensing fee per month for each specific drug.

The Program recognizes the unit dose delivery system of dispensing drugs only for patients residing in skilled or intermediate care facilities. Reimbursements are based on the allowed payments described above plus the unit dose add on fee and an allowance for the cost of unit dose packaging established by the state agency. The allowed drug cost for VMAC drugs will not exceed the 60th percentile cost level identified by the state agency. All other drugs including FMAC drugs will be reimbursed at

drug costs not to exceed the estimated acquisition cost determined by the state agency.

g. All reasonable measures will be taken to ascertain the legal liability of third parties to pay for authorized care and services provided to eligible recipients including those measures specified under 42 USC 1396(a)(25).

h. The single state agency will take whatever measures are necessary to assure appropriate audit of records whenever reimbursement is based on costs of providing care and services, or on a fee-for-service plus cost of materials.

i. Payment for transportation services shall be according to the following table:

| TYPE OF SERVICE                  | PAYMENT METHODOLOGY                 |
|----------------------------------|-------------------------------------|
| Taxi services                    | Rate set by the single state agency |
| Wheelchair van                   | Rate set by the single state agency |
| Nonemergency ambulance           | Rate set by the single state agency |
| Emergency ambulance              | Rate set by the single state agency |
| Volunteer drivers                | Rate set by the single state agency |
| Air ambulance                    | Rate set by the single state agency |
| Mass transit                     | Rate charged to the public          |
| Transportation agreements        | Rate set by the single state agency |
| Special Emergency transportation | Rate set by the single state agency |

j. Payments for Medicare coinsurance and deductibles for noninstitutional services shall not exceed the allowed charges determined by Medicare in accordance with 42 CFR 447.304(b) less the portion paid by Medicare, other third party payors, and recipient copayment requirements of this Plan.

k. Payment for eyeglasses shall be the actual cost of the frames and lenses not to exceed limits set by the single state agency, plus a dispensing fee not to exceed limits set by the single state agency.

**VR 460-03-4.194. Nursing Home Payment System.**

Article 5.

## Cost Report Due Date Reports .

### § 2.20. Cost report submission.

A. Cost reports are due not later than ~~(ninety)~~ 90 days after the provider's fiscal year end. If a complete cost report is not received within ~~(90)~~ 90 days after the end of the provider's fiscal year, DMAS shall take action to assure that [ *an* ] overpayment is not being made.

*The cost report will be judged complete when DMAS has all of the following:*

- 1. Completed cost reporting form(s) provided by DMAS, with signed certification(s);*
- 2. The provider's trial balance showing adjusting journal entries;*
- 3. The provider's financial statements including, but not limited to, a balance sheet, a statement of income and [ ~~expense~~ expenses ] , a statement of retained earnings (or fund balance), [ and ] a statement of changes in financial position [ ; and footnotes to the financial statements ];*
- 4. Schedules which reconcile financial statements and trial balance to expenses claimed in the cost report;*
- 5. Depreciation schedule or summary;*
- 6. Home office cost report, if applicable; and*
- 7. Such other analytical information or supporting documents requested by DMAS when [ ~~sending~~ ] the cost reporting forms [ are sent ] to the provider.*

B. ~~Accordingly.~~ When cost reports are delinquent, the provider's interim rate shall be reduced by a minimum of 20% the first month and an additional 20% for each month the report has not been submitted. DMAS shall notify the provider of the schedule of reductions which shall start on the first of the following month. Thus, for a September 30 fiscal year end, notification would be mailed in early January that payments would be reduced starting with the first payment in February. If the provider fails to submit a complete cost report within ~~one hundred eighty~~ (180) 180 days after the fiscal year end, a penalty in the amount of 10% of the balance withheld shall be forfeited to DMAS.

After the overdue cost report is received, desk reviewed, and a new prospective rate established, the amounts withheld shall be computed and paid.

Freestanding Intermediate Care Facility

Provider Questionnaire

A. Provider's Organization and Operation

1. Has the provider changed ownership?  
If "yes," complete Exhibit 1 - Disclosure of Ownership
 

|  |            |           |
|--|------------|-----------|
|  | <u>Yes</u> | <u>No</u> |
|--|------------|-----------|
2. Is compensation claimed in the cost report for:
 

|                                |       |       |
|--------------------------------|-------|-------|
| a. Owners                      | _____ | _____ |
| b. Partners                    | _____ | _____ |
| c. Shareholders                | _____ | _____ |
| d. Officers                    | _____ | _____ |
| e. Related parties (relatives) | _____ | _____ |

If "yes," reference Exhibit 1.
3. Do any owners and/or officers of the provider or its home office have any interests in any business providing goods or services to this facility or any other facility?  
If "yes," list the organizations below:

| Name of Owner | Name of Related Organization | Provider Number | Percent of Ownership |
|---------------|------------------------------|-----------------|----------------------|
|               |                              |                 |                      |
|               |                              |                 |                      |
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|               |                              |                 |                      |
|               |                              |                 |                      |
|               |                              |                 |                      |

4. Are any employees directly related (as defined by HIM - 15) to owners, partners, shareholders or officers of the provider or its home office?  
If "yes," provide listing of employee(s) and related owner, partner, shareholder and/or officer.
5. Is your facility certified under Internal Revenue Code Section 501 (c)(3)?
6. Was a Certificate of Public Need (CPN) approved for the establishment of your facility or for any additions and/or new service to your facility this fiscal year?

7. Has your facility applied for a change in licensure status by the State Health Department during the cost report period under review?  
Yes \_\_\_\_\_ No \_\_\_\_\_
8. Has your facility been granted a change in licensure status by the State Health Department since the last cost reporting period?  
\_\_\_\_\_
9. Has your facility floor plan changed during this fiscal year?  
\_\_\_\_\_
- If "yes," provide a copy of the revised floor plan of the facility.  
\_\_\_\_\_
- B. Provider's Contractual Arrangements
1. Are management, administrative, and/or patient care services or other services furnished through contractual arrangements with suppliers of services?  
If "yes," have these arrangements changed during the fiscal year?  
Attach a list of services purchased and costs included in the cost report.  
\_\_\_\_\_
- Are these services with a related party?  
\_\_\_\_\_
2. Have you acquired during this fiscal year any property, buildings, or major movable equipment through lease agreements?  
If "yes," is lease with a related party?  
If "yes," provide a copy of the lease(s).  
Nature of new lease is  
- operating \_\_\_\_\_  
- capital \_\_\_\_\_  
- lease-purchase \_\_\_\_\_
3. Have costs been included in the cost report for non-paid workers during this fiscal year?  
If "yes," submit  
- copies of agreement(s)  
- Exhibit 2 - Non-paid Workers  
- description of method used to value volunteer services  
\_\_\_\_\_

|   | Yes                   | No                    |
|---|-----------------------|-----------------------|
| 4. Have consulting services been provided to provider during the fiscal year?<br>If "yes," provide list of services and amount claimed in the cost report.<br>Is consulting service with a related party? | _____                 | _____                 |
| <b>C. Financial Information</b>   |                       |                       |
| 1. During this cost reporting period, have the financial statements been  | _____                 | _____                 |
| a. Audited  | _____                 | _____                 |
| b. Reviewed   | _____                 | _____                 |
| c. Compiled   | _____                 | _____                 |
| d. Unaudited  | _____                 | _____                 |
| e. The public accounting firm is:   | _____                 | _____                 |
| 2. Has the nature of the accounting system changed during the fiscal year?<br>If "yes," explain changes.  | _____                 | _____                 |
| 3. Has there been a change in significant accounting policies, such as capitalization, during the fiscal year?<br>If "yes," provide a description of the nature of the change(s).                         | _____                 | _____                 |
| 4. Have any loan or mortgage agreements been entered into by your facility during the fiscal year?<br>If "yes," submit<br>- a copy of loan or mortgage agreement<br>- amortization schedule               | _____                 | _____                 |
| 5. Have any assets been assigned revised useful lives since the last cost reporting period?<br>If "yes," attach list and provide an explanation.  | _____                 | _____                 |
| 6. Were costs claimed for educational activities? Was the nature of educational activities changed during this fiscal year?<br>If "yes," submit what changes have taken place.                            | _____                 | _____                 |
| 7. Is a deferred compensation or pension plan provided for facility employees and claimed as costs?<br>Has the plan(s) changed during the fiscal year?<br>If "yes," provide a copy of the amendments.     | Yes _____<br>No _____ | Yes _____<br>No _____ |
| 8. Is the provider organization part of a chain?<br>If "yes," provide the following:<br>- Full name and address of home office  | _____                 | _____                 |



# Final Regulations

Department of Medical Assistance Services  
Reporting Form  
Cost Report Filing Requirements

**Exhibit 1  
DISCLOSURE OF OWNERSHIP AND COMPENSATION**

Provider No.: \_\_\_\_\_  
Period Ended: \_\_\_\_\_

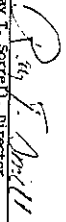
|                  | Name of Owner,<br>Partner, Major Stock-<br>holders and Officers | Title | Address | %<br>Owned | \$<br>Salary | \$Auto | Health<br>Insurance | \$ Life<br>Insurance | \$Other |
|------------------|---|-------|---------|------------|--------------|--------|---------------------|----------------------|---------|
| 1. Sole Prop.    |   |       |         |            |              |        |                     |                      |         |
| 2. Partnerships: |   |       |         |            |              |        |                     |                      |         |
|                  |   |       |         |            |              |        |                     |                      |         |
|                  |   |       |         |            |              |        |                     |                      |         |
| 3. Corporation*  |   |       |         |            |              |        |                     |                      |         |
| Name of Corp.    |   |       |         |            |              |        |                     |                      |         |
|                  |   |       |         |            |              |        |                     |                      |         |
|                  |   |       |         |            |              |        |                     |                      |         |

Corporations must insert information on all major stockholders (over 5% ownership of outstanding stock) and all officers of corporation.  
For providers where ownership is by a chain organization, the name, address, and phone number of the home office must be included in addition to the information required in the corporation section of this form.

\*Amounts reported as compensation to the Internal Revenue Service (W-2, 1099, etc...)

Map 128 - Worksheet Q

Page 17 of 17

CERTIFIED:  
  
Kay T. Scovell, Director  
Department of Medical Assistance Services

**Exhibit 2  
NON-PAID WORKERS**

| Department | Volunteer<br>Position | Number of<br>Positions/Dept. | Type of Work<br>Performed | Average Number<br>of Hours Worked<br>Per Position/Week |
|------------|-----------------------|------------------------------|---------------------------|--|
|            |                       |                              |                           |  |
|            |                       |                              |                           |  |
|            |                       |                              |                           |  |
|            |                       |                              |                           |  |
|            |                       |                              |                           |  |
|            |                       |                              |                           |  |
|            |                       |                              |                           |  |
|            |                       |                              |                           |  |

Department of Medical Assistance Services  
Reporting Form  
Cost Report Filing Requirements

Page 17 of 17

Date: 6-19-88

MAP 128 - Worksheet Q

\* \* \* \* \*

**Title of Regulations:** State Plan for Medical Assistance Relating to Audit Requirements.

**VR 460-02-4.194. Methods and Standards for Establishing Payments Rates - Other Types of Long-term Care.**

**VR 460-03-4.194. Nursing Home Payment System.**

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

**Effective Date:** September 1, 1988

**Summary:**

*These final regulations modify the frequency of periodic field audits of financial and statistical records for participating nursing home providers.*

**VR 460-02-4.194. Methods and Standards for Establishing Payment Rates - Long-term Care.**

The policy and the method to be used in establishing payment rates for skilled and intermediate care nursing homes listed in § 1905(a) of the Social Security Act and included in this State Plan for Medical Assistance are described in the following paragraphs.

a. Reimbursement and payment criteria will be established which are designed to enlist participation of a sufficient number of providers of services in the Program so that eligible persons can receive the medical care and services included in the Plan to the extent these are available to the general population.

b. Participation in the Program will be limited to providers of services who accept, as payment in full, the amounts so paid.

c. Payment for care of service will not exceed the amounts indicated to be reimbursed in accord with the policy and the methods described in the Plan and payments will not be made in excess of the upper limits described in 42 CFR 447.253(b)(2). The state agency has continuing access to data identifying the maximum charges allowed. Such data will be made available to the Secretary, HHS, upon request.

d. Payments for services to skilled and intermediate nursing homes shall be on the basis of reasonable cost in accordance with the standards and principles set forth in 42 CFR 447.252 as follows:

(1) A uniform annual cost report which itemizes allowable cost will be required to be filed within 90 days of each provider's fiscal year end. The effective date of this requirement was July 1, 1972, for intermediate care facilities.

(2) The determination of allowable costs will be in accordance with Medicare principles as established in the Provider Reimbursement Manual (HIM-15) except

where otherwise noted in this Plan. For hospital based, skilled, and combined skilled and intermediate care facilities, the cost finding method will be in accordance with Medicare principles. For free-standing intermediate care facilities, a simplified method not requiring a step-down of indirect costs will be substituted by the Program.

(3) Field audits will be conducted on the cost data submitted by the provider to verify the accuracy and reasonableness of such data. Audits will be conducted for each facility no less than once every three years on a periodic basis as determined from internal desk audits and more often as required. Audit procedures are in conformance with SSA standards set forth in HIM-13-2. Internal desk reviews audits are conducted annually within six months of receipt of a completed cost report from the provider.

(4) Reports of [ onsite field ] audits are retained by the state agency for at least three years following submission of the report.

(5) Overpayments are accounted for in accordance with 42 CFR 447-625 (no later than the second quarter following the quarter in which they were recovered by the state agency).

(6) Facilities are paid on a cost-related basis in accordance with the methodology described in the Plan.

(7) Modifications to the Plan for reimbursement will be submitted as Plan amendments.

(8) Covered cost will include such items as:

(a) Cost of meeting certification standards.

(b) Routine services which include items expense providers normally incur in the provision of services.

(c) The cost of such services provided by related organizations except as modified in the payment system supplement 4.19-D.

(9) Bad debts, charity and courtesy allowances shall be excluded from allowable cost.

(10) Effective for facility cost reporting periods beginning on or after October 1, 1978, the reimbursable amount will be determined prospectively on a facility by facility basis, except that mental institutions and mental retardation facilities shall continue to be reimbursed retrospectively. The prospective rate will be based on the prior period's actual cost (as determined by an annual cost report and verified by audit as set forth in section d(3) above) plus an inflation factor. Payments will be made to facilities no less than monthly.

# Final Regulations

(11) The payment level calculated by the prospective rate will be adequate to reimburse in full such actual allowable costs that an economically and efficiently operated facility might incur. In addition, an incentive plan will be established as described in the payment system supplement 4.19-D.

(12) Upper limits for payment within the prospective payment system shall be as follows:

(a) Allowable cost shall be determined in accordance with Medicare principles as defined in HIM-15, except as may be modified in this Plan.

(b) Reimbursement for operating costs will be limited to regional ceilings calculated for all nursing homes in the Northern Virginia area and a ceiling calculated for the rest of the State Commonwealth plus annual escalators.

(c) Reimbursement, in no instance, will exceed the charges for private patients receiving the same services.

(13) In accordance with 42 CFR 447.205, an opportunity for public comment was permitted before final implementation of rate setting processes.

(14) A detailed description of the prospective reimbursement formula is attached for supporting detail.

(15) Item 398D of the 1987 Appropriation Act (as amended), effective April 8, 1987, eliminated reimbursement of return on equity capital to proprietary providers.

## VR 460-03-4.194. Nursing Home Payment System.

### § 2.33. Audit requirements.

A. Field audits shall be required as follows:

1. For the first cost report on all new facilities;
2. For the first cost report in which a significant number of additional beds are reflected;
3. Immediately following the sale or lease of a facility; [ and ]
4. At least every three years on all providers, and [ As may be determined from the desk audit review On a periodic basis as determined from internal desk audits ].
5. As may be indicated from the desk audit review.

DEPARTMENT FOR RIGHTS OF THE DISABLED  
(BOARD FOR)

Title of Regulation: VR 602-01-1. Public Participation Guidelines.

Statutory Authority: § 9-6.14:7.1 of the Code of Virginia.

Effective Date: September 14, 1988.

### Summary:

*The Virginia Board for Rights of the Disabled will use Public Participation Guidelines to solicit and promote the participation of all interested and affected parties in the development, formulation, and adoption of such regulation(s) as the board may promulgate under the authority established by the law of the Commonwealth of Virginia.*

VR 602-01-1. Public Participation Guidelines.

### § 1. Generally.

*In developing any regulation(s) which they propose, the Board for Rights of the Disabled is committed to soliciting input and comments from interested citizens and private and public associations. The board shall actively solicit such input and participation.*

*Any person who is interested in participating in the regulation(s) development process should notify the board in writing. Such notification should be sent to Systems Advocacy Attorney, Department for Rights of the Disabled, James Monroe Building, 101 North 14th Street, 17th Floor, Richmond, Virginia 23219.*

### § 2. Notice.

#### A. Notice required.

*The board shall prepare a Notice of Intended Regulatory Action prior to the development of any regulation(s). The notice shall identify the subject matter and purpose for the development of the new regulation(s) and shall specify deadlines for receipt of responses from interested persons. The notice shall provide for a comment period of at least 30 days.*

#### B. Dissemination.

*1. The methods for disseminating notice to the public shall include publishing notice in The Virginia Register of Regulations; and*

*2. The board shall publish the notice in at least four regional newspapers throughout the Commonwealth.*

*3. The board shall also mail individual notices to all persons identified as parties interested in the development and promulgation of regulation(s) by the board. For purposes of the preceding sentence, "person" includes public or private agencies which have exhibited an interest in the rights of persons*

with disabilities. The board shall develop the list of interested persons by:

a. Utilizing department subject matter files to identify parties who have previously expressed an interest in the subject matter under consideration;

b. Utilizing a standing list, compiled by the department, of persons who have previously participated in public proceedings of similar subject matter; and

c. Other appropriate methods.

### § 3. Public participation.

#### A. Regulation development.

1. *Initial comment.* After interested parties have responded to the notice, the board will analyze the level of interest. If sufficient interest exists, the board may schedule informal meetings prior to the development of any regulation(s) to determine the specific areas of interest and concern and to get actual information relative to the subject matter of the regulation(s). Alternatively, the board may elect to request that persons who have responded to the notice make written submittals of comments, concerns and suggestions relative to the proposed regulation(s).

2. *Preparation of working draft.* Subsequent to initial public input in the development of any regulation(s) the board shall develop a working draft of the proposed regulation(s). A copy of this draft will be furnished to all persons who responded to the notice indicating an interest in the proposed regulation(s) and to those persons participating in the initial comment stage of the development phase. Audio tapes may be sent to persons with visual disabilities upon request. The board will invite such persons to submit written or taped comments on the draft.

#### C. Submission of proposed regulation(s) under the Administrative Process Act.

Upon conclusion of the development process, the board shall prepare the proposed regulation(s) for submission to the Registrar of Regulations under the provisions of the Administrative Process Act. The board shall furnish to all persons identified as having a potential interest in the subject matter, a copy of the proposed regulation(s) as submitted to the Registrar of Regulations together with a copy of the general public notice of opportunity for oral or written submittals as to that proposed regulation(s). A cover letter accompanying those documents shall explain the deadlines for submitting formal public comments under the Administrative Process Act. In some cases, the public opportunity to comment may be limited to written submittals. This election shall be clearly set forth in the notice. The public notice shall clearly specify the date and place to which submittals shall be made. Where a public

hearing is to be held, the public notice shall clearly specify the time, date, and place. Additionally, the public notice shall designate the date by which persons intending to participate in a public hearing should notify the board of their interest. Persons who will participate will be encouraged to submit written or taped copies of their comments in advance or at the public hearing in order to ensure that all comments are accurately reflected in the formal transcript of the hearing.

#### D. Review process.

After the end of the comment period, the board shall carefully review all comments submitted and where appropriate shall incorporate the comments in the final draft.

#### E. Adoption period.

Upon issuing an order adopting the proposed regulation(s) the board, at its discretion, may send the participants a copy of the proposed regulation(s) as adopted, together with its response to comments made during the public hearing or in a written submittal.

#### F. Publication of final regulation.

When any regulation is published, the board shall print and distribute such regulation(s).

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# EMERGENCY REGULATIONS

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## DEPARTMENT OF COMMERCE

**Title of Regulation:** VR 190-05-1. Asbestos Licensing Regulations.

**Statutory Authority:** § 54-145.5 of the Code of Virginia.

**Effective Dates:** July 13, 1988 through July 12, 1989.

**Preamble:**

*The Department of Commerce is requesting authority to issue emergency regulations (as detailed in § 9-6.14:9, Code of Virginia) governing the issuance of licenses for asbestos inspectors, management planners, and project designers as required by legislative action (HB 400, 1988).*

*The nature of the emergency is that without such effective regulations the Department of Commerce will not be in compliance with the law and will not be in compliance with federal regulations governing the removal or encapsulation of asbestos containing materials. Since the bill required action by July 1, 1988, there was not adequate time to comply with the normal APA process. The Agency will proceed immediately to promulgate permanent regulations, and will receive, consider and respond to petitions by any interested party with respect to reconsideration or review.*

*The regulations for which the emergency authority is sought will be in effect for one year, and will become the immediate subject of the normal regulatory process, including full public participation and comment.*

/s/ David R. Hathcock, Director  
Department of Commerce  
Date: June 29, 1988

/s/ Richard M. Bagley  
Secretary of Economic Development  
Date: June 29, 1988

/s/ Gerald L. Baliles, Governor  
Date: June 30, 1988

/s/ Ann M. Brown  
Deputy Registrar of Regulations  
Date: July 13, 1988 - 11:33 a.m.

\* \* \*

VR 190-05-1. Asbestos Licensing Regulations.

### PART I. DEFINITIONS.

§ 1.1. Definitions.

The following words and terms, when used in these guidelines, shall have the following meaning, unless the context clearly indicates otherwise:

“ACM” means asbestos containing material.

“Asbestos” means any material containing more than 1.0% asbestos by weight, which is friable or which has a reasonable probability of becoming friable in the course of ordinary or anticipated building use.

“Asbestos abatement” means any activity involving job set-up, removal, encapsulation, enclosure, renovation, repair, demolition, construction, alteration, or maintenance of asbestos-containing material.

“Asbestos contractor’s license” means an authorization issued by the Department of Commerce permitting a person to enter into contracts for a project to remove or encapsulate asbestos.

“Asbestos containing material (ACM)” means any material or product which contains more than 1.0% asbestos.

“Asbestos inspector” means any person performing on-site investigations to identify, classify, record, sample, test and prioritize by exposure potential, all friable and nonfriable asbestos containing materials located within a structure.

“Asbestos management planner’s license” means an authorization issued by the department permitting a person to develop and implement an asbestos management plan.

“Asbestos project” means an activity involving the inspection for removal or encapsulation of asbestos.

“Asbestos project designer’s license” means an authorization issued by the department permitting a person to design an asbestos abatement project.

“Asbestos worker” means any person who engages in an asbestos abatement activity.

“Asbestos worker’s license” means an authorization issued by the Department of Commerce permitting an individual to work on an asbestos project.

“Department” means the Department of Commerce.

“Director” means the Director of the Department of Commerce.

“Encapsulation” means the treatment of ACM with a material that surrounds or embeds asbestos fibers in an adhesive matrix to prevent the release of fibers, as the encapsulant creates a membrane over the surface (bridging encapsulant) or penetrates the material and binds its components together (penetrating encapsulant).

# Emergency Regulations

"Enclosure" means the construction or installation over or around the ACM of any solid or flexible coverings, which will not deteriorate or decompose for an extended period of time, so as to conceal the ACM, contain ACM fibers, and render the ACM inaccessible.

"EPA" means Environmental Protection Agency.

"OSHA" means the U.S. Department of Labor Occupational Safety and Health Administration.

"Removal" means the physical removal of ACM from a building and disposal thereof in accordance with all applicable regulations.

"Renovation" means altering in any way, one or more facility components.

"Repair" means returning damaged ACM to an undamaged condition or to an intact state so as to contain fiber release.

"Supervisor" means any asbestos abatement worker who has been licensed by the Department of Commerce under these regulations as a supervisor. A licensed supervisor must be present at each jobsite.

## PART II.

### ASBESTOS WORKERS LICENSING REQUIREMENTS.

#### § 2.1. License application.

A. Each applicant is responsible for obtaining a current application. All requests for applications should be directed to:

Assistant Director  
Asbestos Licensing Program  
Virginia Department of Commerce  
3600 West Broad Street  
5th Floor  
Richmond, Virginia 23230  
1 (800) 552-3016

B. Applicants will be required to provide proof of successful completion of an asbestos workers training course approved by the Department of Commerce.

C. Each application shall be signed by the applicant and shall include a certification by the applicant that within the past three years prior to the application date his license or other authorization to perform asbestos abatement work has not been suspended or revoked by any jurisdiction, and that no enforcement actions by any jurisdiction is pending against the applicant.

D. In the event enforcement actions have been taken against the applicant the following information shall be required as the director may deny an applicant's request for a license based on prior enforcement actions which indicate that the abatement work might not be performed

in a manner that would protect the public health, safety and welfare.

1. A complete list of all prior enforcement actions, including any sanctions imposed on the applicant by any jurisdiction or any state or federal court.

2. A description of any asbestos abatement activities conducted by the applicant that were terminated prior to completion including the circumstances of termination.

3. A copy of any reports compiled by an enforcement agency.

E. All applications should be completed according to the instructions provided with the application. Incomplete applications will be returned to the applicant; however, fees received will not be refunded.

F. Upon approval of an application for licensure a license will be mailed to the address indicated on the application.

#### § 2.2. Qualifications for licensure.

Each individual applying to the Department of Commerce for licensing as an asbestos worker shall have the following qualifications:

1. Applicants shall be at least 18 years of age.

2. Applicants shall provide evidence of having met the educational requirements as set forth in these regulations within 12 months preceding the date of the receipt of the application by the Department of Commerce.

#### § 2.3. Fees.

A. A completed application (as defined in Part II, § 2.1 of these regulations) shall be accompanied by the appropriate fee. All checks or money orders shall be made payable to the Treasurer of Virginia. No application will be processed if it is not accompanied by the appropriate fee.

B. The fee for an asbestos workers license will be established by the director pursuant to § 54-1.28:1 of the Code of Virginia. Fee amounts are based on administrative costs of the asbestos licensing program.

C. All fees will be nonrefundable.

D. Receipt and deposit of fees submitted with applications do not in any way indicate approval for licensure.

#### § 2.4. Expiration.

Asbestos workers licenses issued under these regulations

# Emergency Regulations

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shall expire one year from the last day of the month in which they were issued as indicated on the license.

## § 2.5. Renewal application.

The Department of Commerce will mail a renewal notice to the licensee at the last known address. The notice shall outline the procedures for renewal and the renewal fee amount. Failure to receive the notice shall not relieve the licensee of the obligation to renew.

A. Prior to the expiration date shown on the license, each licensee desiring to renew his license shall return to the Department of Commerce the renewal notice and appropriate fee. Should the licensee fail to receive the renewal notice, a copy of the license may be submitted with the required fee.

B. Applicant shall forward proof that the annual retraining requirement of eight hours has been successfully completed. A copy of a certificate indicating the date and the location of training shall accompany renewal notice.

C. If the renewal fee is not received by the Department of Commerce within 30 days after the expiration date noted on the license, a late renewal fee equal to the regular renewal fee, shall be required in addition to the regular renewal fee.

D. Licensees failing to renew their licenses within six months of the expiration date noted on the license shall not be permitted to renew their licenses and shall apply as new applicants meeting all current educational and examination requirements as specified in Part II, § 2.1 of this regulation.

## § 2.6. Change of address.

The Department of Commerce shall be notified immediately of any change in address by the licensee.

## § 2.7. Interim licensure.

Individuals who have successfully completed an EPA approved three-day (24 hours) asbestos worker's training course and have passed an EPA approved asbestos worker's examination since January 1, 1985, may apply for an interim license for a period of 12 months. During the 12 month interim license period, a Virginia approved asbestos worker's refresher training course must be successfully completed and the individual must apply for a Virginia asbestos worker's license as required in these regulations.

**"NO INTERIM LICENSES WILL BE GRANTED AFTER JULY 1, 1989."** After July 1, 1989, all applicants for an asbestos worker's license must have successfully completed a Virginia approved asbestos worker's training course.

A. All requests for interim license applications should be directed to:

Assistant Director  
Asbestos Licensing Program  
Virginia Department of Commerce  
3600 West Broad Street  
5th Floor  
Richmond, Virginia 23230  
1 (800) 552-3016

B. Each application shall be signed by the applicant and shall include a certification by the applicant that within the past three years prior to the application date, his license or other authorization to perform asbestos abatement work has not been suspended or revoked by any jurisdiction, and that no enforcement action by any jurisdiction is pending against the applicant.

C. In the event enforcement actions have been taken against the applicant, the following information shall be required as the director may deny an applicant's request for a license based on prior enforcement actions which indicate that the abatement work might not be performed in a manner that would protect the public health, safety and welfare.

1. A complete list of all prior enforcement actions, including any sanctions imposed on the applicant by any jurisdiction or any state or federal court.

2. A description of any asbestos abatement activities conducted by the applicant that were terminated prior to completion including the circumstances of termination.

3. A copy of any reports compiled by an enforcement agency.

D. All applications should be completed according to the instructions provided with the application. Incomplete applications will be returned to the applicant; however, fees received will not be refunded.

E. Upon approval of an application for interim asbestos worker's license, an interim license will be mailed to the address indicated on the application.

## F. Fees.

1. A completed application (as required in Part II, § 2.7 of these regulations) shall be accompanied by the appropriate fee. All checks or money orders shall be made payable to the Treasurer of Virginia. No application will be processed if it is not accompanied by the appropriate fee.

2. The fee for an asbestos worker's interim license will be established by the director pursuant to § 54-1.28:1 of the Code of Virginia. Fee amounts are based on administrative costs of the asbestos licensing program.

3. All fees will be nonrefundable.

4. Receipt and deposit of fees submitted with applications do not in any way indicate approval for licensure.

## PART III ASBESTOS CONTRACTORS AND SUPERVISORS LICENSING.

### § 3.1. License application.

A. Each applicant is responsible for obtaining a current application. All requests for applications should be directed to:

Assistant Director  
Asbestos Licensing Program  
Virginia Department of Commerce  
3600 West Broad Street  
5th Floor  
Richmond, Virginia 23230  
1 (800) 552-3016

B. Applicants will be required to provide proof of successful completion of an asbestos contractor/supervisor training course approved by the Department of Commerce.

C. Each application shall be signed by the applicant and shall include a certification by the applicant that within the past three years prior to the application date, his license or other authorization to perform asbestos abatement work has not been suspended or revoked by any jurisdiction, and that no enforcement action by any jurisdiction is pending against the applicant.

D. In the event enforcement action has been taken against the applicant, the following information will be required as the director may deny an applicant's request for a license based on prior enforcement actions which indicate that the abatement work might not be performed in a manner that would protect the public health, safety and welfare.

1. A complete list of all prior enforcement actions, including any sanctions imposed on the applicant, by any jurisdiction or any state or federal court.

2. A description of any asbestos abatement activities conducted by the applicant that were terminated prior to completion including the circumstances of termination.

3. A copy of any reports compiled by an enforcement agency.

E. All applications should be completed according to the instructions provided with the application. Incomplete applications will be returned to the applicant; however, fees received will not be refunded.

F. Upon approval of an application for licensure, a license will be mailed to the address indicated on the

application.

### § 3.2. Qualifications for licensure.

Each individual or business applying to the Department of Commerce for licensing as an asbestos contractor/supervisor shall have the following qualifications:

1. Applicants shall be at least 18 years of age.

2. Applicants shall have all licenses necessary and required by state statute or local ordinance to transact the business of an asbestos contractor/supervisor in addition to those requirements as set forth in these regulations.

3. Applicant shall provide evidence of having met the educational requirements as set forth in these regulations within 12 months preceding the date of the receipt of the application by the Department of Commerce.

### § 3.3. Fees.

A. A completed application (as required in Part III, § 3.1 of these regulations) shall be accompanied by the appropriate fee. All checks or money orders shall be payable to the Treasurer of Virginia. No application will be processed if it is not accompanied by the appropriate fee.

B. The fee for an asbestos contractor/supervisor license will be established by the director pursuant to § 54-1.28:1 of the Code of Virginia. Fee amounts are based on administrative costs of the asbestos licensing program.

C. All fees will be nonrefundable.

D. Receipt and deposit of fees submitted with applications do not in any way indicate approval for licensure.

### § 3.4. Expiration.

Asbestos contractors/supervisors licenses issued under these regulations shall expire one year from the last day of the month in which they were issued as indicated on the license.

### § 3.5. Renewal application.

The Department of Commerce will mail a renewal notice to the licensee at the last known address. The notice shall outline the procedures for renewal and renewal fee amount. Failure to receive the notice shall not relieve the licensee of the obligation to renew.

A. Prior to the expiration date shown on the license, each licensee desiring to renew his license shall return to the Department of Commerce the renewal notice and



# Emergency Regulations

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appropriate fee. Should the licensee fail to receive a renewal notice, a copy of the license may be submitted with the required fee.

B. Applicant shall forward proof that the annual retraining requirement of eight hours has been successfully completed. A copy of a certificate indicating the date and the location of training shall accompany renewal notice.

C. If the renewal fee is not received by the Department of Commerce within 30 days after the expiration date noted on the license, a late renewal fee equal to the regular renewal fee, shall be required in addition to the renewal fee.

D. Licensees failing to renew their licenses within six months of the expiration date noted on the license shall not be permitted to renew their licenses and shall apply as new applicants meeting all current education and examination requirements as specified in Part III, § 3.1 of these regulations.

## § 3.6. License certificate.

A copy of a current asbestos contractors and supervisors license certificate shall be available at all times for review by the Department of Labor and Industry, and the Department of Commerce, at each asbestos jobsite.

## § 3.7. Maintenance of licensing records at asbestos jobsite.

It shall be the responsibility of the contractor/supervisor to maintain at each jobsite, a list of the licensed asbestos workers, the current license number, and the license expiration date of those workers. Records maintained at the jobsite shall be available for review by the Department of Labor and Industry, and the Department of Commerce, and all other agencies having jurisdiction to inspect an asbestos jobsite.

## § 3.8. Change of address.

The Department of Commerce shall be notified immediately of any change in address by the licensee.

## § 3.9. Interim licensure.

Individuals who have successfully completed an EPA approved asbestos contractor/supervisor training course and have passed an EPA approved asbestos contractor/supervisor examination since January 1, 1985, may apply for an interim license for a period of 12 months. During the 12 month interim license period, a Virginia approved asbestos contractor/supervisor refresher training course must be successfully completed and the individual must apply for renewal of his Virginia asbestos contractor/supervisor license as required in these regulations.

"NO INTERIM LICENSES WILL BE GRANTED AFTER JULY 1, 1989." After July 1, 1989, all applicants for an

asbestos contractor/supervisor license must have successfully completed a Virginia approved asbestos contractor/supervisor training course.

A. All requests for interim license applications should be directed to:

Assistant Director  
Asbestos Licensing Program  
Virginia Department of Commerce  
3600 West Broad Street  
5th Floor  
Richmond, Virginia 23230  
1 (800) 552-3016

B. Each application shall be signed by the applicant and shall include a certification by the applicant that within the past three years prior to the application date, his license or other authorization to perform asbestos abatement work has not been suspended or revoked by any jurisdiction, and that no enforcement actions by any jurisdiction is pending against the applicant.

C. In the event enforcement actions have been taken against the applicant, the following information will be required as the director may deny an applicant's request for a license based on prior enforcement actions which indicate that the abatement work might not be performed in a manner that would protect the public health, safety and welfare.

1. A complete list of all prior enforcement actions, including any sanctions imposed on the applicant by jurisdiction or any state or federal court.
2. A description of any asbestos abatement activities conducted by the applicant that were terminated prior to completion, including the circumstances of termination.
3. A copy of any reports compiled by an enforcement agency.

D. All applications should be completed according to the instructions provided with the application. Incomplete applications will be returned to the applicant; however, fees received will not be refunded.

E. Upon approval of an application for interim asbestos contractor/supervisor licensure, an interim license will be mailed to the address indicated on the application.

## § 3.10. Fees.

A. A completed application (as required in Part III, § 3.9 of these regulations) shall be accompanied by the appropriate fee. All checks or money orders shall be made payable to the Treasurer of Virginia. No application will be processed if it is not accompanied by the appropriate fee.

# Emergency Regulations

B. The fee for an asbestos contractor/supervisor's interim license will be established by the director pursuant to § 54-1.28:1 of the Code of Virginia. Fee amounts are based on administrative costs of the asbestos licensing program.

C. All fees will be nonrefundable.

D. Receipt and deposit of fees submitted with applications do not in any way indicate approval for licensure.

## PART IV.

### ASBESTOS INSPECTOR LICENSING REQUIREMENTS.

#### § 4.1. License application.

A. Each applicant is responsible for obtaining a current application. All requests for applications should be directed to:

Assistant Director  
Asbestos Licensing Program  
Virginia Department of Commerce  
3600 West Broad Street  
5th Floor  
Richmond, Virginia 23230  
1 (800) 552-3016

B. Applicants will be required to provide proof of successful completion of an asbestos inspector training course approved by the Department of Commerce.

C. Each application shall be signed by the applicant and shall include a certification by the applicant that within the past three years prior to the application date, his license or other authorization to perform asbestos abatement work has not been suspended or revoked by any jurisdiction, and that no enforcement actions by any jurisdiction is pending against the applicant.

D. In the event enforcement actions have been taken against the applicant, the following information will be required as the director may deny an applicant's request for a license based on prior enforcement actions which indicate that the abatement work might not be performed in a manner that would protect the public health, safety and welfare.

1. A complete list of all prior enforcement actions, including any sanctions imposed on the applicant by any jurisdiction or any state or federal court.

2. A description of any asbestos inspection activities conducted by the applicant that were terminated prior to completion, including the circumstances of termination.

3. A copy of any reports compiled by an enforcement agency.

E. All applications should be completed according to the instructions provided with the application. Incomplete applications will be returned to the applicant; however, fees received will not be refunded.

F. Upon approval of an application for licensure, a license will be mailed to the address indicated on the application.

#### § 4.2. Qualifications for licensure.

A. Each individual or business applying to the Department of Commerce for licensing as an asbestos inspector shall have the following qualifications:

1. Applicants shall be at least 18 years of age.

2. Applicants shall provide evidence of having met the educational requirements as set forth in these regulations within 12 months preceding the date of the receipt of the application by the Department of Commerce.

#### § 4.3. Fees.

A. A completed application (as required in Part IV, § 4.1 of these regulations) shall be accompanied by the appropriate fee. All checks or money orders shall be made payable to the Treasurer of Virginia. No application will be processed if it is not accompanied by the appropriate fee.

B. The fee for an asbestos inspector's license will be established by the director pursuant to § 54-1.28:1 of the Code of Virginia. Fee amounts are based on administrative costs of the asbestos licensing program.

C. All fees will be nonrefundable.

D. Receipt and deposit of fees submitted with applications do not in any way indicate approval for licensure.

#### § 4.4. Expiration.

Asbestos inspector licenses issued under these regulations shall expire one year from the last day of the month in which they were issued as indicated on the license.

#### § 4.5. Renewal application.

The Department of Commerce will mail a renewal notice to the licensee at the last known address. The notice shall outline the procedures for renewal and renewal fee amount. Failure to receive the notice shall not relieve the licensee of the obligation to renew.

A. Prior to the expiration date shown on the license, each licensee desiring to renew his license shall return to the Department of Commerce the renewal notice and appropriate fee. Should the licensee fail to receive the

# Emergency Regulations

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renewal notice, a copy of the license may be submitted with the required fee.

B. Applicants shall forward proof that the annual retraining requirement of four hours has been successfully completed. A copy of a certificate indicating the date and the location of training shall accompany renewal notice.

C. If the renewal fee is not received by the Department of Commerce within 30 days after the expiration date noted on the license, a late renewal fee equal to the regular renewal fee, shall be required in addition to the regular renewal fee.

D. Licensees failing to renew their licenses within six months of the expiration date noted on the license shall not be permitted to renew their licenses and shall apply as new applicants meeting all current education and examination requirements in Part IV of these regulations.

## § 4.6. Change of address.

The Department of Commerce shall be notified immediately of any change in address by the licensee.

## § 4.7. Interim licensure.

Individuals who have successfully completed an EPA approved asbestos inspector training and have passed an EPA approved asbestos inspector examination since January 1, 1985, may apply for an interim license for a period of 12 months. During the 12 month interim license period, a Virginia approved asbestos inspector refresher training course must be successfully completed and the individual must apply for renewal of his Virginia asbestos inspector license as required in these regulations.

"NO INTERIM LICENSES WILL BE GRANTED AFTER JULY 1, 1989." After July 1, 1989, all applicants for an asbestos inspector's license must have successfully completed a Virginia approved asbestos inspector's training course.

A. All requests for interim license applications should be directed to:

Assistant Director  
Asbestos Licensing Program  
Virginia Department of Commerce  
3600 West Broad Street  
5th Floor  
Richmond, Virginia 23230  
1 (800) 552-3016

B. Each application shall be signed by the applicant and shall include a certification by the applicant that within the past three years prior to the application date, his license or other authorization to perform building inspections for asbestos containing materials has not been suspended or revoked by any jurisdiction, and that no enforcement actions by any jurisdiction is pending against

the applicant.

C. In the event enforcement actions have been taken against the applicant, the following information will be required as the director may deny an applicant's request for a license based on prior enforcement actions which indicate that the asbestos inspection might not be performed in a manner that would protect the public health, safety and welfare.

1. A complete list of all prior enforcement actions, including any sanctions imposed on the applicant by any jurisdiction or any state or federal court.
2. A description of any asbestos inspection activities conducted by the applicant that were terminated prior to completion, including the circumstances of termination.
3. A copy of any reports compiled by an enforcement agency.

D. All applications should be completed according to the instructions provided with the application. Incomplete applications will be returned to the applicant; however, fees received will not be refunded.

E. Upon approval of an application for interim asbestos inspector's license, an interim license will be mailed to the address indicated on the application.

## § 4.8. Fees.

A. A completed application (as required in Part IV, § 4.7 of these regulations) shall be accompanied by the appropriate fee. All checks or money orders shall be made payable to the Treasurer of Virginia. No application will be processed if it is not accompanied by the appropriate fee.

B. The fee for an asbestos inspector's interim license will be established by the director pursuant to § 54-1.28:1 of the Code of Virginia. Fee amounts are based on administrative costs of the asbestos licensing program.

C. All fees will be nonrefundable.

D. Receipt and deposit of fees submitted with applications do not in any way indicate approval for licensure.

## PART V. ASBESTOS PROJECT DESIGNER LICENSING REQUIREMENTS.

### § 5.1. License application.

A. Each applicant is responsible for obtaining a current application. All requests for applications should be directed to:

# Emergency Regulations

Assistant Director  
Asbestos Licensing Program  
Virginia Department of Commerce  
3600 West Broad Street  
5th Floor  
Richmond, Virginia 23230  
1 (800) 552-3016

B. Applicants will be required to provide proof of successful completion of an asbestos project designer training course approved by the Department of Commerce.

C. Each application shall be signed by the applicant and shall include a certification by the applicant that within the past three years prior to the application date, his license or other authorization to design asbestos abatement projects has not been suspended or revoked by any jurisdiction, and that no enforcement action by any jurisdiction is pending against the applicant.

D. In the event enforcement actions have been taken against the applicant, the following information will be required as the director may deny an applicant's request for a license based on prior enforcement actions which indicate that the asbestos project designer's plans might not be developed in a manner that would protect the public health, safety and welfare.

1. A complete list of all prior enforcement actions, including any sanctions imposed on the applicant by any jurisdiction or any state or federal court.

2. A copy of any reports compiled by an enforcement agency.

E. All applications should be completed according to the instructions provided with the application. Incomplete applications will be returned to the applicant; however, fees received will not be refunded.

F. Upon approval of an application for licensure, a license will be mailed to the address indicated on the application.

## § 5.2. Qualifications for licensure.

A. Each individual applying to the Department of Commerce for licensing as an asbestos project designer shall have the following qualifications:

1. Applicants shall provide evidence of having met the educational requirements as set forth in these regulations within 12 months preceding the date of the receipt of the application by the Department of Commerce.

## § 5.3. Fees.

A. A completed application (as required in Part V, § 5.1 of these regulations) shall be accompanied by the appropriate fee. All checks or money orders shall be

made payable to the Treasurer of Virginia. No application will be processed if it is not accompanied by the appropriate fee.

B. The fee for an asbestos project designer's license will be established by the director pursuant to § 54-1.28:1 of the Code of Virginia. Fee amounts are based on administrative costs of the asbestos licensing program.

C. All fees will be nonrefundable.

D. Receipt and deposit of fees submitted with applications do not in any way indicate approval for licensure.

## § 5.4. Expiration.

Asbestos project designer licenses issued under these regulations shall expire one year from the last day of the month in which they were issued as indicated on the license.

## § 5.5. Renewal application.

The Department of Commerce will mail a renewal notice to the licensee at the last known address. The notice shall outline the procedures for renewal and renewal fee amount. Failure to receive the notice shall not relieve the licensee of the obligation to renew.

A. Prior to the expiration date shown on the license, each licensee desiring to renew his license shall return to the Department of Commerce the renewal notice and appropriate fee. Should the licensee fail to receive the renewal notice, a copy of the license may be submitted with the required fee.

B. Applicants shall forward proof that the annual retraining requirement of eight hours has been successfully completed. A copy of a certificate indicating the date and the location of training shall accompany renewal notice.

C. If the renewal fee is not received by the Department of Commerce within 30 days after the expiration date noted on the license a late renewal fee, equal to the regular renewal fee, shall be required in addition to the regular renewal fee.

D. Licensees failing to renew their licenses within six months of the expiration date noted on the license shall not be permitted to renew their licenses and shall apply as new applicants meeting all current education and examination requirements in Part V of these regulations.

## § 5.6. Change of address.

The Department of Commerce shall be notified immediately of any change in address by the licensee.

## § 5.7. Interim licensure.

# Emergency Regulations

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Individuals who have successfully completed an EPA approved asbestos project designer training course and have passed an EPA approved asbestos project designer examination since January 1, 1985, may apply for an interim license for a period of 12 months. During the 12 month interim license period, a Virginia approved asbestos project designer refresher training course must be successfully completed and the individual must apply for renewal of his Virginia asbestos project designer license as required in these regulations. **NO INTERIM LICENSES WILL BE GRANTED AFTER JULY 1, 1989.** After July 1, 1989, all applicants for an asbestos project designer license must have successfully completed a Virginia approved asbestos project designer training course.

A. All requests for interim license applications should be directed to:

Assistant Director  
Asbestos Licensing Program  
Virginia Department of Commerce  
3600 West Broad Street  
5th Floor  
Richmond, Virginia 23230  
1 (800) 552-3016

B. Each application shall be signed by the applicant and shall include a certification by the applicant that within the past three years prior to the application date, his license or other authorization to design asbestos abatement projects has not been suspended or revoked by any jurisdiction, and that no enforcement action by any jurisdiction is pending against the applicant.

C. In the event enforcement actions have been taken against the applicant, the following information will be required as the director may deny any applicant's request for a license based on prior enforcement actions which indicate that the asbestos project designer's plans might not be developed in a manner that would protect the public health, safety and welfare.

1. A complete list of all prior enforcement actions, including any sanctions imposed on the applicant by any jurisdiction or any state or federal court.

2. A copy of any reports compiled by an enforcement agency.

D. All applications should be completed according to the instructions provided with the application. Incomplete applications will be returned to the applicant; however, fees received will not be refunded.

E. Upon approval of an application for an interim asbestos project designer license, an interim license will be mailed to the address indicated on the application.

F. Fees.

1. A completed application (as required in Part V, §

5.7 of these regulations) shall be accompanied by the appropriate fee. All checks or money orders shall be made payable to the Treasurer of Virginia. No application will be processed if it is not accompanied by the appropriate fee.

2. The fee for an asbestos project designer interim license will be established by the director pursuant to § 54-1.28:1 of the Code of Virginia. Fee amounts are based on administrative costs of the asbestos licensing program.

3. All fees shall be nonrefundable.

4. Receipt and deposit of fees submitted with applications do not in any way indicate approval for licensure.

## PART VI.

### ASBESTOS MANAGEMENT PLANNER LICENSING REQUIREMENTS.

#### § 6.1. License application.

A. Each applicant is responsible for obtaining a current application. All requests for applications should be directed to:

Assistant Director  
Asbestos Licensing Program  
Virginia Department of Commerce  
3600 West Broad Street  
5th Floor  
Richmond, Virginia 23230  
1 (800) 552-3016

B. Applicants will be required to provide proof of successful completion of an asbestos management planner training course approved by the Department of Commerce.

C. Each application shall be signed by the applicant and shall include a certification by the applicant that within the past three years prior to the application date, his license or other authorization to develop and implement an asbestos management plan has not been suspended or revoked by any jurisdiction, and that no enforcement action by any jurisdiction is pending against the applicant.

D. In the event enforcement actions have been taken against the applicant, the following information will be required as the director may deny an applicant's request for a license based on prior enforcement actions which indicate that the asbestos management plan might not be developed in a manner that would protect the public health, safety and welfare.

1. A complete list of all prior enforcement actions, including any sanctions imposed on the applicant by any jurisdiction or any state or federal court.

2. A description of any asbestos management planner

# Emergency Regulations

activities conducted by the applicant that were terminated prior to completion, including the circumstances of termination.

3. A copy of any reports compiled by an enforcement agency.

E. All applications should be completed according to the instructions provided with the application. Incomplete applications will be returned to the applicant; however, fees received will not be refunded.

F. Upon approval of an application for licensure, a license will be mailed to the address indicated on the application.

## § 6.2. Qualifications for licensure.

A. Each individual applying to the Department of Commerce for licensing as an asbestos management planner shall have the following qualifications:

1. Applicants shall be at least 18 years of age.
2. Applicants shall provide evidence of having met the educational requirements as set forth in these regulations within 12 months preceding the date of the receipt of the application by the Department of Commerce.

## § 6.3. Fees.

A. A completed application (as required in Part VI, § 6.1 of these regulations) shall be accompanied by the appropriate fee. All checks or money orders shall be made payable to the Treasurer of Virginia. No application will be processed if it is not accompanied by the appropriate fee.

B. The fee for an asbestos management planner's license will be established by the director pursuant to § 54-1.28:1 of the Code of Virginia. Fee amounts are based on administrative costs of the asbestos licensing program.

C. All fees will be nonrefundable.

D. Receipt and deposit of fees submitted with applications do not in any way indicate approval for licensure.

## § 6.4. Expiration.

Asbestos management planner licenses issued under these regulations shall expire one year from the last day of the month in which they were issued as indicated on the license.

## § 6.5. Renewal application.

The Department of Commerce will mail a renewal notice to the licensee at the last known address. The

notice shall outline the procedures for renewal and renewal fee amount. Failure to receive the notice shall not relieve the licensee of the obligation to renew.

A. Prior to the expiration date shown on the license, each licensee desiring to renew his license shall return to the Department of Commerce the renewal notice and appropriate fee. Should the licensee fail to receive the renewal notice, a copy of the license may be submitted with the required fee.

B. Applicants shall forward proof that the annual retraining requirement of eight hours has been successfully completed. A copy of a certificate indicating the date and the location of training shall accompany renewal notice.

C. If the renewal fee is not received by the Department of Commerce within 30 days after the expiration date noted on the license a late renewal fee, equal to the regular renewal fee, shall be required in addition to the regular renewal fee.

D. Licensees failing to renew their licenses within six months of the expiration date noted on the license shall not be permitted to renew their licenses and shall apply as new applicants meeting all current education and examination requirements in Part VI of these regulations.

## § 6.6. Change of address.

The Department of Commerce shall be notified immediately of any change in address by the licensee.

## § 6.7. Interim licensure.

Individuals who have successfully completed an EPA approved asbestos management planner training course and have passed an EPA approved asbestos management planner examination since January 1, 1985, may apply for an interim license for a period of 12 months. During the 12 month interim license period, a Virginia approved asbestos management planner refresher training course must be successfully completed and the individual must apply for renewal of his Virginia asbestos management planner license as required in these regulations.

**NO INTERIM LICENSES WILL BE GRANTED AFTER JULY 1, 1989.** After July 1, 1989, all applicants for an asbestos management planner's license must have successfully completed a Virginia approved asbestos management planner's training course.

A. All requests for interim license applications should be directed to:

Assistant Director  
Asbestos Licensing Program  
Virginia Department of Commerce  
3600 West Broad Street  
5th Floor  
Richmond, Virginia 23230

# Emergency Regulations

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1 (800) 552-3016

B. Each application shall be signed by the applicant and shall include a certification by the applicant that within the past three years prior to the application date, his license or other authorization as an asbestos management planner has not been suspended or revoked by any jurisdiction, and that no enforcement action by any jurisdiction is pending against the applicant.

C. In the event enforcement actions have been taken against the applicant, the following information will be required as the director may deny an applicant's request for a license based on prior enforcement actions which indicate that the asbestos management plan might not be developed in a manner that would protect the public health, safety and welfare.

1. A complete list of all prior enforcement actions, including any sanctions imposed on the applicant by any jurisdiction or any state or federal court.

2. A copy of any reports compiled by an enforcement agency.

D. All applications should be completed according to the instructions provided with the application. Incomplete applications will be returned to the applicant; however, fees received will not be refunded.

E. Upon approval of an application for interim asbestos management planner's license, an interim license will be mailed to the address indicated on the application.

## F. Fees.

1. A completed application (as required in Part VI, § 6.1 of these regulations) shall be accompanied by the appropriate fee. All checks or money orders shall be made payable to the Treasurer of Virginia. No application will be processed if it is not accompanied by the appropriate fee.

2. The fee for an asbestos management planner's interim license will be established by the director pursuant to § 54-1.28:1 of the Code of Virginia. Fee amounts are based on administrative costs of the asbestos licensing program.

3. All fees will be nonrefundable.

4. Receipt and deposit of fees submitted with applications do not in any way indicate approval for licensure.

## PART V VII .

### TRAINING COURSE REQUIREMENTS.

IN ALL OF THE FOLLOWING TRAINING COURSE REQUIREMENTS ONE DAY SHALL BE EQUAL TO EIGHT HOURS.

## § 5-1. § 7.1. Worker training.

Asbestos abatement workers shall complete at least a three day (24 hours) training course as outlined below. All training courses shall be approved by the Virginia Department of Commerce. The training course shall include lectures, demonstrations, at least six hours of hands-on training, individual respirator fit testing, course review, and an examination. The training shall address the following topics:

1. Physical characteristics of asbestos:
  - a. Identification of asbestos.
  - b. Aerodynamic characteristics.
  - c. Typical uses and physical appearance.
  - d. A summary of abatement control options.
2. Potential health effects related to asbestos exposure:
  - a. The nature of asbestos related diseases.
  - b. Routes of exposure, dose response relationships and the lack of a safe exposure level.
  - c. Synergism between cigarette smoking and asbestos exposure.
  - d. Latency period for disease.
3. Employee personal protective equipment:
  - a. Classes and characteristics of respirator types.
  - b. Limitations of respirators and their proper selection, inspection, donning, use, maintenance, and storage procedures.
  - c. Methods for field testing of the facepiece-to-face seal (positive and negative pressure fitting tests).
  - d. Qualitative and quantitative fit testing procedures.
  - e. Variability between field and laboratory protection factors.
  - f. Factors that alter respirator fit (e.g., facial hair).
  - g. The components of a proper respiratory protection program.
  - h. Selection and use of personal protective clothing; use, storage, and handling of nondisposable clothing.
  - i. Regulations covering personal protective equipment.
4. State-of-the-art work practices:

# Emergency Regulations

- a. Proper asbestos abatement activities including descriptions of proper construction and maintenance of barriers and decontamination enclosure systems.
  - b. Positioning of warning signs.
  - c. Electrical and ventilation system lock-out.
  - d. Proper working techniques for minimizing fiber release, use of wet methods, use of negative pressure ventilation equipment, use of high efficiency particulate air (HEPA) vacuums.
  - e. Proper clean-up and disposal procedures.
  - f. Work practices for removal, encapsulation, enclosure, and repair.
  - g. Emergency procedures for sudden releases.
  - h. Potential exposure situations, and transport and disposal procedures.
  - i. Recommended and prohibited work practices.
5. Personal hygiene:
- a. Entry and exit procedures for the work area, use of showers, avoidance of eating, drinking, smoking, and chewing (gum or tobacco) in the work area.
  - b. Potential exposures, such as family exposure.
6. Additional safety hazards:
- a. Hazards encountered during abatement activities and how to deal with them, including electrical hazards, heat stress, air contaminants other than asbestos, fire and explosion hazards.
  - b. Scaffold and ladder hazards.
  - c. Slips, trips and falls.
  - d. Confined spaces.
7. Medical monitoring:
- a. OSHA requirements for a pulmonary function test.
  - b. Chest x-rays and a medical history for each employee.
8. Air monitoring:
- a. Procedures to determine airborne concentrations of asbestos fibers.
  - b. Focusing on how personal air sampling is performed and the reasons for it.

9. Relevant federal, state and local regulatory requirements, procedures and standards, with particular attention directed at relevant EPA, OSHA, and state regulations concerning asbestos abatement workers.

10. Establishment of respiratory protection programs.

11. Course review. A review of key aspects of the training course.

## ~~§ 5.2.~~ § 7.2. Examinations.

Upon completion of an approved initial training course a closed book examination will be administered. Demonstration testing will also be included as part of the examination. Each examination shall adequately cover the topics included in the training course. Persons who pass the examination and fulfill course requirements will receive a written certificate indicating successful completion of the course. The following are the requirements for examination:

Asbestos abatement workers:

1. 50 multiple choice questions.
2. Passing score: 70% correct.

IN ALL REFRESHER TRAINING COURSE REQUIREMENTS ONE DAY SHALL BE EQUAL TO EIGHT HOURS.

## ~~§ 5.3.~~ § 7.3. Refresher training course.

Refresher courses shall be one day (8 hours) in length for asbestos abatement workers. The course shall review and discuss changes in federal and state regulations, developments in state-of-the-art procedures and a review of key aspects of the initial training course as set forth in Part V, ~~§ 5.1~~ Part VII, § 7.1 of these regulations. A written closed book examination of 50 multiple choice questions will be administered covering the topics included in the refresher course. A passing refresher examination score will be 70% correct. Persons who pass the refresher course examination will receive a written certificate indicating successful completion of the course.

## ~~§ 5.4.~~ § 7.4. Contractor/supervisor training.

Asbestos abatement contractors and supervisors shall complete a four day (32 hours) training course as outlined below. All training courses shall be approved by the Virginia Department of Commerce. The training course shall include lecture, demonstrations, individual respirator fit testing, course review, examination, and at least six hours of hands-on training which allows contractors and supervisors the experience of performing actual tasks associated with asbestos abatement.

For purposes of approval, asbestos abatement supervisors



# Emergency Regulations

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include those persons who provide supervision and direction to workers engaged in asbestos removal, encapsulation, enclosure, and repair. The contractor may designate a supervisor to serve as his agent for the purposes of meeting the requirements for approval.

The contractor and supervisor's training course shall adequately address the following topics:

1. The physical characteristics of asbestos and asbestos-containing materials:
  - a. Identification of asbestos.
  - b. Aerodynamic characteristics.
  - c. Typical uses, physical appearance.
  - d. A review of hazard assessment considerations.
  - e. A summary of abatement control options.
2. Potential health effects related to asbestos exposure:
  - a. The nature of asbestos-related diseases.
  - b. Routes of exposure, dose-response relationships and the lack of a safe exposure level.
  - c. Synergism between cigarette smoking and asbestos exposure.
  - d. Latency period for disease.
3. Employee personal protective equipment:
  - a. Classes and characteristics of respirator types.
  - b. Limitations of respirators and their proper selection, inspection, donning, use, maintenance and storage procedures.
  - c. Methods for field testing of the facepiece-to-face seal (positive and negative pressure fitting tests).
  - d. Qualitative and quantitative fit testing procedures.
  - e. Variability between field and laboratory protection factors.
  - f. Factors that alter respirator fit (e.g., facial hair).
  - g. The components of a proper respiratory protection program.
  - h. Selection and use of personal protective clothing; use, storage and handling of nondisposable clothing.
  - i. Regulations covering personal protective equipment.
4. State-of-the-art work practices:
  - a. Proper asbestos abatement activities including descriptions of proper construction and maintenance of barriers and decontamination enclosure systems.
  - b. Positioning of warning signs.
  - c. Electrical and ventilation system lock-out.
  - d. Proper working techniques for minimizing fiber release, use of wet methods, use of negative pressure ventilation equipment, use of high efficiency particulate air (HEPA) vacuums.
  - e. Proper clean-up and disposal procedures.
  - f. Work practices for removal, encapsulation, enclosure and repair.
  - g. Emergency procedures for sudden releases.
  - h. Potential exposure situations, and transport and disposal procedures.
  - i. Recommended and prohibited work practices.
5. Personal hygiene:
  - a. Entry and exit procedures for the work area; use of showers; and avoidance of eating, drinking, smoking, and chewing, (gum or tobacco) in the work area.
  - b. Potential exposures, such as family exposure, shall also be included.
6. Additional safety hazards:
  - a. Hazards encountered during abatement activities and how to deal with them, including electrical hazards, heat stress, air contaminants, other than asbestos, fire and explosion hazards.
  - b. Scaffold and ladder hazards.
  - c. Slips, trips and falls.
  - d. Confined spaces.
7. Medical monitoring. OSHA requirements for a pulmonary function test, chest x-rays and a medical history for each employee.
8. Air monitoring:
  - a. Procedures to determine airborne concentration of asbestos fibers, including a description of an aggressive sampling, equipment and methods.
  - b. Reasons for air monitoring.

c. Types of samples and interpretation of results, specifically from analysis performed by polarized light, phase-contrast, and electron microscopy analyses.

9. Relevant federal, state, and local regulatory requirements, procedures and standards including:

a. Requirements of TSCA Title II.

b. 40 CFR Part 61 National Emission Standards for Hazardous Air Pollutants, Subparts A (General Provisions) and M (National Emission Standards for Asbestos).

c. OSHA Standards for permissible exposure to airborne concentrations of asbestos fibers and respiratory protection (29 CFR 1910.134).

d. OSHA Asbestos Construction Standard (29 CFR 1926.58).

e. EPA Worker Protection Rule, 40 CFR Part 763, Subpart G.

10. Respiratory protection programs and medical surveillance programs.

11. Insurance and liability issues:

a. Contractor issues, worker's compensation coverage, and exclusions.

b. Third-party liabilities and defenses.

c. Insurance coverage and exclusions.

12. Recordkeeping for asbestos abatement projects:

a. Records required by federal, state, and local regulations.

b. Records recommended for legal and insurance purposes.

13. Supervisory techniques for asbestos abatement activities. Supervisory practices to enforce and reinforce the required work practices and discourage unsafe work practices.

14. Contract specifications. Discussions of key elements that are included in contract specifications.

15. Course review. A review of key aspects of the training course.

§ 5-5. § 7.5. Examinations.

Upon completion of an approved initial training course, a closed book examination will be administered. Demonstration testing will also be included as part of the

examination. Each examination shall adequately cover the topics included in the training course. Persons who pass the examination and fulfill course requirements will receive some form of a written certificate indicating successful completion of the course. The following are the requirements for examination:

Asbestos abatement contract supervisors:

1. 100 multiple choice questions.

2. Passing score: 70% correct.

§ 5-6. § 7.6. Refresher training course.

Refresher courses shall be one day (8 hours) in length for contractors/supervisors. The course shall review and discuss changes in federal and state regulations, developments in state-of-the-art procedures and review of key aspects of the initial training course as set forth in Part V, § 6-1 Part VII, § 7.4 of these regulations. A written closed book examination will be included in the refresher course. Persons who pass the refresher course examination will receive a written certificate indicating successful completion of the course.

§ 5-7. § 7.7. Inspector training.

Asbestos inspectors shall complete a three day (24 hour) training course as outlined below. The course shall include lectures, demonstrations, four hours of hands-on training, individual respirator fit testing, course review and a written examination.

The inspector training course shall adequately address the following topics:

1. Background information on asbestos:

a. Identification of asbestos, and examples and discussion of the uses and locations of asbestos in buildings.

b. Physical appearance of asbestos.

2. Potential health effects related to asbestos exposure:

a. The nature of asbestos-related diseases.

b. Routes of exposure, dose-response relationships and the lack of a safe exposure level.

c. The synergistic effect between cigarette smoking and asbestos exposure.

d. Latency period for asbestos-related diseases, a discussion of the relationship of asbestos exposure to asbestosis, lung cancer, mesothelioma and cancer of other organs.

3. Functions/qualifications and role of inspectors:

# Emergency Regulations

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- a. Discussions of prior experience and qualifications for inspectors.
  - b. Discussions of the functions of an accredited inspector as compared to those of an accredited management planner.
  - c. Discussion of inspection process including inventory of ACM and physical assessment.
4. Legal liabilities and defenses:
- a. Responsibilities of the inspector, a discussion of comprehensive general liability policies, claims made and occurrence policies, environment and pollution liability policy clauses; state liability insurance requirements.
  - b. Bonding and relationship of insurance availability to bond availability.
5. Understanding building systems:
- a. The interrelationship between building systems, including: an overview of common building physical plan layout; heat, ventilation and air conditioning (HVAC) system types; physical organization; and where asbestos is found on HVAC components.
  - b. Building mechanical systems, their types and organization and where to look for asbestos on such systems.
  - c. Inspecting electrical systems, including appropriate safety precautions.
  - d. Reading building plans and as-built drawings.
6. Public/employee/building occupant relations:
- a. Notifying employee organizations about the inspection.
  - b. Signs to warn building occupants.
  - c. Tact in dealing with occupants and the press.
  - d. Scheduling of inspections to minimize disruption.
  - e. Education of building occupants about actions being taken.
7. Preinspection planning and review of previous inspection records:
- a. Scheduling the inspection and obtaining access.
  - b. Building record review; identification of probable homogeneous areas from building plans or as-built drawings.
  - c. Consultation with maintenance or building personnel.
  - d. Review of previous inspection, sampling, and abatement records of a building.
  - e. The role of the inspector in exclusions for previously performed inspections.
8. Inspection for friable and nonfriable asbestos-containing material (ACM) and assessment of the condition of friable ACM:
- a. Procedures to follow in conducting visual inspections for friable and nonfriable ACM.
  - b. Types of building materials that may contain asbestos.
  - c. Touching materials to determine friability.
  - d. Open return air plenums and their importance in HVAC systems.
  - e. Assessing damage, significant damage, potential damage, and potential significant damage.
  - f. Amount of suspected ACM, both in total quantity and as a percentage of the total area.
  - g. Type of damage.
  - h. Accessibility.
  - i. Material's potential for disturbance.
  - j. Known or suspected causes of damage or significant damage, and deterioration as assessment factors.
9. Bulk sampling/documentation of asbestos in schools:
- a. Detailed discussion of the "Simplified Sampling Scheme for Friable Surfacing Materials" (EPA 560/5-85-030a October 1985) techniques to ensure sampling in a randomly distributed manner for other than friable surfacing materials.
  - b. Techniques for bulk sampling.
  - c. Sampling equipment the inspector should use.
  - d. Patching or repair of damage done in sampling; and inspector's repair kit.
  - e. Discussion of polarized light microscopy.
  - f. Choosing an accredited laboratory to analyze bulk samples.
  - g. Quality control and quality assurance procedures.

# Emergency Regulations

## 10. Inspector respiratory protection and equipment:

- a. Classes and characteristics of respirator types.
- b. Limitations of respirators.
- c. Proper selection, inspection, donning, use maintenance, and storage procedures for respirators.
- d. Methods for field testing of the facepiece-to-mouth seal (positive and negative pressure fitting tests); qualitative and quantitative fit testing procedures.
- e. Variability between field and laboratory protection factors.
- f. Factors that alter respirator fit (e.g., facial hair).
- g. The components of a proper respiratory protection program.
- h. Selection and use of personal protective clothing.
- i. Use, storage, and handling of nondisposable clothing.

## 11. Recordkeeping and writing the inspection report:

- a. Labeling of samples and keying sample identification to sampling location.
- b. Recommendations on sample labeling.
- c. Detailing of ACM inventory.
- d. Photographs of selected sampling areas and examples of ACM condition.
- e. Information required for inclusion in the management plan by TSCA Title II § 203 (i)(1).

## 12. Regulatory review:

- a. EPA Worker Protection Rule found at 40 CFR Part 763, Subpart G.
- b. TSCA Title II.
- c. OSHA Asbestos Construction Standard 29 CFR 1926.58.
- d. OSHA respirator requirements found at 29 CFR 1910.134.
- e. The friable ACM in Schools Rule found at 40 CFR Part 763 Subpart F.

(The above materials are incorporated by reference).

- f. Applicable state and local regulations.

## 13. Field trip:

- a. To include a field exercise including a walk-through inspection.
- b. Discussion on information gathering and determination of sampling locations.
- c. On-site practice in physical assessment.
- d. Classroom discussion of field exercise.

## 14. Course review. A review of key aspects of the training course.

### ~~§ 5.8.~~ § 7.8. Examinations.

Upon completion of an approved initial training course, a closed book examination will be administered. Each examination shall adequately cover the topics included in the training course. Persons who pass the examination and fulfill course requirements will receive a written certification indicating successful completion of the course. The following are the requirements for examination:

#### Asbestos inspectors:

1. 50 multiple choice questions.
2. Passing score: 70% correct.

### ~~§ 5.9.~~ § 7.9. Refresher training course.

Refresher courses shall be one-half day (4 hours) in length for inspectors. The course shall review and discuss changes in federal and state regulations, developments in state-of-the-art procedures, and a review of key aspects of the initial training course as set forth in Part V, § 5.7 Part VII, § 7.7 of these regulations. A written closed book examination will be administered covering the topics included in the asbestos inspector refresher training course. Persons who pass the refresher course examination will receive some form of written certification indicating successful completion of the course.

### ~~§ 7.10.~~ Abatement project designers.

Asbestos project designers shall complete either a three-day abatement project designer training course as outlined below or the four-day asbestos abatement contractor and supervisor's training course as outlined in § 7. The three-day abatement project designer training program shall include lectures, demonstrations, a field trip, course review, and a written examination. The three-day abatement project designer training course shall adequately address the following topics:

#### 1. Background information on asbestos:

- a. Identification of asbestos; examples and discussion of the uses and locations of asbestos in buildings.

# Emergency Regulations

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- b. Physical appearance of asbestos.*
  - 2. *Potential health effects related to asbestos exposure:*
    - a. Nature of asbestos-related diseases.*
    - b. Routes of exposure, dose-response relationships and the lack of a safe exposure level.*
    - c. The synergistic effect between cigarette smoking and asbestos exposure.*
    - d. The latency period of asbestos-related diseases; a discussion of the relationship between asbestos exposure and asbestosis, lung cancer, mesothelioma, and cancer of other organs.*
  - 3. *Overview of abatement construction projects:*
    - a. Abatement as a portion of a renovation project.*
    - b. OSHA requirements for notification of other contractors on a multi-employer site (29 CFR 1926.58).*
  - 4. *Safety system design specifications:*
    - a. Construction and maintenance of containment barriers and decontamination enclosure systems.*
    - b. Positioning of warning signs.*
    - c. Electrical and ventilation system lock-out.*
    - d. Proper working techniques for minimizing fiber release.*
    - e. Entry and exit procedures for the work area, use of wet methods, use of negative pressure exhaust ventilation equipment, use of high efficiency particulate aerosol (HEPA) vacuums, proper clean-up and disposal of asbestos, work practices as they apply to encapsulation, enclosure, and repair, use of glove bags and a demonstration of glove bag use.*
  - 5. *Field trip:*
    - a. Visit an abatement site or other suitable building site, including on-site discussions of abatement design.*
    - b. Building walk-through inspection, and discussion following the walk-through.*
  - 6. *Employee personal protective equipment:*
    - a. To include the classes and characteristics of respirator types.*
    - b. Limitations of respirators, proper selection, inspection, donning, use, maintenance, and storage procedures.*
  - c. Methods for field testing of the facepiece-to-facepiece seal (positive and negative pressure fitting tests).*
  - d. Qualitative and quantitative fit testing procedures.*
  - e. Variability between field and laboratory protection factors, factors that alter respirator fit (e.g., facial hair).*
  - f. Components of a proper respiratory protection program.*
  - g. Selection and use of personal protective clothing, use, storage and handling of nondisposable clothing.*
  - h. Regulations covering personal protective equipment.*
7. *Additional safety hazards:*
- a. Hazards encountered during abatement activities and how to deal with them.*
  - b. Electrical hazards, heat stress, air contaminants other than asbestos, fire and explosion hazards.*
8. *Fiber aerodynamics and control:*
- a. Aerodynamic characteristics of asbestos fibers.*
  - b. Importance of proper containment barriers.*
  - c. Settling time for asbestos fibers.*
  - d. Wet methods in abatement.*
  - e. Aggressive air monitoring following abatement.*
  - f. Aggressive air movement and negative pressure exhaust ventilation as a clean-up method.*
9. *Designing abatement solutions.*
- a. Discussions of removal, enclosure, and encapsulation methods.*
  - b. Asbestos waste disposal.*
10. *Budgeting/cost estimation.*
- a. Development of cost estimates.*
  - b. Present costs of abatement versus future operations and maintenance costs.*
  - c. Setting priorities for abatement jobs to reduce cost.*

# Emergency Regulations

## 11. Writing abatement specifications.

- a. Means and methods specifications versus performance specifications.
- b. Design of abatement in occupied buildings.
- c. Modification of guide specifications to a particular building.
- d. Worker and building occupant health/medical considerations.
- e. Replacement of ACM with nonasbestos substitutes.
- f. Clearance of work area after abatement.
- g. Air monitoring for clearance.

## 12. Preparing abatement drawings:

- a. Use of as-built drawings.
- b. Use of inspection photographs and on-site reports.
- c. Particular problems in abatement drawings.

## 13. Contract preparation and administration.

## 14. Legal/liabilities/defenses.

- a. Insurance considerations, bonding, hold harmless clauses, use of abatement contractor's liability insurance.
- b. Claims-made versus occurrence policies.

## 15. Replacement of asbestos with asbestos-free substitutes.

## 16. Role of other consultants:

- a. Development of technical specification sections by industrial hygienists or engineers.
- b. The multidisciplinary team approach to abatement design.

## 17. Occupied buildings.

- a. Special design procedures required in occupied buildings.
- b. Education of occupants.
- c. Extra monitoring recommendations.
- d. Staging of work to minimize occupant exposure.
- e. Scheduling of renovation to minimize exposure.

## 18. Relevant federal, state and local regulatory requirements. Procedures and standards including:

- a. Requirements of TSCA Title II.
- b. 40 CFR Part 61, National Emission Standards for Hazardous Air Pollutants, Subparts A (General Provisions) and M (National Emission Standard for Asbestos).
- c. OSHA standards for permissible exposure to airborne concentrations of asbestos fibers and respiratory protection (29 CFR 1910.134).
- d. EPA Worker Protection Rule, found at 40 CFR Part 763, Subpart G.
- e. OSHA Asbestos Construction Standard found at 29 CFR 1926.58.

## 19. A review of key aspects of the training course.

### § 7.11. Examinations.

Upon completion of an approved initial training course, a closed book examination will be administered. Demonstration testing will also be included as part of the examination. Each examination shall adequately cover the topics included in the training course. Persons who pass the examination and fulfill course requirements will receive a written certification indicating successful completion of the course. The following are the requirements for examination:

#### Asbestos Project Designers:

1. 100 multiple choice questions.
2. Passing score: 70% correct.

### § 7.12. Refresher training course.

Refresher courses shall be one day (eight hours) in length for project designers. The course shall review and discuss changes in federal and state regulations, developments in state-of-the-art procedures and review of key aspects of the initial training course as set forth in Part V of these regulations. A written closed book examination shall be included in the refresher course. Persons who pass the refresher course examination will receive a written certificate indicating successful completion of the course.

### § 7.13. Management planner training.

Asbestos management planners seeking accreditation must complete an inspection training course as outlined above and a two day management planning training course. The two day training program shall include lectures, demonstrations, course review, and a written examination. The management planner training course

# Emergency Regulations

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shall adequately address the following topics:

1. Course overview:

- a. The role of the management planner.
- b. Operations and maintenance programs.
- c. Setting work priorities; protection of building occupants.

2. Evaluation/interpretation of survey results:

- a. Review of TSCA Title II requirements for inspection and management plans as given in § 203(i)(1) of TSCA Title II.
- b. Summarized field data and laboratory results; comparison between field inspector's data sheet with laboratory results and site survey.

3. Hazard assessment:

- a. Amplification of the difference between physical assessment and hazard assessment.
- b. The role of the management planner in hazard assessment.
- c. Explanation of significant damage, damage, potential damage, and potential significant damage and use of a description (or decision tree) code for assessment of ACM; assessment of friable ACM.
- d. Relationship of accessibility, vibration sources, use of adjoining space, and air plenums and other factors to hazard assessment.

4. Legal implications:

- a. Liability; insurance issues specific to planners.
- b. Liabilities associated with interim control measures, in-house maintenance, repair, and removal.
- c. Use of results from previously performed inspections.

5. Evaluation and selection of control options:

- a. Overview of encapsulation, enclosure, interim operations and maintenance, and removal; advantages and disadvantages of each method.
- b. Response actions described via a decision tree or other appropriate method; work practices for each response action.
- c. Staging and prioritizing of work in both vacant and occupied buildings.

d. The need for containment barriers and decontamination in response actions.

6. Role of other professionals:

- a. Use of industrial hygienists, engineers and architects in developing technical specifications for response actions.
- b. Any requirements that may exist for architect sign-off of plans.
- c. Team approach to design of high-quality job specifications.

7. Developing an operations and maintenance (O&M) plan:

- a. Purpose of the plan.
- b. Discussion of applicable EPA guidance documents.
- c. What actions should be taken by custodial staff: proper cleaning procedures; steam cleaning and high efficiency particulate aerosol (HEPA) vacuuming.
- d. Reducing disturbance of ACM.
- e. Scheduling O&M for off-hours; rescheduling or canceling renovation in areas with ACM.
- f. Boiler room maintenance.
- g. Disposal of ACM.
- h. In-house procedures for ACM: bridging and penetrating encapsulants, pipe fittings, metal sleeves, polyvinyl chloride (PVC), canvas, and wet wraps; muslin with straps; fiber mesh cloth; mineral wool, and insulating cement.
- i. Discussion of employee protection programs and staff training.
- j. Case study in developing an O&M plan (development, implementation process, and problems that have been experienced).

8. Regulatory review:

- a. Focusing on the OSHA Asbestos Construction Standard found at 29 CFR 1926.58.
- b. The National Emission Standard for Hazardous Air Pollutants (NESHAPS) found at 40 CFR Part 61, Subparts A (General Provisions) and M (National Emission Standard for Asbestos).
- c. EPA Worker Protection Rule found at 40 CFR Part 763, Subpart G; TSCA Title II.

# Emergency Regulations

- d. Applicable state regulations.
9. Recordkeeping for the management planner:
  - a. Use of field inspector's data sheet along with laboratory results.
  - b. On-going recordkeeping as a means to track asbestos disturbance.
  - c. Procedures for recordkeeping.
10. Assembling and submitting the management plan:
  - a. Plan requirements in TSCA Title II § 203(i)(1).
  - b. The management plan as a planning tool.
11. Financing abatement actions:
  - a. Economic analysis and cost estimates.
  - b. Development of cost estimates.
  - c. Present costs of abatement versus future operations and maintenance costs.
  - d. Asbestos School Hazard Abatement Act grants and loans.
12. A review of key aspects of the training course.

## § 7.14. Examinations.

Upon completion of an approved management planner training course, a closed book examination will be administered. Each examination shall adequately cover the topics included in the management planner training course. Persons who pass the examination and fulfill course requirements will receive a written certification indicating successful completion of the management planner training course. The following are the requirements for examination:

### Asbestos Management Planners:

1. 50 multiple choice questions.
2. Passing score: 70% correct.

## § 7.15. Refresher training course.

Management planners shall attend the inspector refresher course of one-half day (four hours) in length plus an additional half-day (four hours) on management planning. The course shall review and discuss changes in federal and state regulations, developments in state-of-the-art procedures, and a review of key aspects of the inspector and management planner training courses as set forth in Parts IV and VI of these regulations. A written closed book examination will be administered covering the

topics included in the asbestos inspector and management planner refresher courses. Persons who pass the asbestos inspector and management planner refresher course examinations will receive some form of written certification indicating successful completion of the course.

## PART VI, VIII. TRAINING COURSE APPROVAL.

### § 6.1. § 8.1. Training course approval requirements.

All approved training courses shall meet the minimum requirements as outlined in Part V, VIII of these regulations. Individuals, businesses, agencies, or institutions wishing to sponsor training courses to prepare applicants for licensure requirements shall submit the following information for review to the Department of Commerce at least 45 days prior to the commencement of the training course:

1. Sponsor's name, address and phone number.
2. The course curriculum.
3. A narrative explanation that clearly indicates how the course meets the requirements for approval in the following areas:
  - a. Length of training in hours.
  - b. Amount and type of hands-on training.
  - c. Examinations (length, format and passing score).
  - d. Topics covered in the course.
  - e. Assurances as to test security and how exams are administered.
4. A copy of all course materials (student manuals, instructor notebooks, handouts, etc.).
5. A detailed statement about the development of the examination used in the course.
6. Names, qualifications (include education or experience, or both), and subject areas that each instructor will teach.
7. Teacher-student ratio.
8. Description and an example of numbered certificates that will be issued to students who successfully complete the course.

### § 6.2. § 8.2. Examination.

In order for courses to be approved by the Department of Commerce, they are required to have a monitored, final written examination which shall include a practical component to test skill in asbestos abatement techniques.



# Emergency Regulations

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Students must obtain a minimum exam grade of 70% correct. A record of each student's grades will be retained by each institution for a period of three years.

~~§ 6-2.~~ § 8.3. Certificate of course approval.

Certificates of course approval shall be displayed in each approved school facility in a conspicuous place readily accessible to the public. An approved school shall maintain lists of students trained and the dates training occurred. These records shall be made available for Department of Commerce and Department of Labor and Industry review, and shall be maintained for three years.

~~§ 6-4.~~ § 8.4. Refresher course approval.

Refresher courses shall be one day (8 hours) in length for contractors/supervisors and workers, and one-half day (4 hours) in length for inspectors. The refresher course shall review and discuss changes in federal and state regulations, developments in state-of-the-art procedures and a review of key aspects of the initial training course. Individuals, businesses, agencies, or institutions wishing to sponsor refresher training courses shall submit the following information for review to the Department of Commerce at least 45 days prior to the commencement of the training course:

1. Length of training.
2. Topics covered in the course.
3. A copy of all course materials.
4. Names and qualifications of course instructors.
5. An example of certificates issued to students who complete the refresher course.
6. Location and dates the training course is to be held.
7. A detailed statement about the development of the examination and assurances as to test security and how exams are administered.
8. Description and an example of numbered certificates issued to students who successfully complete the course.

~~§ 6-5.~~ § 8.5. Changes to an approved training course.

Once a training course has been approved, any change in topics covered, course materials, and instructors shall be submitted for approval by the Department of Commerce.

~~§ 6-6.~~ § 8.6. Suspension or revocation of approval of a training course.

The director may withdraw approval of any approved

training program for the following reasons:

1. The school, instructors, or courses no longer meet the standards established by the director, and found in Parts V and VI, §§ 5-2 through 6-5 Part VIII, § 8.1 of these regulations.

2. Field inspectors indicate an approved individual, business, agency, institution or sponsor is not conducting the training that meets the requirements as set forth in these regulations. Training course sponsors shall permit Department of Commerce and Department of Labor and Industry representatives to attend, evaluate, and monitor any training course.

Prior notice of attendance by agency representatives may or may not be given.

3. If the approval of a training course is revoked or suspended, the Department of Commerce will promptly notify the individual business, agency, institution, or sponsor in writing of the reason for the suspension or revocation. In the case of a suspension, the necessary steps that shall be taken to comply with the requirements as set forth in Part V Part VIII of the regulations will be specified.

## PART VII. IX. EXEMPTIONS.

~~§ 7-1.~~ § 9.1. Emergency exemption from licensing.

An exemption from the licensing requirements, as set forth in these regulations may be granted by the director, pursuant to § 54-145.10:6 of the Code of Virginia, based on a situation that requires immediate removal, repair or encapsulation of asbestos containing materials and a licensed contractor/supervisor and workers are not available to perform the abatement work. Notification shall be immediate and followed by a written description of:

1. The emergency situation.
2. The planned abatement project to include: description of abatement techniques, safety precautions, provisions for worker safety and protection, and safety equipment to be used in the abatement project.
3. The project shall not commence until the exemption has been approved by the director.

~~§ 7-2.~~ § 9.2. "BUSINESS NECESSITY" WILL NOT QUALIFY FOR EMERGENCY EXEMPTION FROM LICENSING REQUIREMENTS.

~~§ 7-3.~~ § 9.3. Exemption from licensure (not an emergency exemption).

The director may exempt from licensure any employer and any employees of such employer, but only with

# Emergency Regulations

respect to an asbestos project on premises owned or leased by such employer and only after the director has determined that the training course implemented by the employer for his employees meets all of the standards as set forth in Part V VII of these regulations. *However, the requirement that the premises be owned or leased by the employer shall not apply if the asbestos project is located on a ship or other vessel designed for operation on or underneath, and intended to be operated on or underneath, the water.* All exemptions from licensure will be reviewed on at least an annual basis. To aid the director in making a determination of exemption, the employer shall submit to the director the following information regarding the asbestos safety and training program of the employer:

1. Employer's name, address, phone number, and contact person.
2. A narrative explanation that clearly indicates how the course or training program is structured to meet the training course requirements as set forth in Part V VII of these regulations.

Upon the approval by the director of the request for exemption from licensing requirements, the employer will be notified in writing by the Department of Commerce.

Employers shall permit the Department of Commerce or Department of Labor and Industry representatives to attend, evaluate, and monitor any training course. Prior notice of attendance by agency representatives may or may not be given.

## DEPARTMENT OF HEALTH

**Title of Regulation:** Regulations Governing Application Fees For Construction Permits For Onsite Sewage Disposal Systems and Private Wells.

**Statutory Authority:** §§ 32.1-164.C and 32.1-176.4.B of the Code of Virginia.

**Effective Dates:** July 1, 1988 through June 30, 1989.

### DECISION BRIEF

for  
The Honorable Gerald L. Baliles

**Request:** The Board of Health has directed the Commissioner of Health to prepare an emergency regulation to establish an application fee of \$50.00 for a permit to construct an onsite sewage disposal system and an application fee of \$25.00 for a permit to construct a private well effective July 1, 1988. The Commissioner of Health is requesting the Governor's approval of this emergency regulation.

/s/ Robert B. Stroube, M.D. (for C. M. G. BATTERY, M.D., M.P.H.)

State Health Commissioner  
Date: June 23, 1988

/s/ Eva S. Teig, Secretary of Human Resources  
Date: June 23, 1988

/s/ Gerald L. Baliles, Governor  
Date: June 30, 1988

/s/ Joan W. Smith  
Registrar of Regulations  
Date: July 1, 1988 - 10:35 a.m.

### Background:

*At its 1988 session the General Assembly passed House Bill 418 which authorizes the Board of Health to establish fees for applications for permits to construct on-site sewage disposal systems and private wells. The fees for on-site sewage disposal systems cannot exceed \$50. The fees for private wells cannot exceed \$25. The General Assembly also appropriated the revenue to be generated from these fees in the Appropriation Act assuming the fees would be set at \$50 and \$25, respectively, and fee collection would begin July 1, 1988. These appropriations support public health activities including new sanitarian positions. The total appropriated for FY 89 from these revenue sources is \$1,554,513. To collect this amount of revenues, it is necessary that the Department of Health initiate these fees on July 1, 1988. Without this appropriation the Department will not have the fiscal resources necessary to maintain essential public health activities such as family planning services, water and sewage inspections, and food inspections.*

*The Department has been advised by the Office of the Attorney General that the promulgation of these fees must comply with the full Administrative Process Act procedures and is not covered in the exclusion provided for regulations fixing rates or prices.*

### Discussion:

*The Board of Health at its meeting on May 10, 1988 approved a \$50 fee to be charged for filing an application for an onsite sewage disposal system permit with the Department and a \$25 fee to be charged for filing an application for a private well construction permit with the Department.*

*Since normal rulemaking procedures could not allow for such proper and timely action, the Board found a need to promulgate this as an emergency regulation while a permanent regulation is being adopted under the Administrative Process Act. This regulation will generate the \$3.3 million funds during the biennium. This action will provide the revenues to cover expenditures for essential public health services in FY 89.*

# Emergency Regulations

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PART I.  
DEFINITIONS.

§ 1. Definitions.

The following words and terms, when used in these regulations, shall have the following meaning, unless the context clearly indicates otherwise:

"Agent" means a legally authorized representative of the owner.

"Board" means the State Board of Health.

"Commissioner" means the State Health Commissioner.

"Construction of private wells" means acts necessary to construct private wells, including the location of private wells, the boring, digging, drilling, or otherwise excavating a well hole and installing casing with or without well screens, or well curbing.

"Department" means the Virginia Department of Health.

"Dewatering well" means a driven well constructed for the sole purpose of lowering the water table and kept in operation for a period of 60 days or less. Dewatering wells are used to allow construction in areas where a high water table hinders or prohibits construction and are always temporary in nature.

"Family" means the economic unit which shall include the owner, the spouse of the owner, and any other person actually and properly dependent upon or contributing to the family's income for subsistence.

A husband and wife who have been separated and are not living together, and who are not dependent on each other for support, shall be considered separate family units.

The family unit which is based on cohabitation is considered to be a separate family unit for determining if an application fee is waivable. The cohabiting partners and any children shall be considered a family unit.

"Income" means total cash receipts of the family before taxes from all sources. These include money wages and salaries before any deductions, but do not include food or rent in lieu of wages. These receipts include net receipts from non-farm or farm self-employment (e.g., receipts from own business or farm after deductions for business or farm expenses.) They include regular payments from public assistance (including Supplemental Security Income), social security or railroad retirement, unemployment and worker's compensation, strike benefits from union funds, veterans' benefits, training stipends, alimony, child support, and military family allotments or other regular support

from an absent family member or someone not living in the household; private pensions, government employee pensions, and regular insurance or annuity payment; and income from dividends, interest, rents, royalties, or periodic receipts from estates or trusts. These receipts further include funds obtained through college work study programs, scholarships, and grants to the extent said funds are used for current living costs. Income does not include the value of food stamps, WIC checks, fuel assistance, money borrowed, tax refunds, gifts, lump sum settlements, inheritances or insurance payments, withdrawal of bank deposits, earnings of minor children, money received from the sale of property. Income also does not include funds derived from college work study programs, scholarships, loans, or grants to the extent such funds are not used for current living costs.

"Onsite Sewage Disposal System" means a sewerage system or treatment works designed not to result in a point source discharge.

"Owner" means any person who owns, leases, or proposes to own or lease a private well and/or an onsite sewage disposal system.

"Person" means the Commonwealth or any of its political subdivisions, including sanitary districts, sanitation district commissions and authorities, any individual, any group of individuals acting individually or as a group, or any public or private institution, corporation, company, partnership, firm or association which owns or proposes to own a sewerage system, treatment works or private well.

"Principal place of residence" means the dwelling unit, single family dwelling, or mobile home where the owner lives.

"Private well" means any water well constructed for a person on land which is owned or leased by that person and is usually intended for household, groundwater source heat pump, agricultural use, industrial use, use as an observation or monitoring well, or other nonpublic water well. A dewatering well, for the purposes of these regulations, is not a private well.

"Repair of a failing onsite sewage disposal system" means the construction of an onsite sewage disposal system or parts thereof to correct an existing and failing sewage disposal system for an occupied structure with indoor plumbing.

"Replacement of a private well" means the construction of a private well to be used in lieu of an existing private well.

"Sewage" means water-carried and nonwater-carried human excrement, kitchen, laundry, shower, bath or lavatory wastes separately or together with such underground, surface, storm and other water and liquid industrial wastes as may be present from residences, buildings, vehicles, industrial establishments or other

# Emergency Regulations

places.

"Sewerage system" means pipelines or conduits, pumping stations and force mains and all other construction, devices and appliances appurtenant thereto, used for the collection and conveyance of sewage to a treatment works or point of ultimate disposal.

"Treatment works" means any device or system used in the storage, treatment, disposal or reclamation of sewage or combinations of sewage and industrial wastes, including but not limited to pumping, power and other equipment and appurtenances, septic tanks and any works, including land, that are or will be (i) an integral part of the treatment process or (ii) used for ultimate disposal of residues or effluents resulting from such treatment.

"Well" means any artificial opening or artificially altered natural opening, however made, by which groundwater is sought or through which groundwater flows under natural pressure or is intended to be artificially drawn; provided this definition shall not include wells drilled for the purpose of exploration or production of oil or gas, for building foundation investigation and construction, elevator shafts, grounding of electrical apparatus, or the modification or development of springs.

## PART II. GENERAL INFORMATION.

### § 2.1. Authority for regulations.

§ 32.1-164.C. and § 32.1-176.4.B. of the Code of Virginia provide that the State Board of Health has the power to prescribe a reasonable fee to be charged for filing an application for an onsite sewage disposal system permit and a reasonable fee to be charged for filing an application for a private well construction permit.

### § 2.2. Purpose of regulations.

The Board has promulgated these regulations to:

A. establish a fee for filing an application for a permit to construct an onsite sewage disposal system or for the construction of a private well; and,

B. establish a procedure for the waiver of fees for an owner whose income of his family is at or below the federal poverty guidelines established by the United States Department of Health and Human Services, or when the application is for a pit privy, the replacement of a private well, or the repair of a failing onsite sewage disposal system.

### § 2.3. Compliance with Administrative Process Act.

The provisions of the Virginia Administrative Process Act, (§ 9-6.14:1 et. seq. of the Code of Virginia) shall govern the promulgation and administration of these regulations and shall be applicable to the appeal of any

case decision based upon these regulations.

### § 2.4. Powers and procedures of regulations not exclusive.

The Commissioner may enforce these regulations through any means lawfully available.

### § 2.5. Effective date of regulations.

The effective date of these regulations shall be July 1, 1988 through June 30, 1989.

## PART III. FEES.

### § 3.1. Application fees.

A. A fee of fifty dollars shall be charged to the owner for filing an application for an onsite sewage disposal system permit with the Department. The fee shall be paid to the Virginia Department of Health by the owner or his agent at the time of filing the application and the application shall not be processed until the fee has been collected. Applications shall be limited to one site specific proposal. When site conditions change, or the needs of an applicant change, or the applicant proposes and requests another site be evaluated, and a new site evaluation is conducted, a new application and fee is required.

B. A fee of twenty-five dollars shall be charged to the owner for filing an application for the construction of a private well with the Department. The fee shall be paid to the Virginia Department of Health by the owner or his agent at the time of filing the application and the application shall not be processed until the fee has been collected. Applications shall be limited to one site specific proposal. When site conditions change, or the needs of an applicant change or the applicant proposes and requests another site be evaluated, and a new site evaluation is conducted, a new application and fee is required.

C. A person seeking revalidation of a construction permit for an onsite sewage disposal system shall file a completed application and shall pay a fee of fifty dollars.

D. A person seeking revalidation of a permit for the construction of a private well shall file a completed application and shall pay a fee of twenty-five dollars.

### § 3.2. Waiver of fees.

A. An owner whose income of his family is at or below the 1988 poverty Income Guidelines For All States (Except Alaska and Hawaii) and The District of Columbia established by the Department of Health and Human Services, 53 Fed. Reg. 4213(1988), shall not be charged a fee for filing an application for an onsite sewage disposal system permit or a private well construction permit.

B. Any person applying for a permit to construct a pit privy shall not be charged a fee for filing the application.

# Emergency Regulations

C. Any person applying for a construction permit for the replacement of a private well shall not be charged a fee for filing the application.

## § 3.3. Refunds of application fee.

A. An application fee shall be refunded to the owner (or agent, if applicable) if the Department denies a permit on his land on which the owner seeks to construct his principal place of residence. Such fee shall not be refunded by the Department until final resolution of any appeals made by the owner from the denial.

An owner or agent who withdraws his application shall not receive a refund.

## PART IV.

### ELIGIBILITY DETERMINATION FOR WAIVER.

#### § 4.1. Determining eligibility.

A. An owner seeking a waiver of an application fee shall request the waiver on the application form. The Department will require information as to income, family size, financial status and other related data. The Department shall not process the application until final resolution of the eligibility determination for waiver.

B. It is the owner's responsibility to furnish the Department with the correct financial data in order to be appropriately classified according to income level and to determine eligibility for a waiver of an application fee. The owner shall be required to provide written verification of income such as check stubs, written letter from an employer, W-2 forms, etc., in order to provide documentation for the application.

C. The proof of income must reflect current income which is expected to be available during the next twelve months period. Proof of income must include: Name of employer, amount of gross earnings, pay period for stated earnings. If no pay stub, a written statement must include the name, address, telephone number and title of person certifying the income.

## PART V.

### EMERGENCY REGULATIONS.

#### § 5.1. Notice.

The Department will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision of this regulation.

### DEPARTMENT OF MEDICAL ASSISTANCE SERVICES (BOARD OF)

Title of Regulation: VR 460-03-2.6109. Transfer of Assets.

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

Effective Dates: July 11, 1988 through July 1, 1989.

DECISION BRIEF FOR: The Honorable Gerald L. Baliles, Governor

SUBJECT: EMERGENCY REGULATION CONCERNING THE TRANSFER OF ASSETS

### SUMMARY

1. REQUEST: The Governor is hereby requested to approve the adoption of an emergency regulation concerning the Transfer of Assets. Since the President signed the Catastrophic Health Care Bill on July 1, 1988, the Department is requesting the Governor's prompt approval. Prompt approval will enable the Department to adopt the regulation and file it with the Registrar of Regulations to achieve a timely regulatory effective date.

#### 2. RECOMMENDATION:

/s/ Ray T. Sorrell, Director  
Date: July 1, 1988

#### 3. CONCURRENCES:

Secretary of Health and Human Resources: Concur

/s/ Maston T. Jacks (for Eva S. Teig)  
Date: July 1, 1988

#### 4. GOVERNOR'S ACTION: Approve

/s/ Gerald L. Baliles, Governor  
Date: July 10, 1988

#### 5. FILED WITH:

/s/ Ann M. Brown  
Deputy Registrar of Regulations  
Date: July 11, 1988 - 2:25 p.m.

### DISCUSSION

6. BACKGROUND: On June 14, 1988, the United States Congress passed the Catastrophic Health Care Bill which included a number of provisions affecting Medicaid. The bill was enacted and became effective upon the President's signing it on July 1, 1988. Section 1924(b) amended § 1917(c) of the Social Security Act which provides the authority for States to impose a period of Medicaid ineligibility for individuals who transfer or dispose of assets in order to become or remain eligible for Medicaid.

An emergency regulation is needed to amend the State Plan for Medical Assistance to comply with the new federal statutory requirements. Without this emergency regulation, the amendment to the State Plan can not become effective until August due to the prior publication

# Emergency Regulations

requirements of the Virginia Administrative Process Act, § 9-6.14.1. Therefore, the Governor is requested to authorize the Department of Medical Assistance Services to issue this emergency regulation.

Since 1969, Virginia Medicaid has imposed sanctions on individuals who have transferred assets in order to become or remain eligible for Medicaid. Medicaid is a program of assistance for indigent persons who are too poor to purchase health care services. Because the expense of medical treatment can be high and the eligibility limits for Medicaid have remained very low, a large number of individuals who wanted to retain assets or to pass them to their heirs have transferred ownership of these assets without compensation in order to become eligible for Medicaid. The sanction was designed to discourage individuals from deliberately impoverishing themselves in order to qualify for Medicaid. Unfortunately, the legal authority under which states were imposing transfer of assets rules was questionable.

In 1981, because transfers of assets were becoming a growing national problem and federal courts were declaring state initiated transfer of assets rules invalid, Congress passed § 1917 of the Social Security Act. This statute gave States the express legal authority to adopt an option to impose a period of ineligibility for Medicaid upon anyone who transferred assets with the intention of becoming or remaining eligible for Medicaid. The length of the period of ineligibility depended on the uncompensated value of the transferred asset. In determining the length of ineligibility, Virginia calculated the "uncompensated value" by deducting any compensation received for the property from the fair market value. Effective July 1, 1981, Virginia adopted the option to impose a transfer of assets sanction. For an uncompensated value of \$12,000 or less, the individual waited 24 months before becoming eligible for Medicaid. For uncompensated value greater than \$12,000, the waiting period was extended 2 months for each additional \$1,000 of total uncompensated value.

Since 1981, a number of states have adopted transfer of assets rules. However, Congress was concerned that not all states had done so. Therefore, in the Catastrophic Health Care Bill Congress amended § 1917(c) of the Social Security Act to mandate that all States impose a transfer of assets rule. The mandatory rule is more liberal than the former optional rule in order to be consistent with the new provisions on spousal impoverishment which were also included in the Catastrophic Health Care Bill.

After the Governor's approval is given, the Department of Medical Assistance Services expects to immediately file this emergency regulation with the Registrar of Regulations for publication as soon as possible in the Register. The effective period of the emergency regulation will be limited to one year or until full compliance with the provisions of the APA process in § 9-6.14.9 of the Code are met. This emergency regulation is to become effective upon its adoption and filing with the Registrar of

Regulations.

**7. AUTHORITY TO ACT:** The Governor is requested to approve the adoption of an emergency regulation in accordance with the § 9-6.14.4.1(C)(5) of the Code of Virginia. Without this approval, the Department will have no regulatory authority after July 1, 1988, for the proper administration of this aspect of the Medicaid program and therefore would be exposed to federal sanction or to litigation.

This emergency regulation will supersede those now in effect. In addition, it will supersede the requirements of § 32.1-325 of the Code of Virginia relating to transfers of assets into irrevocable burial trusts.

The Code of Virginia at § 32.1-325 gives the Board of Medical Assistance Services the authority to promulgate regulations which contradict Virginia Code requirements if the regulations are necessary to implement federally mandated changes. During the 1989 session of the General Assembly, the Department will request an amendment of the Code to conform with federal requirements.

**8. FISCAL/BUDGETARY IMPACT:** The present transfer of assets rule counts transfers from individuals who are living at home or in an institution. The amendment to § 1917(c) exempts transfers unless the individual is living in an institution.

The transfer of assets rule was developed to discourage individuals from impoverishing themselves to become eligible for Medicaid or to deter their application for two years after self-impoverishment. People retain their resources and spend them on medical bills or wait two years after transferring property before applying. Because it appears that this rule works there is, therefore, only limited data available to document the consequences of its absence.

Based on the very limited data available, the Department can anticipate that the impact will be at least:

|      | Total       | GF        | NGF       |
|------|-------------|-----------|-----------|
| FY89 | \$9,241,024 | 4,506,847 | 4,734,177 |

This is the annualized estimated value of resources held by nursing home residents who, in the last quality control review, were denied Medicaid eligibility because of excess resources. While current nursing home residents can not transfer property and gain eligibility, prospective residents can follow an easily identifiable series of maneuvers to obviate the rule as it is described in the Catastrophic Health Care bill. This estimate is likely to be very low because it does not include transfers of assets by applicants who are not nursing home residents. Such transfers will now be totally exempt. Because of lack of data, estimates are not yet complete on the costs of these individuals.

In addition, DMAS anticipates a direct loss of:

# Emergency Regulations

|      | Total     | GF      | NGF     |
|------|-----------|---------|---------|
| FY89 | \$999,333 | 487,375 | 511,958 |

This is the value of benefits to people who actually transferred assets and who will now be found eligible. Because many individuals who are informed of Medicaid eligibility rules may not have applied for benefits in the past, the loss of the deterrent effect of the rule will result in additional expenditures which cannot, at this point, be estimated.

Thus, the total impact of this change would be at minimum:

|      | Total        | GF        | NGF       |
|------|--------------|-----------|-----------|
| FY89 | \$10,240,357 | 4,994,222 | 5,246,135 |

Based on data available now, this impact is not projected to change over future years.

9. **RECOMMENDATION:** Recommend approval of this request to adopt the described emergency regulation. Failure by the Department to take this adoption action will leave the Department out of compliance with federal statute and subject to litigation.

## 10. Approval Sought for VR 460-03-2.6190

Approval of the Governor is sought for the emergency modification of the Medicaid regulation in accordance with the § 9-6.14.4.1(C)(5) of the Code of Virginia to adopt the following regulation:

\* \* \*

1. An institutionalized individual (as defined in paragraph 3) who, at any time during the 30 month period immediately before the individual's application for medical assistance under the State plan, disposed of resources for less than fair market value shall be ineligible for Medicaid. The period of ineligibility shall begin with the month in which such resources were transferred and the number of months in such period shall be equal to the lesser of

a. 30 months, or

b. the total uncompensated value of the resources so transferred, divided by the average cost, to a private patient at the time of application, of nursing facility services in the State.

2. An individual shall not be ineligible for medical assistance by reason of paragraph 1 to the extent that

a. the resources transferred were a home and title to the home was transferred to

(1) the spouse of such individual;

(2) a child of such individual who is under age 21, or is blind or disabled as defined in § 1614 of the Social Security Act;

(3) a sibling of such individual who has an equity interest in such home and who was residing in such individual's home for a period of at least one year immediately before the date of the individual's admission to the medical institution or nursing facility; or

(4) a son or daughter of such individual (other than a child described in clause 2) who was residing in such individual's home for a period of at least two years immediately before the date of such individual's admission to the medical institution or nursing facility, and who (as determined by the State) provided care to such individual which permitted such individual to reside at home rather than in such an institution or facility;

b. The resources were transferred to (or to another for the sole benefit of) the community spouse as defined in § 1924(h)(2) of the Social Security Act, or the individual's child who is blind or permanently and totally disabled;

c. A satisfactory showing is made to the State (in accordance with any regulations promulgated by the Secretary of the United States Department of Health and Human Services) that

(1) the individual intended to dispose of the resources either at fair market value, or for other valuable consideration, or

(2) the resources were transferred exclusively for a purpose other than to qualify for medical assistance; or

(3) the State determines that denial of eligibility would work an undue hardship.

3. In this section, the term "institutionalized individual" means an individual who is an inpatient in a medical institution or nursing facility.

4. This section applies to resources disposed of on or after July 1, 1988.

## VIRGINIA BOARD OF PROFESSIONAL COUNSELORS

**Title of Regulation:** Emergency Regulations of the Board of Professional Counselors (§ 2.2.B Supervised Experience).

**Statutory Authority:** § 54-929 of the Code of Virginia.

**Effective Dates:** July 12, 1988, through July 11, 1989.

# Emergency Regulations

## Summary:

The Board of Professional Counselors has determined that, within its new regulations that become effective July 6, 1988, it is necessary to amend two sections. If § 2.2.B.2, The Supervisor, is not amended, approximately 25 nonlicensed individuals, previously approved by the Board to provide supervision under its existing regulations, will be acting in violation of the Board's new regulations, which require supervisors to be licensed. Approximately 50 counselor trainees will be practicing counseling in violation of the new regulations governing supervisory experience.

If § 2.2.B.4 is not amended, any nonregistered supervised experience obtained prior to July 6, 1988, will not be considered acceptable by the Board for the purposes of licensure. Applicants for licensure as a professional counselor must document for the Board two years of post-graduate degree experience in counseling practice.

## Basis of Emergency:

The Board's new regulations require supervisors of counselor trainees to be licensed as professional counselors, psychologists, school psychologists, clinical psychologists, clinical social workers, or psychiatrists. The Board's current regulations require supervisors to be licensed or "license-eligible" as one of these practitioners as a condition for being approved by the Board as a supervisor.

Under the existing regulations, the Board requires individuals to apply to the Board and become designated as a "Board-approved" supervisor. Approximately 50 counselor trainees are currently working under the supervision of Board-approved nonlicensed supervisors. Unless an emergency regulation is implemented, these trainees will have to discontinue their training with these supervisors and enlist the supervision of licensed practitioners. The Board is of the opinion that an interruption in these trainees' learning experiences will create an unnecessary hardship for these individuals. Trainees currently registered with the Board working under these supervisors should be allowed to complete their training. No new supervisory arrangements with nonlicensed supervisors will be approved.

In addition, the Board intends to allow nonregistered supervision obtained prior to July 31, 1988, to be considered acceptable towards licensure if such supervision met the Board's requirements at the time it was rendered. The Board has been allowing nonregistered supervision to be accepted for purposes of licensure. The Board's new regulations require all supervised experience in a nonexempt setting to be registered at the onset of the experience with the Board. No allowance is made for the retroactive approval of supervision. Trainees in exempt settings

are strongly encouraged to initially register their supervision to assure its acceptability.

Through an emergency regulation, the Board will be permitted to consider a trainee's supervised experience that was not registered with the Board prior to July 31, 1988. Supervision obtained after that time must meet the Board's new requirements.

If an emergency regulation is not implemented, individuals in nonexempt settings who apply for licensure without having registered their two years of supervised experience will have to repeat the supervised experience before they can qualify for licensure.

## Nature of Regulation.

The emergency regulations will:

1. Allow persons who were Board-approved as supervisors under the existing regulations, but who are not licensed, to continue the supervision of trainees that have been registered with the Board until the completion of the trainee's supervised experience.

2. Allow the Board to consider supervision that was received but not registered prior to July 31, 1988, to be considered acceptable for the purposes of licensure. Such supervision must have met the requirements of the Board that were in effect at the time the supervision was rendered.

Failure to implement the emergency regulations will present a financial hardship for trainees who will be required to pay for additional supervised experience in an effort to meet the Board's new regulations.

The emergency regulations will be effective for one year from the date they are entered or until they are modified or suspended by regulations promulgated according to the normal rulemaking procedures under the Administrative Process Act.

The Virginia Board of Professional Counselors will receive, consider, and respond to petitions by any interested person at any time after reconsideration of a revision of these regulations.

## EMERGENCY REGULATIONS OF THE BOARD OF PROFESSIONAL COUNSELORS (§ 2.2.B SUPERVISED EXPERIENCE).

Amendments to the Regulations Governing the Practice of Professional Counseling.

Section 2.2.B.2. The supervisor.

a. A person who provides supervision for a prospective applicant for licensure as a professional



# Emergency Regulations

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counselor shall be licensed as a professional counselor, psychologist, school psychologist, clinical psychologist, clinical social worker, or psychiatrist.

a. (1) Supervision by relatives of a prospective applicant will not be approved.

b. (2) The supervisor of a prospective applicant shall assume full responsibility for the clinical activities of that prospective applicant specified within the supervisory contract for the duration of the supervised experience.

b. Persons who do not meet the requirements of § 2.2.B.2.a but were approved by the Board prior to July 31, 1988, to provide supervision to prospective applicants for licensure may continue to provide supervision to that individual, provided that the supervisory arrangement was registered with the Board prior to July 31, 1988.

## Section 2.2.B.4. Documentation of supervision.

a. Applicants must document successful completion of their supervised experience on appropriate forms at the time of application. Supervised experience obtained prior to July 31, 1988, that was not registered with the Board may be accepted towards licensure if this supervision met the requirements of the Board which were in effect at the time the supervision was rendered.

I recommend the adoption of the appended regulations of the Board of Professional Counselors on an emergency basis under the provisions of Code of Virginia § 9-6.14:4.1.C.5. These emergency regulations, if approved, shall expire one year following the date upon which they become effective or upon the effective date of replacement regulations proposed and promulgated under the nonemergency provisions of the Administrative Process Act, whichever is sooner.

/s/ Bernard L. Henderson, Jr., Director  
Department of Health Regulatory Boards  
Date: June 30, 1988

I approve the adoption of the appended regulations of the Board of Professional Counselors on an emergency basis under the provisions of Code of Virginia § 9-6.14:4.1.C.5.

/s/ Gerald L. Baliles, Governor  
Date: July 10, 1988

I acknowledge receipt of the appended emergency regulations to become effective immediately.

/s/ Ann M. Brown  
Deputy Registrar of Regulations  
Date: July 12, 1988 - 2:39 p.m.

## DEPARTMENT OF SOCIAL SERVICES (BOARD OF)

Title of Regulation: VR 615-01-15. Aid to Dependent Children - Unemployed Parent Demonstration (ADC-UP Demo) Project.

Statutory Authority: § 63.1-25 of the Code of Virginia.

Effective Date: July 1, 1988 through June 30, 1989

### Preamble:

*For the past four years, Virginia has tested various programs to assist unemployed two-parent households. From October 1, 1984, through June 30, 1986, the Emergency Services for Two-Parent Unemployed Families Program was operated in 15 localities; the program was based on General Relief Program eligibility criteria.*

*Since July 1, 1986, the Department of Social Services has operated the Aid to Dependent Children - Working Parents (ADC-WP) Program to provide temporary financial assistance to unemployed two-parent households. Eligibility criteria for the ADC-WP Program parallel the federal Aid to Families with Dependent Children-Unemployed Parent (AFDC-UP) Program found in federal regulations at 45 CFR 233.100 with the exception that the eligibility for participation in the ADC-WP Program is limited to six months. The Emergency Regulation (VR 615-01-15) authorizing the department to operate the ADC-WP Program expires June 30, 1988.*

*The 1987 session of the Virginia General Assembly mandated that the Office of the Secretary of Human Resources conduct a comprehensive evaluation of all unemployed two-parent assistance programs which the Commonwealth has piloted to explore alternative policies to address the social service and financial assistance needs of unemployed two-parent households in Virginia. The Secretarial Study revealed that Virginia's unemployed two-parent households will be best served by a program which, like the ADC-WP Program, is based on the federal AFDC-UP eligibility criteria. The study further revealed, however, that the federal requirements should be modified to ensure that the limited state resources are targeted at the most economically depressed areas of the state. The program, to be known as the Aid to Dependent Children - Unemployed Parent Demonstration (ADC-UP Demo) Project, will modify the federal program requirements to ensure families in areas of extended high unemployment who would not otherwise qualify for assistance under the federal program requirements will be eligible for participation in the project.*

*In response to the Secretarial Study, the Virginia General Assembly appropriated \$1.25 million for each year of the 1989-1990 biennium for the Department of Social Services to continue to operate an assistance*

# Emergency Regulations

*program to meet the needs of unemployed two-parent households. Due to the immediate needs of unemployed two-parent households, the department finds that a situation necessitating immediate promulgation of an emergency regulation exists. The emergency precludes the promulgation of said regulation from the public participation requirements of the Administrative Process Act, § 9-6.14:4.1 of the Code of Virginia.*

*The emergency approval of the Governor is needed to allow the department to continue a program to assist unemployed two-parent households effective July 1, 1988. The inability of the department to promulgate such regulation will result in a delay in the program's implementation.*

*The Department of Social Services will receive, consider, and respond to any petitions to reconsider or revise the emergency regulation contained herein which may be filed by interested persons or groups prior to the regulation's expiration.*

## Summary:

*Pursuant to § 63.1-25 of the Code of Virginia, the State Board of Social Services has been delegated authority to promulgate rules and regulations necessary for operation of public assistance programs in Virginia.*

*The Department of Social Services, in conjunction with the Office of the Secretary of Human Resources, is proposing the implementation of a program to assist unemployed two-parent households similar to the Aid to Dependent Children-Working Parents (ADC-WP) Program; state regulatory authority to operate the ADC-WP Program expires June 30, 1988. The program being proposed, the Aid to Dependent Children-Unemployed Parent Demonstration (ADC-UP Demo) Project, will modify the federal requirements of the Aid to Families with Dependent Children-Unemployed Parent (AFDC-UP) Program found at 45 CFR 233.100. These modifications are necessary in order to meet the needs of unemployed two-parent households in the most economically depressed areas of the Commonwealth.*

*The ADC-UP Demo Project will become effective July 1, 1988.*

VR 615-01-15. Aid to Dependent Children - Unemployed Parent Demonstration (ADC-UP Demo) Project.

## PART I. DEFINITIONS.

§ 1.1. The following words and terms, when used in these guidelines, shall have the following meaning unless the context clearly indicates otherwise:

*"Exempt resources" means the home in which the assistance unit lives and its contents; one motor vehicle with an equity value of \$1,500 or less; income producing farm and business equipment; cash and other assets, the total of which does not exceed the established resource maximum of \$1,000; one burial plot per assistance unit member; and burial funds and/or funeral arrangements with an equity value of \$1,500 or less per assistance unit member.*

*"Principal wage earner" means the parent in the home who earned the greater amount of income in the 24-month period, the last month of which immediately precedes the month in which an application is filed for assistance.*

*"Resource" means real and personal property, both liquid and nonliquid, including cash, bank accounts, the cash value of bank accounts, the cash value of life insurance, trust funds, stocks, bonds, mutual funds, or any other financial instruments, which the assistance unit has the right, authority, or power to liquidate.*

*"Sibling" means two or more children with at least one natural parent in common.*

*"Standard of assistance" means the dollar amount, based on the family size, which has been established to cover predetermined monthly maintenance needs. The standard of assistance represents payment levels at 90% of the standard of need.*

*"Standard of Need" means the full monthly amount, based on the family size, which is needed to cover the cost of predetermined monthly maintenance needs.*

*"Unemployed" means employed less than 100 hours a month; or if the 100 hour rule is exceeded for a particular month, the work must be intermittent as evidenced by the fact that the 100 hour rule was not violated during the prior two months and is expected to be under the standard during the next month; gross wages from employment do not exceed 185% of the state's standard of need.*

## PART II. HOUSEHOLD COMPOSITION.

§ 2.1. Aid to Dependent Children - Working Parents Program Unemployed Parent Demonstration (ADC-UP Demo) Project is limited to those families with a child under 18, or under 19 if enrolled in a full-time secondary, vocational, or technical school and is expected to graduate before reaching the age of 19, who would be eligible for assistance through the Aid to Dependent Children Program except that he is not deprived due to the continued absence, death, or incapacity of at least one parent, as long as the principal wage earner:

A. Has been unemployed for 30 days prior to receipt of assistance; and

# Emergency Regulations

B. Has not without good cause, within such 30-day period prior to receipt of assistance, refused a bona fide offer of employment or training; and

C. Has an attachment to the work force as evidenced by six or more quarters of work within any ~~13-calendar-quarter~~ 28-calendar-quarter period ending within one year prior to application for assistance, or within such one-year period, received unemployment compensation under an unemployment compensation law of a state or of the United States or would have "qualified" for unemployment compensation under the state's unemployment compensation law if he had filed application for same, or he performed work not covered by such law, which if it had been covered, would (together with any covered work he had performed) have made him eligible to receive such benefits upon filing an application ; or

D. Is the head of a young family with an insufficient work history or an individual who has been unable to accumulate the required number of work quarters due to illness.

§ 2.2. Any sibling of a child who is deprived based on the unemployment of a parent, who is himself deprived based on the continued absence or death of a parent and who is financially ineligible for assistance through the Aid to Dependent Children (ADC) Program, will be included in the ADC-UP Demo Project assistance unit.

## PART III. FINANCIAL ELIGIBILITY.

§ 3.1. The family's total income must be below the Aid to Dependent Children Program's Standard of Assistance for the appropriate family size. Income disregards used in the Aid to Dependent Children (ADC) Program are also applicable.

## PART IV. EMPLOYMENT SERVICES.

§ 4.1. In order for the family to be eligible for assistance, the principal wage earner must participate in a program of employment services which will consist of the following components:

- A. Job search.
- B. Work experience.
- C. Education/Training.

## PART V. RESOURCES.

§ 5.1. The total nonexempt resources of the family cannot exceed \$1,000.

§ 5.2. The family will be ineligible for assistance if they

improperly transfer or improperly dispose of their legal or equitable interest in nonexempt resources within two years from the date of application.

## PART VI. APPLICATION PROCESS.

§ 6.1. The application must be acted upon as quickly as possible, however, in all instances a determination regarding eligibility must be made within 45 days from the date the signed application is received in the agency.

## PART VII. ENTITLEMENT.

§ 7.1. Entitlement to assistance is limited to ~~six~~ twelve months during the period beginning July 1, ~~1987~~ 1988 and ending June 30, ~~1988~~ 1989, unless the principal wage earner is participating in an education or training activity in conjunction with the family's participation in a program of employment services. Such families will have their eligibility extended for the duration of their education or training or until the expiration of the program, whichever occurs first .

## PART VIII. MEDICAL ASSISTANCE.

§ 8.1. Recipients of assistance through the Aid to Dependent Children - Working Parents Program Unemployed Parent Demonstration (ADC-UP Demo) Project will not automatically be eligible for medical assistance through the Medicaid Program.

## PART IX. LOCAL PARTICIPATION.

§ 9.1. Participation in the project will be limited to the 11 localities which were experiencing double-digit unemployment in 1987 based on Virginia Employment Commission "Preliminary County/City Annual Average Unemployment Rates - 1987."

### Submitted by:

/s/ Larry D. Jackson, Commissioner  
Date: June 16, 1988

### Approved by:

/s/ Gerald L. Baliles, Governor of Virginia  
Date: June 30, 1988

### Filed by:

/s/ Joan W. Smith, Registrar of Regulations  
Date: July 1, 1988 - 1 p.m.

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# Emergency Regulations

**Title of Regulation:** VR 615-70-8. Policy for Child Support Enforcement.

**Statutory Authority:** § 63.1-25 of the Code of Virginia.

**Effective Dates:** July 1, 1988, through June 30, 1989.

**Preface:**

*In 1984, Congress enacted Public Law 98-378, better known as the Child Support Enforcement Amendments of 1984, which outlines the current federal regulatory base for the Virginia Division of Child Support Enforcement in the Department of Social Services. The 1985 Session of the Virginia General Assembly subsequently passed comprehensive child support enforcement legislation to achieve compliance with federal law and regulations. This legislation is contained in Chapters 13 and 14 of Title 63.1 of the Code of Virginia.*

*In 1988, several major legislative proposals were enacted by the General Assembly which strengthen Virginia's statutory base relative to child support enforcement. These measures ensure full compliance with federal regulations, provide for more effective and efficient child support collection and strengthen enforcement capabilities.*

*The enactment of this legislation, with an effective date of July 1, 1988, has required extensive review and revision of current policy with proposed policy to incorporate the statutory changes.*

*The Department of Social Services is promulgating VR 615-70-8 for adoption as an emergency regulation for a period of one year to be effective July 1, 1988 through June 30, 1989. If this emergency regulation is not passed on a timely basis, the authority and capabilities of the Department will be severely limited and it will be out of compliance with federal and state laws. This could result in a loss of federal funding as the program would not meet the standards of the audit criteria.*

*The Department is including a request for repeal of regulations VR 615-70-1, VR 615-70-2, VR 615-70-3, VR 615-70-4 and VR 615-70-6 as a part of VR 615-70-8.*

*A summary of the comparison between current policy and the proposed policy denoting whether the revision is a result of changes in Federal Regulations, changes in the Code of Virginia, or is a Division of Child Support Enforcement initiative. This comparison is available for inspection at the office of the Registrar of Regulations and at the Department of Social Services.*

**Summary:**

*Section 63.1-25 of the Code of Virginia provides the*

*State Board of Social Services with the authority to make such rules and regulations as necessary to carry out the intent of the Department's program. The Department of Social Services with the approval of the Board of Social Services has elected to repeal all existing child support enforcement regulations and promulgate this regulation to incorporate legislative changes enacted by the 1988 General Assembly to be effective July 1, 1988. The Board of Social Services approved this regulation at its meeting on June 16, 1988, with the intent that it exist as an emergency regulation until June 30, 1989.*

VR 615-70-8. Policy for Child Support Enforcement.

*"IV-A." Title IV-A of the Social Security Act is the part of federal law covering the Aid to Dependent Children (ADC) public assistance program. The term "IV-A Agency" refers either to a local welfare agency or to the Division of Benefit Programs at the State level.*

*"IV-D." Title IV-D of the Social Security Act is the part of federal law covering the Support Enforcement Program. The term "IV-D Agency" refers either to the Division of Child Support Enforcement or to any of the Regional or District Child Support Enforcement Offices.*

*"IV-E." Title IV-E of the Social Security Act is the part of the federal law covering the ADC Foster Care (ADC/FC) program.*

*"Aid to Dependent Children (ADC)." A category of public assistance paid on behalf of children who are deprived of one or both of their parents by reason of death, disability, or continued absence (including desertion) from the home.*

*"Aid to Families with Dependent Children." This term is synonymous with "ADC" as defined above. Federal laws and publications refer to the program as "AFDC"; Virginia uses "ADC."*

*"Assistance Unit (AU)." The grouping of the eligible children and the needy parent or other caretaker relative in a public assistance household.*

*"Acknowledged Father." The natural father of a child born out of wedlock for whom paternity has been acknowledged, in writing, under oath.*

*"Administrative Means of Enforcement." Procedures available to DCSE, other than judicial action, for the purpose of enforcing support obligations. These procedures include mandatory withholding of earnings, liens, orders to withhold and deliver, foreclosure, and distraint, seizure and sale of property.*

*"Administrative Support Order." A non-court ordered legally enforceable support obligation based on the income of the Responsible Parent and Custodial Parent as applied to the Support Scale, or a non-court ordered, legally*

# Emergency Regulations

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*enforceable obligation based on the amount of the public assistance grant paid or that could be paid for non-PA cases. The administrative order has the same force and effect as a court order.*

*"Arrearage." The total unpaid support obligation owed by a responsible parent.*

*"Assignment of Earnings." A voluntary wage assignment.*

*"Assignment of Rights." The legal procedure whereby an individual assigns support rights to the Commonwealth on behalf of a dependent child or spouse and dependent child. In Virginia, assignment of rights is automatic by operation of law with the receipt of public assistance.*

*"Assistance." A money payment from Social Services. For Support Enforcement purposes includes ADC or ADC/FC or State/Local Foster Care.*

*"Authorization to Seek or Enforce a Support Obligation." A signed authorization giving the Division of Child Support Enforcement the authority to seek or enforce support on behalf of a dependent child or a spouse and dependent child or on behalf of a person deemed to have submitted an application by operation of law.*

*"B-1 Payment." The first 50 dollars of a payment on the required support obligation is sent to the ADC family and disregarded by IV-A in determining the amount of the grant. The disregard is limited to a total of 50 dollars regardless of the number of responsible parents paying support.*

*"B-2 Distribution." The portion of the support monies not disbursed in a B-1 payment that is used to satisfy the state and federal shares of Public Assistance paid for current month.*

*"B-3 Payment." The portion of the support monies not used in B-1 and B-2 processing of a payment that is paid to the client up to the deficit between the amount of Public Assistance received in a month and the support order.*

*"B-4 Distribution." The portion of support monies not used in B-1, B-2, and B-3 processing of a payment that is applied to state and federal shares of arrearage for past public assistance paid.*

*"B-5 Payment." The portion of the support monies not used in B-1, B-2, B-3, and B-4 processing of a payment that is sent to the family in the month following the month in which the amount of the support payment was used to determine continued eligibility for an assistance payment under the IV-A plan.*

*"Caretaker." A parent, relative, or guardian who maintains care and control of a dependent child and*

*whose needs may be included with the child's in a public assistance payment under the ADC program.*

*"Child Support Services." Any civil, criminal, or administrative action taken by the Division of Child Support Enforcement to establish, modify, enforce or collect child support or child and spousal support.*

*"Client." The person in receipt of child support enforcement services.*

*"Cohabitor." Any individual who lives in the home as husband or wife with the natural or adoptive parent of a child.*

*"Commissioner." The Commissioner of the State Department of Social Services.*

*"Common Law." Case decisions that serve as legal principles where no statutes govern.*

*"Companion Case." Cases in which there are multiple responsible parents for a single recipient or non-ADC client or cases in which one responsible parent is associated with more than one IV-A case or non-ADC case.*

*"Custodial Parent." The natural parent, adoptive parent or stepparent who is legally responsible for the child and with whom the child lives.*

*"Debt" The total unpaid support obligation established by court order, administrative process or by the payment of public assistance, and owned by a responsible parent to either the Commonwealth or to his dependents.*

*"Deficiency Amount." The total needs of an ADC recipient (at 90%), minus any countable income. In some cases, the deficiency amount may be greater than the actual grant amount, due to a maximum allowable payment level.*

*"Department." The State Department of Social Services.*

*"Dependent Child." Any person who meets the eligibility criteria set forth in § 63.1-105 of the Code of Virginia, whose support rights have been assigned or whose Authorization to Seek or Enforce a Support Obligation has been given to the Commonwealth and whose support is required by Titles 16.1 and 20.*

*"Director." The Commissioner of the State Department of Social Services or his designee or authorized representative.*

*"Disposable Earnings." The portion of earnings remaining after the deduction of any amounts as required by law.*

*"Distraint, Seizure and Sale." A procedure for enforcing debts, involving the direct seizure and sale of the debtor's*

# Emergency Regulations

property by DCSE.

*"District Office."* One of the DCSE offices responsible for the operation of the IV-D program.

*"Earnings."* Current or future income due from the responsible parent's employer and compensation paid or payable for personal services, whether denominated as wages, salary, commission, bonus, or otherwise, and specifically includes periodic payments currently being made by the responsible parent pursuant to pension or retirement programs, unemployment compensation benefits, debts owed the responsible parent and any income or profits due the responsible parent from any source including gambling, lotteries, prizes or any other windfall or other payment of any type.

*"Emancipate."* To judicially release from parental care and responsibility. A child may be emancipated by court action or marriage, for example.

*"Expedited Process."* Written procedures to expeditiously establish and enforce child support obligations having the same force and effect as those established through judicial procedures.

*"Federal Parent Locator Service (FPLS)."* A service operated by the Department of Health and Human Services to assist states in searching for and locating responsible parents for the purpose of obtaining child support.

*"Financial Records."* Financial Records include, but are not limited to, records held by employers showing earnings, profit sharing contributions and benefits paid or payable and records held by financial institutions, broker-dealers and other institutions and entities showing bank accounts, IRA and separate contributions, gross winnings, dividends, interest, distributive share, stocks, bonds, agricultural subsidies, royalties, prizes and awards held for or due and payable to a responsible parent.

*"Financial Statement."* A Financial Statement is a sworn statement showing the financial situation of both the responsible parent and the custodial parent. A statement is filed annually with the Department of Social Services. Failure to comply with the requirements of the Code section describing the financial statement shall constitute a Class 4 misdemeanor.

*"Foreclosure."* A judicial procedure to enforce debts, involving a forced judicial sale of the real or personal property of the debtor.

*"Foster Care (State/local FC)."* A category of assistance financed solely out of State and local funds on behalf of children who have been removed from their parents' home due to detrimental conditions, but who do not meet the ADC criteria.

*"Good Cause."* "Good Cause" refers to cases in which

the recipient of ADC or ADC-FC claims good cause for not cooperating in providing information about the responsible parent. The "good cause" claimed can be because of physical or emotional harm to the caretaker or child, i.e., child was conceived by rape or incest.

*"Grant Amount."* The amount of public assistance to which the family is entitled.

*"Health Care Coverage."* Any plan providing hospital, medical or surgical care coverage for dependent children, provided such coverage is available and can be obtained by a responsible parent, at a reasonable cost.

*"Hold Harmless Payments."* ADC cases for which the deficiency amount at 90% exceeds the grant amount at 90%; the difference between the grant and the deficiency is paid to the family by DCSE out of the current month's support collections.

*"Immediate Payroll Deduction."* A wage assignment that is entered at the time the court order is entered. This can be used to collect current support and delinquent support.

*"Immediate Withholding of Earnings."* A wage assignment that is entered at the time an administrative support order is established. This can be used to collect current support and delinquent support.

*"Initiating State."* The state in which a URESA proceeding is started and where the obligee resides.

*"Judicial Means of Enforcement."* Action through the court to enforce support obligations.

*"Legal Father."* A man who is recognized by law as the parent of a minor child.

*"Local Agency (LA)."* The departments located in each county, city, or town throughout the Commonwealth charged with administering public assistance and social service programs.

*"Mandatory Payroll Deduction."* A judicial means of collecting current and delinquent support. This remedy can be requested by the party owing court ordered support or ordered by the judge for good cause shown or delinquency that has accrued.

*"Mandatory Withholding of Earnings (MWE)."* An involuntary administrative means of collecting current and delinquent support. A specified sum is regularly withheld from the responsible parent's salary by the employer and forwarded to DCSE. This must be initiated after a delinquency of one month's support.

*"Medicaid Only."* This is a category of Public Assistance whereby the family receives medical benefits only and there is no assistance grant.

*"Mistake of Fact."* An error in the identity of the payor

# Emergency Regulations

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or the amount of current support or arrearage.

**"Net Income."** That income remaining after the following deductions have been taken from gross income: federal income tax, state income tax, federal income compensation act benefits, any union dues where collection is required under federal law, and any other amounts required by law.

**"Non-PA Cases."** IV-D cases in which individuals not receiving ADC, ADC/FC or State/Local Foster Care apply for support enforcement services.

**"Notice and Finding of Financial Responsibility (N&F)."** The document which, (1) makes an administrative debt legally enforceable and (2) makes use of administrative means of enforcement legal in court ordered cases. Effective July 1, 1988, this document is superceded by the Administrative Support Order.

**"Obligation."** The amount and frequency of money which the responsible parent is legally bound to pay.

**"Obligee."** The person to whom the duty of support is owed.

**"Obligor."** Any person owing a duty of support.

**"Order to Withhold and Deliver."** An administrative procedure to enforce a support debt. It orders a third party who has control over real or personal property belonging to the responsible parent to turn over the property to the Department of Social Services.

**"Other Legal Process."** A procedure by which the Commonwealth has the authority to establish a debt without court involvement.

**"Parentage."** Determination of fatherhood (paternity) or motherhood by judicial process.

**"Paternity."** Fatherhood determination.

**"Personal Property."** Any property, such as cash, liquid assets, automobiles, etc., not defined as real property.

**"Public Assistance (PA or ADC)."** A payment from DSS; for Support Enforcement purposes, ADC, ADC/FC or State/Local Foster Care.

**"Putative Father (PF)."** Alleged father. A person who has been named as the father of a child born out-of-wedlock, but for whom paternity has not been established.

**"Real Property."** Property such as land, tenements, and buildings, which are permanent, fixed, and immovable.

**"Recipient."** A person receiving public assistance under the IV-A program of Title XIX (Medicaid) Program.

**"Responding State."** The state in a URESA Action responding to a proceeding initiated in another state because it is the state where the responsible parent resides.

**"Responsible Parent."** Any person obligated under law for the support of a dependent child and/or the caretaker or parent of such child.

**"Revised Uniform Reciprocal Enforcement of Support Act (RURESA)."** The revised uniform law which sets forth reciprocal legislation concerning the enforcement of support between the states.

**"State Parent Locator Service (SPLS)."** The section of DCSE responsible for contacting agencies of the Commonwealth and other states to locate absent responsible parents. All requests from other states and Virginia State agencies for location of responsible parents are channeled through the Central Office of DCSE.

**"Supplemental Security Income."** A program administered by the federal government which guarantees a minimum income to persons who meet the requirement as aged, blind, or disabled.

**"State Agency."** Division of Child Support Enforcement.

**"Statutes."** Formal written law found in code books.

**"Support Enforcement Cases."** IV-D cases resulting from application for Support Enforcement services by individuals not receiving ADC, ADC/FC, State/Local Foster Care or cases referred by the IV-A agencies.

**"Support Enforcement Hearings Officer."** An impartial person authorized by the Division of Child Support Enforcement to render decisions about the proper application of policy and procedure when the responsible parent files an appeal.

**"Support Scale/Guidelines."** The scale/guidelines used to establish a monthly obligation amount a responsible parent must pay on behalf of his dependents.

**"Uniform Reciprocal Enforcement of Support Act (URES A)."** A uniform law which sets forth reciprocal legislation concerning the enforcement of support between the states.

## 1. LEGAL BASE AND PURPOSE

The Division of Child Support Enforcement (DCSE) is located within the Virginia Department of Social Services. DCSE's duty is to locate, establish, enforce, and collect and disburse child support for children from Responsible Parents. The Division receives child support referrals from the IV-A (local social services) office within two days of approval of an application for ADC and ADC/FC. The Division also provides services to those residents of Virginia not receiving ADC and ADC/FC who apply and

# Emergency Regulations

to other states requesting support services for their IV-D cases. The \$1.00 fee assessed for DCSE services, is paid by the Department on behalf of all non-ADC applicants. Public Laws 93-647 and 98-378 outline the requirements that each state must meet regarding the Child Support Enforcement Program. Virginia complies with these requirements and has enacted state legislation to support them.

The Division of Child Support Enforcement has five regional Offices which supervise fifteen district offices. The District Offices are staffed with investigators and program support staff who are responsible for establishing and enforcing support obligations. An Assistant Attorney General or contract attorney is assigned to assist District Offices in legal matters. The Division contracts with various Commonwealth's Attorneys' offices, county and city attorneys and private attorneys for legal services. In addition, there are points of service around the state to distribute support payments and information regarding the program.

The Child Support Enforcement Program provides the following services: location of absent parents, establishment of paternity, establishment and enforcement of support orders, including health care coverage provisions, and the collection and disbursement of support.

## 2. UNAUTHORIZED PRACTICE OF LAW

Section 54-44 of the Code of Virginia, as amended, provides that anyone found guilty of practicing law without a license shall be guilty of a misdemeanor.

### a. Practice of Law

There are a number of activities which have been determined to be the practice of law.

#### 1) Examination or cross-examination of witnesses

A representative of the Division of Child Support Enforcement who is not an attorney may testify on behalf of the Division but cannot direct questions to others who might appear as witnesses or other parties.

#### 2) Presentation of legal conclusions.

A legal conclusion is a proposition arrived at by the application of rules of law to the facts. Thus, statements as to the admissibility of evidence, the sufficiency of evidence as measured against a burden of proof, and the like are the practice of law and cannot be performed by members of the Division of Child Support Enforcement staff who are not attorneys.

### b. Activities Performed by Investigators

A number of activities are considered permissible by an individual who is not an attorney.

- 1) Appearing before a Clerk of Court or Intake Officer and offering facts so that a petition may be drawn and completed;
- 2) Testifying on any factual matters related to the support issue of which they have personal knowledge;
- 3) Moving for a continuance;
- 4) Appearing to obtain a judgment on behalf of the Commonwealth;
- 5) Commencing an action based upon a warrant which has been obtained with approval of legal counsel;
- 6) Setting a case for trial;
- 7) Presenting affidavits of account.
- 8) Complete and sign, as representatives of the DCSE, petitions, motions, and notices in the name of the Commonwealth of Virginia to the extent that the information provided by such employee is limited to facts, figures or factual conclusions, and does not include legal arguments or legal conclusions.

### c. Consultation with the Assistant Attorney General

Child Support Enforcement staff should consult with the Assistant Attorney General or other attorney who may be assigned to perform legal functions for the Division in the following cases:

- 1) When briefs and/or pleadings may need to be prepared and filed;
- 2) When examination or cross-examinations may be necessary;
- 3) When the presentation of legal conclusions may be desired.

## 3. LEGAL COUNSEL FOR DCSE

### a. Assistant Attorneys General (AAG)

An Assistant Attorney General is assigned to each District Child Support Enforcement Office. Local procedures are followed for referring cases to the AAG. The Attorney General's Office may contract for legal counsel to represent the District Child Support Enforcement Offices.

### b. Commonwealth's Attorneys/City/County Attorneys/Private Attorneys

These attorneys may be available to help DCSE with



# Emergency Regulations

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court actions for support when there exists a contract between the Department of Social Services and those attorneys who handle Child Support Enforcement cases. These attorneys are called Cooperative Agreement Attorneys. Local procedures are followed for referring cases to contract attorneys.

## 4. COURTS

DCSE staff works with two levels of courts - the Juvenile and Domestic Relations District Court (JDRCD) and the Circuit Court. The JDRDC has the authority to establish paternity and support obligations, to enforce support, and to hear appeals of administrative determinations. The Circuit Court has the authority to grant divorces, order support payments, hear appeals of state and federal tax intercepts and to hear appeals of decisions of the JDRDC.

## 5. CONFIDENTIALITY AND EXCHANGE OF INFORMATION

Federal and State laws require the Division of Child Support Enforcement to safeguard personal information collected about absent responsible parents and applicants for services. The information can be released only to the subject of the information pursuant to provisions of the Privacy Protection Act and to others authorized pursuant to Virginia Code § 63.1-275.7.

### a. Restrictions for Collecting Information

All State, county and city offices and agencies are required by law to provide DCSE with information about absent parents to help locate them and to collect support. The Commissioner of the Department of Social Services and the Director of the Division of Child Support Enforcement have the right to subpoena financial records of the obligor and the obligee from any person, firm, corporation, association, political subdivision or state agency to corroborate the existence of assets identified by the Internal Revenue Service.

### b. Restrictions for Releasing Information

1) Names, addresses and other personal information about RPs and Support Enforcement clients, except information provided by IRS, can be released for the following reasons:

- a) investigation or prosecution of persons suspected of abusing federal or federally assisted programs for needy individuals.
- b) information necessary for the administration of federal or federally assisted programs for needy individuals.
- c) information requested by Consumer Credit Reporting Agencies regarding RPs who have accumulated at least \$1,000 in arrearages.

d) information that a lien has been filed by DCSE may be released to Consumer Credit Reporting Agencies, regardless of the amount.

2) Information provided by IRS will not be released to anyone outside of the IV-D agency, except that

a) payment information can be provided to local welfare agencies and the courts, but the source of the payment (IRS) will not be given; and

b) if the information is verified by a source independent of IRS, the information can be released.

3) When personal data about absent parents and Support Enforcement clients is released, the following conditions must be satisfied:

a) the confidentiality of the information will be preserved by the person who receives the information;

b) the information will be used only for the purpose for which it was requested;

c) the information will be kept in a secure place with limited access; and,

d) permission to release information to agencies that do not have access to DCSE information must be given by the subject of the information before the information can be released. Agencies that have access to information are courts and other state IV-D Agencies.

4) The Director of DCSE, or designee, has the authority to release information of RPs to other agencies, including the Internal Revenue Service who reviews the names of such persons in connection with income tax returns and claims of dependencies made by persons filing income tax returns.

5) Requests for confidential, personal information from the general public will be answered within 14 days of receiving the request. The answer will explain that this information is subject to § 63.1-274.7 of the Code of Virginia which says this information is confidential.

6) Requests for information from courts and law enforcement officials should be referred to the District Administrator or the District's legal counsel.

7) Copies of personal information about himself/herself kept by DCSE can be provided to the RP or client receiving DCSE services after review of the case by DCSE's legal counsel. The RP or CP can also correct, explain, and challenge the personal information kept about him or her. However, the RP or CP cannot review the entire case record. The RP or CP can be given medical or psychological information about himself/herself that DCSE might have collected, unless

# Emergency Regulations

the physician has stated that the RP or CP should not be given the information. The RP or CP cannot review case information solely related to other people.

8) If the source of any information has forbidden its release, the RP will be told to contact that source for the information. IRS information cannot be released unless it is verified by a third source. In addition, the Credit Bureau does not allow the release of information obtained from them.

A fee of ten cents a page will be charged for copying case record information for the RP or CP, except during the hearings process and for forms given to the RP which have not already been served on the RP.

9) Copies of the following forms are to be released to the obligee:

(a) copy of Notice of Proposed Action (MWE)

(b) copy of Administrative Support Order

(c) copies of Notices for Appeal Hearings and decisions for all administrative appeals

10) Copies of court orders and fiscal records can be released to both parties.

## 6. EXCHANGE OF INFORMATION WITH THE DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

The Department of Social Services has a cooperative agreement with the Department of Medical Assistance Services (DMAS) to provide health care coverage information to that agency on all ADC and ADC/FC cases in which health care coverage is in force. Information regarding health care coverage for dependents in the Non-PA cases can be provided to DMAS only with the consent of the Non-PA applicants. This information is used to identify additional medical insurance to offset Medicaid cost. In out-of-state cases, health care coverage information is to be transmitted to the out-of-state IV-D Agency.

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## 1. LEGAL BASE AND PURPOSE

Federal regulations require cooperation among state IV-D agencies. The states have also adopted uniform reciprocal laws which require cooperation between two courts of different states. This interaction ensures that support enforcement services are provided for all cases, regardless of where the absent parent resides.

The Virginia IV-D agency manages the flow of interstate correspondence through the Interstate/URESAs Unit located in Central Office. All incoming IV-D URESAs Petitions and IV-D Requests are forwarded to the Central Registry in

Central Office and distributed to appropriate District Offices for enforcement or to the State Parent Locator Service for locate activity. The District Offices then respond directly to the other state regarding actions taken on these cases. The Interstate URESAs Unit also carries out the Department's designation as URESAs State Information Agent. The URESAs State Information Agent's duties include maintaining a list of the State's courts and addresses and providing this information to other states. Another responsibility is to provide other states' court addresses to all courts in Virginia. The Agent also assists in problem solving and provides general guidance for interstate cases.

## 2. COOPERATION AMONG IV-D AGENCIES

Federal regulations require the IV-D agency in a state to provide the same services that it provides to its own cases when a case is referred from another state's IV-D agency. Requests for help are made in writing. Each request lists the specific services needed to collect support.

### a. Responsibilities of Virginia When Acting as the Initiating State IV-D Agency

The District Office must:

1) Refer any interstate IV-D case to the responding State IV-D Interstate Central Registry for action. This includes URESAs petitions and requests for location, administrative reviews in Federal income tax refund offset cases, wage withholding and State income tax refund offset. If a state has a long arm statute which allows paternity establishment, the initiating state should use this authority whenever appropriate.

2) Provide the IV-D agency in the responding state with sufficient, accurate information to act on the case by submitting with each case any necessary documentation and appropriate Federal transmittal form.

3) Provide the IV-D Agency or Interstate Central Registry in the responding state with requested additional information or notify the responding state when information will be provided within 30 days of receipt of the request by submitting an updated form.

4) Notify the IV-D agency in the responding state within 10 days of receipt of new information on a case by submitting an updated form.

5) Contact the responding state IV-D agency for status update on cases not in a payment status if 90 days has elapsed since the last contact with the responding State IV-D agency.

6) Pay for blood tests ordered in the responding state resulting from the action commenced by the initiating state.

# Emergency Regulations

## b. Responsibilities of Virginia When Acting as the Responding State IV-D Agency

The District Office must:

1) Within 60 days of receipt of the Federal Transmittal Form:

a) provide location services.

b) notify the IV-D agency in the initiating state of necessary additions or corrections to the request form.

c) process the interstate IV-D case to the extent possible pending necessary action by the initiating state if the documentation received with a case is inadequate and cannot be remedied by the responding IV-D state agency without the assistance of the initiating state.

2) Inform the initiating state IV-D agency and Interstate Central Registry of the responding state within 10 days of locating the RP, if the RP is in a different jurisdiction from the one originally thought to be.

3) Provide any necessary services as it would intrastate cases. This includes deciding whether to file a URESA Petition or proceed administratively on a case even if the other state IV-D agency requests that a URESA Petition be filed. If an Administrative Support Order is established, the order will be filed with the appropriate court as in an intrastate case.

4) Inform the IV-D agency in the initiating state in advance of any formal hearings which may result in establishment or modification of an order.

5) Notify the IV-D agency in the initiating state within 10 days of receipt of any new information on a case. This shall be done on an updated transmittal form.

6) Notify the Interstate Central Registry in the initiating state when a case is closed.

## c. Services Available Through a IV-D Agency

The services that may be requested of a IV-D agency include, but are not limited to, the following:

1) Establishing paternity and attempting to obtain a judgment for costs should paternity be established. The State IV-D Agency should have established and be using its long arm statute that allows establishment of paternity. Virginia has a long arm statute for establishing paternity.

2) Contacting the Responsible Parent (RP) about paying support, obtaining financial information from

the RP, establishing a support order for child support and a provision for health coverage.

3) Processing and enforcing orders referred by other state whether pursuant to URESA or other legal process. The Virginia IV-D Agency will make the determination as to whether to file a URESA Petition or proceed administratively to establish/enforce a support obligation.

4) Collecting and monitoring any support payment and forwarding payments to the location specified by the IV-D agency in the initiating state no later than 10 days after the collection is received by the responding state IV-D agency, except with respect to certain Federal tax offsets. Identifying information must be included, plus the date when the payment was received and the other state's FIPS Code.

## 3. THE REVISED UNIFORM RECIPROCAL ENFORCEMENT OF SUPPORT ACT (RURES)

Reciprocal laws are in effect in all states, the District of Columbia, and the territories of the United States. The Commonwealth of Virginia has agreed to reciprocate with certain foreign countries that have a substantially similar law. Reciprocal cases initiated by these countries will be referred to the District Office for necessary enforcement action.

Reciprocal laws generally provide three options: criminal or civil nonsupport petitions, and registration of an existing order. Some of these actions may not be allowed, depending on each states' law.

## 4. PAYMENT AND RECOVERY OF COSTS IN INTERSTATE CASES

Except as follows, the responding state must pay the costs it incurs in processing interstate IV-D cases:

a. The IV-D agency in the initiating stage must pay for the costs of blood testing in actions to establish paternity. The responding state must attempt to obtain a judgment for the costs of blood testing from the putative father, and if costs of blood testing are recovered, must reimburse the initiating state.

b. The IV-D agency may recover its costs of providing services in interstate Non-ADC cases as prescribed by costs recovery policy for that state IV-D agency.

c. The IV-D agency in the responding state must identify any fees or costs deducted from support payments when forwarding payments to the IV-D agency in the initiating state.

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## 1. LEGAL BASE AND PURPOSE

# Emergency Regulations

45 CFR 302.33 and Virginia Code § 63.1-250.2 require that support enforcement services be made available to all persons with dependent children in need of support.

## a. Who Qualifies for Support Enforcement Services

1) Residents of Virginia who are parents or legal guardians of children under 18 years of age who reside with the parent, guardian, or legal custodian. The person applying for services must live within the physical boundaries of the State of Virginia or claim Virginia as his/her place of residency (i.e., military personnel).

2) Residents of Virginia who are parents or legal guardians of children over 18 years of age, when court-ordered support arose from a separation agreement incorporated into a final divorce. The court order must have been entered before the child turned eighteen. Enforcement services will only be available when it is determined that a current order for support is in effect (i.e., current support ordered through the age of 21). The person applying for services must be a legal resident living within the physical boundaries of the State of Virginia or claim Virginia as his/her place of residency (i.e., military personnel).

3) Residents of Virginia who are parents of children up to nineteen years of age when court ordered support is to be paid to the parent. This may be ordered by a court beyond the age of 18 when the child is a full time high school senior. The person applying for services must live within the physical boundaries of the State of Virginia or claim Virginia as his/her place of residency (i.e., military personnel).

4) Residents of Virginia who are parents or legal guardians of children over eighteen years of age who are handicapped. A current support order can be established for a disabled child over the age of 18. The person applying for services must live within the physical boundaries of the State of Virginia or claim Virginia as his/her place of residency (i.e., military personnel).

5) Virginia State/local foster care agencies.

6) Virginia courts with authority to issue support orders.

7) Support Enforcement cases referred by IV-D agencies in other states.

8) ADC and ADC/FC cases referred by local Virginia social service agencies.

## b. Types of Cases DCSE Can Enforce

1) In-state cases

a) ADC or Foster Care Cases - Party involved receives ADC, ADC/FC, or State/Local FC.

b) Non-ADC Cases - These can be transition cases in which the ADC case (does not apply to ADC/FC) closes and DCSE continues collecting and enforcing on the case(s). For cases that were never on ADC an application must be made and a fee paid.

## 2) Out-of-State Cases

a) ADC or Foster Care Cases - Recipient receives ADC, ADC/FC or State/Local FC benefits.

b) Non-ADC Cases - Cases from other state IV-D Agencies in which no ADC or ADC/FC benefits have been paid.

Note: Enforcement of child support orders is initiated for those in-state and out-of-state cases listed above. In order to enforce spousal support orders, the following three requirements must be satisfied:

a) the children must be living with the custodial parent,

b) a child support obligation must exist which is being enforced under the IV-D State plan, and

c) the spousal support obligation must already be in effect; that is, the IV-D agency may enforce an existing spousal support order, but may not pursue the establishment of such an order.

IV-D enforcement activity is permitted regardless of whether the custodial parent's order for support is included in the children's order or is the subject of a separate order. However, in Non-ADC cases, spousal support can only be collected by the IV-D agency from the parent of the child for whom a support obligation is being enforced. Enforcement activity is not appropriate if the payor of spousal support is a different individual than the child support payor. In ADC cases, the recipient is not allowed to receive support payments, therefore spousal support must be redirected to DCSE.

## c. Services Available for Support Enforcement Cases

The following services are applied for and provided as a group.

1) Location of Responsible Parents to establish and enforce child support orders. This involves the State Parent Locator Service and the ability to have the Locate Unit access the Federal Parent Locator Service.

2) Establishment of paternity.

3) Establishment and modification of support orders

# Emergency Regulations

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for support payments with provision for health care coverage.

- 4) *Administrative and judicial enforcement.*
- 5) *Collection and disbursement of support money.*

The State Parent Locator Service will accept applications from Virginia courts and other State IV-D Agencies for "locate only" services. This is the only separate service that is offered and it is only offered to these two entities.

## 2. THE APPLICATION PROCESS

Applications for support enforcement services are not required for ADC or ADC/FC cases. By accepting assistance under the ADC or ADC/FC programs, these cases are referred for services by the IV-A agency. For out-of-state cases, a written request for services is required from the out-of-state IV-D agency. Courts and agencies trying to enforce child support orders can request location services by completing an application form and sending it directly to CO.

DCSE staff will explain the services to the Non-Public Assistance applicant. Staff must inform the client at the point of application that if a debt is owed to the Commonwealth due to the past payment of ADC or ADC/FC funds, the collection of any money designated as a support payment above the amount due for current support will be applied to the ADC or ADC/FC debt. In addition, any money received from tax setoffs will be applied, in total, towards the ADC or ADC/FC debt until satisfied.

### a. Requirements for Applying for Services

1) An application form authorizing DCSE to provide services must be completed by the applicant for all Support Enforcement cases, except those transferring from an ADC status, or those receiving ADC and ADC/FC. A Responsible Person Information Form containing identifying information about the RP is sent to the IV-D agency by the IV-A agency for these cases.

2) A Responsible Person Information form must be completed for all Support Enforcement cases, except out-of-state referrals. This form provides identifying information about the RP to enable DCSE to collect and enforce on a case.

3) A financial statement must be completed showing the applicant's income. This will be used to compute the obligation for the Administrative Support order.

### b. Application Fee and Recovery of Costs

An application fee of \$1.00 is charged for Non-ADC cases. The Commonwealth pays this fee on behalf of the

Non-ADC, SL/FC applicants or courts and state agencies who want DCSE services.

### 1) The Application Fee

Federal and State laws require an application fee for Support Enforcement services that are provided. There is no application fee charged for ADC cases that continue receiving services after the ADC case closes.

a) The application fee is \$1.00 for all services and is paid by the State.

b) No additional application fees will be charged if other absent parents or children are added later to the original case.

c) Persons reapplying for Support Enforcement services after they have requested that their DCSE can be closed are assessed an application fee as if they are new cases and this fee is paid by the State.

### 2) Recovery of Costs

The client is not responsible for any additional cost above the application fee which is paid by the Commonwealth. However, if the putative father signs a stipulation agreement to pay or is court-ordered to pay, he is responsible for payment of blood testing costs.

### 3) Services Provided Without An Application Fee Being Charged

a) Location of absent parents for other state IV-D agencies and for in-state courts.

b) All support enforcement services for

(1) out-of-state Support Enforcement referrals, and

(2) Clients who continue to receive services following the closing of their ADC case (not applicable to ADC/FC). Only former ADC clients who stated in writing that they did not want DCSE services (after 10/1/84), or whose case closed prior to 10/1/84 will be charged an application fee if they later decide to apply for child support services.

(3) State/Local foster care agencies

## 3. RIGHTS AND RESPONSIBILITIES OF THE SUPPORT ENFORCEMENT CLIENT AND DCSE

At the time of initial application and applicant must be informed of his or her rights and responsibilities and of the Division's rights and responsibilities.

### a. Custodial Parent's Rights

# Emergency Regulations

A client of the Division of Child Support Enforcement, receiving location of absent responsible parent services, establishment of paternity or establishment of obligation services, and enforcement and collection services, has the right:

- 1) To receive notice regarding major decisions about the case.
- 2) To be informed periodically about the progress of the case.
- 3) To receive copies of the Notice of Proposed Action Form for the MWE, Administrative Support order and copies of Notices of Appeal Hearing and decisions of Administrative Hearings sent to the Absent Responsible Parent.

## b. Custodial Parent's Responsibilities

A Child Support Enforcement client is required to cooperate with the Division of Child Support Enforcement by fulfilling the following responsibilities:

- 1) Give full and complete information regarding the Absent Responsible Parent's name, address, Social Security number, current employment and employment history. Provide any other information that may be necessary to locate him/her; to establish paternity if needed; to establish a support obligation; and to enable DCSE to enforce the obligation in a timely manner. (The amount of information provided will affect the priority level assigned in working the case.)
- 2) Inform DCSE of any public assistance that has been received on behalf of the custodial parent and the custodial parent's children, and whether currently receiving or expecting to receive Public Assistance.
- 3) Inform DCSE if there has been any court action to establish or to attempt to establish a support order against the Absent Responsible Parent. DCSE must know if divorce is pending or if proceedings are going to take place.
- 4) Notify DCSE immediately of any change in financial circumstances and of any new information related to the Absent Responsible Parent.
- 5) Notify DCSE before hiring an attorney to represent the Custodial Parent in child support matters.
- 6) Send copies, promptly, to DCSE of any legal documents received pertaining to divorce, support, custody, etc.
- 7) Inform DCSE of any plans for reconciliation with the Responsible Parent, as this will affect the handling of the case.

8) Provide DCSE with a financial statement upon application and as specified thereafter as required by the Code of Virginia. The custodial parent may be required to provide a verification of child care expenses and extraordinary medical expenses.

9) Notify DCSE regarding any change of address or name.

## c. Division of Child Support Enforcement's Rights

- 1) To decide the best way to handle the applicant's case to obtain the desired results.
- 2) To close the case when the services applied for have been provided or all, available, appropriate resources have been exhausted.

DCSE will close the case when:

- a) The client provides written request that the case be closed;
- b) The Putative Father/Responsible Parent cannot be found and all available location resources have been used twice at 6 month intervals;
- c) The Putative Father denies paternity, blood testing for paternity is inconclusive or not approved, and there is insufficient other evidence to petition the court;
- d) The court finds the Putative Father not to be the father;
- e) There is a long-term (one year or more) inability to pay support due to the Responsible Parent's incarceration or disability;
- f) The Responsible Parent receives Public Assistance or Social Security Income (SSI) or the client and dependents apply for and receive Public Assistance; the Non-ADC case will open up as an ADC case.
- g) The court finds there is no responsibility to pay support;
- h) All amounts established by the support order have been collected and the obligation has been terminated.
- i) The absent parent (except for employees of the U.S. Government) or Putative Father resides in a foreign country which has no support/reciprocity agreement with Virginia;
- j) The client moves out of Virginia.
- k) If the client and his/her attorney initiate legal action related to the location of a RP, establishment of paternity, establishment and enforcement of a

# Emergency Regulations

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*child support obligation without prior notice of DCSE, DCSE reserves the right to close the IV-D case.*

## d. Division of Child Support Enforcement's Responsibilities

1) *To provide the requested services in a timely manner consistent with an established priority system. The information provided may affect the priority level assigned to the case.*

2) *To act in a manner consistent with the best interests of the child.*

3) *To keep the Custodial Parent informed about the progress of the case, i.e., telephone calls, letters, sending copies of the Administrative Support Order, Notice of Proposed Action for the MWE, notices of appeals filed by the Responsible Person, and decisions of all Administrative appeals held.*

4) *To include the Custodial Parent in major decisions about the handling of the case.*

5) *To establish paternity and establish and enforce a support obligation. The Division cannot litigate legal matters such as custody and visitation.*

6) *To consider the financial information provided by the Custodial Parent in determining the Responsible Parent's support obligation.*

7) *To inform the applicant that a debt owed to the State for Public Assistance paid is satisfied first when tax refunds are intercepted to pay off child support debts, or when any amounts designated as support, above the current monthly obligation are collected.*

8) *To determine if legal assistance will be needed for a particular case. DCSE staff will make this decision after consulting with legal counsel.*

9) *To inform the client that services provided by legal counsel are provided to the DCSE and not to the client personally.*

## 4. IV-D INTERACTION WITH IV-A PROGRAM

*Residents of Virginia who are receiving ADC or ADC/FC are automatically eligible for child support enforcement services free of charge.*

### a. Staff in the IV-A Program

#### 1) *Local Social Service Agencies*

*Eligibility Workers in the local welfare agencies must send DCSE information about Responsible Parents on the Responsible Person Information form.*

#### 2) *Regional DSS Eligibility Specialists*

*The Regional Department of Social Services' Eligibility Specialists act as a liaison between DCSE Regional and District Offices and the local agencies.*

#### 3) *Quality Control Reviewers*

*IV-D case record information, except for information provided by the IRS, will be given to Quality Control Reviewers when requested.*

### b. IV-A Recipients

*Recipients receiving ADC or ADC/FC are required to cooperate with IV-D to establish paternity and support unless a good cause claim is established.*

#### 1) *Requirements of Cooperation*

a) *To assist DCSE in establishing paternity for a child. This includes:*

(1) *Providing information (if available) as to the identity, Social Security number, and the whereabouts of person(s) having a legal duty to support a child.*

(2) *Appearing at the offices of the Division of Child Support Enforcement or local welfare agency as necessary to provide verbal or written information or documentary evidence, known to, possessed by, or reasonably obtainable by the recipient regarding the absent responsible parent. If two appointments are made and the custodial parent does not keep the appointments, the recipient is cited and the IV-D Agency notifies the IV-A Agency that the client has not cooperated as required by Federal Regulation.*

(3) *Assisting DCSE in obtaining any payments or property due the recipient or children on the grant.*

(4) *Appearing as a witness at court or other hearings or proceedings as necessary in order to secure support. Reasons for failure to appear must be validated by and acceptable to IV-A.*

(5) *Appearing for a scheduled appointment to have blood drawn to establish paternity. Reasons for failure to appear must be validated by and acceptable to IV-A.*

(6) *Providing information, or attesting to the lack of information, returning notarized statements, such as paternity questionnaires, affidavits, etc.*

b) *To pay to DCSE any support payments received from the Responsible Parent after receipt of the first ADC or ADC/FC payment.*

## 2) Consequences for Failing to Cooperate

The IV-A Agency will investigate the situation after receiving a notice from the IV-D Agency. The IV-A Agency will contact the recipient to determine whether the recipient is refusing to cooperate or unable to cooperate. If the recipient is refusing to cooperate, IV-A will notify IV-D of this. The Recipient may receive a reduced PA grant as a result, and the ADC or ADC/FC check may be sent to a protective payee. If non-cooperation does not appear to exist, then IV-A will notify IV-D and IV-D will continue to work the case.

## 5. PRIORITIZATION OF CASES FOR WORKABILITY

Cases will be prioritized and worked according to the following criteria.

### a. Workable (Priority 1)

- 1) current residence address is known
- 2) current employer is known
- 3) last known residence address or employer is provided and is less than three years old;
- 4) identifying information is provided, i.e., RP's relatives' names, addresses, telephone numbers, etc.
- 5) SSN or DOB is known;
- 6) meets criteria for workable, but RP is a minor and not emancipated;
- 7) voluntary support is being paid or a court order exists, but RP's whereabouts are unknown;
- 8) in military with APO/FPO address;
- 9) incarcerated/institutionalized;
- 10) good cause claimed.

### b. Unworkable (Priority 2)

- 1) RP is unknown;
- 2) RP is deceased;
- 3) paternity denied by court;
- 4) good cause found to exist;
- 5) parental rights terminated (child is adopted);
- 6) RP is receiving ADC benefits.

## 6. MODEL OFFICE CONCEPT

a. DCSE District Offices have specialized teams assigned to intake, establishment and enforcement functions. The Intake Team has the responsibility of setting up Non-ADC cases from applications; reviewing new and reopened ADC or ADC/FC cases, processing all transition cases and performing initial locate activity on all cases with RP's or forming initial locate activity on all cases with RP's or PF's whereabouts unknown or not verified. Transition cases are to be given a high priority as the category must be changed on the system as soon as possible to prevent support payments from being posted to the wrong identification number and subsequently disbursed or distributed incorrectly. All workable cases will be referred to the appropriate team, where, upon successful location of the RP or PF, the cases will be prioritized with ADC, ADC/FC, and Non-ADC cases receiving equal consideration.

b. A "workable case" is a case that contains enough identifying information (i.e., name and SS# or name and date of birth) to pursue support and where good cause is not found to exist, paternity has not been denied by court, parental rights have not been terminated and the RP is not receiving ADC benefits. When workable cases are referred to the Establishment Team, the team member responsible for locate will review and make any further locate efforts in the following order of priority.

- 1) RP's or PF's whereabouts known, but not verified.
- 2) RP's or PF's whereabouts unknown, SS# or DOB known.
- 3) RP's or PF's whereabouts unknown - family or friends known.
- 4) RP or PF incarcerated, not verified.
- 5) RP's or PF's whereabouts unknown - have former address, military record, place of employment, or record of incarceration.

c. When location of RP or PF is accomplished, the case will be assigned to the Investigator for establishment of paternity or establishment of an obligation for support, and will be prioritized in the following order.

- 1) RPs with earned income, including military, whereabouts verified.
- 2) PF whereabouts verified.
- 3) RP with verified unearned income (i.e., disability, unemployment benefits, pension, etc.), whereabouts verified.
- 4) RP unemployed, whereabouts verified.
- 5) RP incarcerated or institutionalized.
- 6) RP out of country/non-military, whereabouts



# Emergency Regulations

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verified.

d. When workable cases are referred to the Enforcement Team, the team member responsible for locate will review and take any further locate action in the following order.

- 1) RP's whereabouts known, not verified, arrearage amount equal to 30 days obligation.
- 2) RP self-employed, whereabouts known, possible assets, not verified, arrearage amount equal to 30 days obligation.
- 3) RP out of country, non-military, not verified.

e. When location of RP is accomplished the case will be assigned to the Investigator for enforcement of the obligation and will be prioritized in the following order.

- 1) RPs with earned income, including military, whereabouts verified, arrearage amount equal to at least 30 days obligation.
- 2) RPs with unearned income, (i.e., disability, unemployment, pension, etc.) whereabouts verified, arrearage amount equal to at least 30 days obligation.
- 3) RPs who are self-employed, with verified assets, arrearage amount equal to at least 30 days obligation.
- 4) RP incarcerated, verified, possible work release, arrearage amount equal to at least 30 days obligation.
- 5) Out of country/non-military, verified whereabouts - arrearage amount equal to at least 30 days.
- 6) Minor RP (14-17 years of age) no known income - arrearage amount equal to at least 30 days.
- 7) Requests by Custodial Parent for increase in amount of obligation will be processed as time allows.
- 8) All obligated cases must be reviewed annually - to assure that low priority cases be given consideration with possible change in prioritization level if more information is known.

## 7. GOOD CAUSE CLAIMS

Good cause, when claimed and found to exist, excuses the recipient of ADC or ADC/FC from cooperating with DCSE. It suspends all action on the case by DCSE as long as the claim exists. The IV-A Agency makes the final determination as to whether the claim is valid.

a. Good cause exists when:

- 1) The child or recipient may be physically or emotionally harmed if the recipient cooperates with DCSE.

- 2) The child was conceived as a result of incest or rape and the local agency believes harm will come to the child.

- 3) Adoption of the child is pending or being decided.

- 4) The caretaker, assisted by a public or a licensed private social services agency, is deciding whether to keep or relinquish for adoption the child for whom aid is requested.

b. Good cause prevents DCSE from acting on the case while the claim exists. If a case closes with a good cause claim in place, no further action can be taken unless the case is reopened to IV-A with the good cause claim no longer claimed.

c. The IV-A Agency notified DCSE whether child support enforcement services may proceed without the participation of the recipient in good cause claims. The IV-D Agency has 15 days from receipt of the claim to send a response/comment to IV-A, if the IV-D Agency has information that might affect the determination of good cause. The IV-A Agency makes the final decision about the claim.

d. The IV-A Agency may decide later for an active IV-A case that good cause no longer exists. This decision must be received in writing by IV-D before support action can be taken on that case.

e. When a case reopens to IV-A and there was a determination of good cause, but there is no claim made for the reopened case, IV-D will handle the case as if good cause was never claimed, including collecting debt or arrearages that accumulated during the time that good cause was found to exist.

f. The case is closed to IV-D if the determination of good cause is to be permanent, i.e., child conceived because of rape or incest.

## 8. CLOSING THE NON-PUBLIC ASSISTANCE SUPPORT ENFORCEMENT CASE

a. Locate Only Cases for Out-of-State Requests and for In-State Courts

- 1) Cases will be closed when the RP has been successfully located and a current, verified residence address or employer is provided.

- 2) Cases will be closed when the Responsible Parent's (or Putative Father's) location is unknown after all reasonable and diligent location attempts have been exhausted by the Commonwealth. (All locate resources have been used twice, at six month intervals, with no success). If additional information regarding location of the Responsible Parent is received, another application can be taken and the case reopened.

# Emergency Regulations

## b. Cases Needing All Support Enforcement Services

### 1) Close the case when

a) the client provides a written request for termination of services;

b) all amounts established by the support order have been collected and the obligation has been terminated. (For example, all children to be supported have reached the age of majority and all arrearages have been paid);

c) verification of the absent parent's death is obtained and no further action, including a levy against an estate or trust, can be taken;

d) the Responsible Parent's (or Putative Father's) location is unknown after all reasonable and diligent location attempts have been exhausted by the Commonwealth. All available location resources have been used twice at six month intervals. If additional information is received regarding the location of the absent parent, another application can be taken and the case is reopened.

e) the State determines that paternity cannot be established. This may be due to a court ruling that the Putative Father is not the parent, a dismissal of the case, the exclusion of the Putative Father based on blood tests, insufficient evidence for a paternity hearing as determined by legal counsel, or other reasons;

f) the Responsible Parent or Putative Father (except for employees of the U.S. Government) resides in a foreign country which has no support/reciprocity agreement with the reporting state;

g) the court finds there is no responsibility to pay support;

h) the Responsible Parent receives PA or SSI;

i) there is a long term (one year or longer) inability to pay support due to the Responsible Parent's incarceration or disability. The case can be reopened once the period of inability to pay has passed if the custodial parent applies.

j) client obtains court order for direct pay.

k) if the client and his/her attorney initiate legal action related to the location of a RP, establishment of paternity, establishment and enforcement of a child support obligation without prior notice to DCSE, DCSE reserves the right to close the IV-D case.

l) the client fails to cooperate in providing financial information to establish and enforce a support

obligation.

## 9. CLOSING THE PUBLIC ASSISTANCE SUPPORT ENFORCEMENT CASE

### Close the case when:

a. the case has been terminated by IV-A and the recipient opts not to continue as a IV-D case. DCSE should redirect child support payments to the family, when no arrearages are due to the Commonwealth. If the family again becomes IV-A recipients, the case would be reopened as a new IV-D PA case;

b. when verification of the Responsible Parent's death is obtained and no further action, including a levy against an estate or trust, can be taken.

c. the case has been terminated by IV-A and has been subsequently opened as a regular IV-D case. EXCEPTIONS: If PA arrearages are still owed and the possibility of payment exists, the case should not be closed but should instead be counted as both a PA (arrearages only) case and a non-PA case;

d. the case was terminated by IV-A at least two years ago and a current financial assessment of the Responsible Parent's ability to pay demonstrates no possibility of paying the outstanding arrearages that exist. This may include parents who are incarcerated, incapacitated (as defined by Social Security regulations), or institutionalized, for a period of one year or longer. The case can be reopened once the period of inability to pay has passed.

e. good cause waiver has been granted and the Commonwealth has opted not to proceed in the absence of the caretaker relative's cooperation;

f. the father is claimed to be unknown and no evidence indicates otherwise;

g. the Responsible Parent's (or Putative Father's) location is unknown after all reasonable and diligent location attempts have been exhausted by the Commonwealth; location resources have been used twice at six months intervals.

h. the Commonwealth determines that paternity cannot be established. This may be due to a court ruling that the putative father is not the parent, a dismissal of the case, the exclusion of the Putative Father based on blood tests, insufficient evidence for a paternity hearing as determined by legal counsel or other reasons;

i. the Responsible Parent or Putative Father (except for U.S. Government employees) resides in a foreign country which has no support/reciprocity agreement with the Commonwealth of Virginia;

j. the court finds there is no responsibility to pay support;

# Emergency Regulations

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k. the Responsible Parent receives PA or SSI.

The above closing criteria do not preclude a PA or Non-PA case from being reopened if certain circumstances exist.

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## 1. LEGAL BASE AND PURPOSE

A putative father (PF) is an alleged father; he is an individual who has been named as the father of a child by the child's mother, but has not been legally established as the father. If a child was born within a marriage, the husband is the legal father and presumed responsible for support. Therefore, if a PF is named where a legal father also exists, the responsibility of the legal father for support must be adjudicated. Before adjudicating the legal father's responsibility to support, the PF should acknowledge paternity in writing, or there should be sufficient evidence to establish paternity.

Federal regulations require that attempts to establish paternity must be made for all IV-D cases in which paternity has not been established. The purpose of this requirement is two-fold:

a. To establish the lawful rights of children.

1) Under the law of the Commonwealth, an illegitimate child possesses rights of inheritance from or through his natural father once paternity is established by a court of law. He also has enforceable rights to support once paternity has been established, as well as rights to any federal benefits (i.e., Social Security benefits or Veteran's benefits) to which he may be entitled through the acknowledged father.

2) Special situations such as common-law marriage, bigamy, annulment, legitimation may affect the issue of paternity. When the man marries the mother of the child and the child is recognized by both of them as their own, jointly or separately, before or after the marriage, the child may be deemed legitimate. If deemed legitimate, this provides the child with all the rights of a child born within wedlock including inheritance. The parents may recognize the child in many ways. Legal counsel for the District should be consulted to resolve any questions.

3) Establishing paternity creates responsibility to provide support in the future; it does not create responsibility for past support.

b. To enable the Division of Child Support Enforcement to enforce and collect support for children from persons responsible for their support.

## 2. VOLUNTARY ESTABLISHMENT OF PATERNITY

a. Consent Order

A consent order is a procedure in which the putative father, who is 18 years or older, acknowledges paternity and agrees to pay support, and the acknowledgment and agreement are officially recognized by the court.

b. Acknowledgment of Paternity

This is a method used by the Division of Child Support Enforcement to establish responsibility for support as a part of a consent order or as a piece of evidence in a court hearing. A knowing and voluntary acknowledgment of paternity may be taken from a minor putative father, age 14 and older.

Occasionally, the PF will acknowledge paternity other than through DCSE, usually at the IV-A local agency, in a court proceeding other than a paternity hearing or at the Division of Vital Records and Health Statistics (DVRHS).

An acknowledgment may be obtained from a court proceeding where the PF voluntarily testifies that he is the father of a child. The court will obtain the acknowledgment on a DCSE Form and forward it to DCSE where it will be maintained pending action.

## 3. INVOLUNTARY ESTABLISHMENT OF PATERNITY

a. Petitioning the Court

When paternity is not acknowledged voluntarily, all such cases shall be referred to the Assistant Attorney General or contract attorney for a determination to be made regarding whether sufficient evidence exists to petition the court to establish paternity. The standard of proof in any action to establish paternity shall be by clear and convincing evidence.

Evidence Required by State Code to Establish Paternity in Court Includes but is Not Limited to

1) An admission of paternity before the court.

2) A written declaration of paternity signed under oath.

3) Open cohabitation or sexual intercourse with the mother at the probable time of the conception of the child.

4) Allowing the child to use his (the father's) surname.

5) Claiming the child as his own on any local, State or Federal government form or statement which he has signed and filed.

6) Results of medically reliable genetic blood grouping tests. The Department will monitor a list of blood testing labs for paternity establishment, however, the Department will only use specific labs with which it has contracts.

# Emergency Regulations

7) Medical or anthropological evidence based on tests performed by experts.

Note: Any one of the above pieces of evidence may be sufficient cause to petition the court.

b. If a putative father fails to appear for a court paternity hearing after having been personally served with a notice to appear, the court may proceed in hearing the evidence as if he were there and may adjudicate paternity in his absence.

c. If sufficient evidence does not exist or if the court determines that the PF is not the father of the child, the case is closed according to case closing criteria.

## 4. INTERSTATE CASES

The Virginia IV-D Agency will try to establish paternity on all out-of-state requests. A consent order will be obtained where possible for paternity establishment and support.

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## 1. LEGAL BASE AND PURPOSE

State and federal laws require that support obligations be established and paid by those people determined to be legally responsible for child support. The Child Support Enforcement program in Virginia is empowered to collect child support from absent responsible parents. In ADC and ADC/FC cases the support collected is to repay the Commonwealth for public funds spent for children deserted by their parents. An Administrative Support Order based on the Public Assistance grant amount is issued upon receipt of a referral from the IV-A Agency notifying the Responsible Parent that his/her dependents are receiving public assistance. In Virginia, the following persons are responsible for child support:

a. parents of dependent children under the age of 18.

b. parents of dependent children over the age of 18 if ordered by the court. The court may also order that support be paid for any child over the age of 18 years of age who is

1) a full time high school senior and;

2) not self-supporting; and

3) living in the home of the parent seeking or receiving child support until such child reaches the age of nineteen or graduates from high school, whichever occurs first;

c. legal father even if not the biological father, until a court decides otherwise;

d. parents of handicapped persons and/or children in school over the age of 18, when so ordered by the court.

Under Virginia law, paying ADC or ADC/FC benefits for dependent children and their caretakers creates a debt which is owed to the Commonwealth by the person responsible for support. This debt is equal to the amount of the ADC or ADC/FC grant, the amount of a court order or the amount of an administrative support order.

An obligation will be sought by DCSE under the following conditions:

a. DCSE has an authorization in writing or by operation of law because of the receipt of ADC or ADC/FC benefits;

b. the children are under 18;

c. the person responsible for support does not receive PA or SSI;

d. parental rights have not been terminated;

e. good cause has not been established;

f. paternity has been established by the court or RP is married to the mother at the time of birth of the child;

g. children have been legitimized.

h. the child's best interest will be served.

## 2. ADMINISTRATIVE SUPPORT ORDER (ASO)

Administrative, rather than judicial, means of establishing and enforcing obligations should be used whenever possible to expedite support matters. In addition, administrative processes are to be used to establish temporary administrative support orders in cases in which judicial determinations of support are delayed by issues, such as custody and visitation. For ADC or ADC/FC cases in which paternity is not an issue an Administrative Support Order is sent upon receipt of the Responsible Person Information form from the IV-A agency. The ASO is based on the amount of ADC or ADC/FC paid to the Responsible Parent's dependents. The obligation amount can be changed prospectively when the Responsible Parent provides financial information. The amount of the new obligation will be based on the Administrative Child Support Enforcement Scale. There is no retroactive modification of support owed which was based on the ADC or ADC/FC grant.

For Non-ADC cases, an Administrative Support Order will be based on the Administrative Child Support Enforcement Scale unless the Responsible Parent does not cooperate and in these cases a default Administrative Support Order will be issued based on the amount of Public Assistance that would be paid for the Responsible Parent's dependent based on 90% of the ADC Standard on Need.

The RP must also provide information regarding health

# Emergency Regulations

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care coverage for his dependent children. If the RP does not have health care coverage (medical insurance) for his dependent children, he should be told to obtain this if he can at a reasonable cost. (NOTE: Reasonable cost is defined as employer-related coverage). The RP is to have the coverage at the time the support obligation is established. However, the Division should monitor the case to ensure that the RP does try to obtain health care coverage. If the RP refuses to obtain health care coverage and it is available at a reasonable cost, then the RP Health Care Coverage Enforcement Letter should be sent.

The administrative obligation can only be established when the RP can be legally served in Virginia with an Administrative Support Order. This usually means that the RP either lives or works in the Commonwealth. All original and/or amended orders are to be filed with the appropriate Juvenile and Domestic Relations District Court. Once this is done, the Administrative Support Order, for enforcement purposes, has the same status as a court order.

The Administrative Support Order will contain an immediate withholding of earnings requirement which is an automatic deduction from the RP's earnings to satisfy the support obligation. If the RP and CP which to choose an alternate arrangement of paying, then the RP may sign an Assignment of Earnings Form which is a voluntary wage deduction order. This can only be released by DCSE. One of these two payment arrangements must be elected if the RP is employed.

## a. The Financial Statement

Both the Responsible Parent whose absence from the home is the reason for a person applying for public assistance or child support services and the Custodial Parent are required to complete sworn statements of:

- 1) current monthly income;
- 2) total income over the past twelve months;
- 3) amounts due from or to such person or parent under a court or administrative order for support of a child or child and spouse;
- 4) the number of dependents for whom support is provided;
- 5) amount contributed regularly toward support of all children or caretakers for whom application is made;
- 6) information to determine ability to support dependent children or caretaker.

Note: The exception to this is a case in which both the mother and father of the child are absent parents and another person has physical and legal custody of the child(ren) in question. In these cases, a Financial Statement is not completed by the person having

custody.

Financial Statements are to be filed annually with the Department of Social Services. Failure to file a sworn statement is a misdemeanor. If the Department deems it necessary, the Department may at any time request a statement of the RP's and CP's current gross income.

## b. The Administrative Support Scale

The Administrative Support Scale used by DCSE to establish an administrative child support obligation is a formula for calculating the amount of an administrative child support obligation based on the Responsible Parent's and Custodial Parent's gross income. If the Custodial Parent is an ADC or ADC/FC recipient, his/her income (includes grant issued and any other income she/he may have) is not considered. There shall be no deviation from the scale in establishing administrative support orders.

### 1) The Formula of the Scale Factors Considered in the Formula

- a) RP's and Custodial Parent's gross monthly income and resource value. Gross income shall not include benefits from Public Assistance Programs, such as ADC, ADC/FC, auxiliary grants to the aged, blind and disabled, medical assistance, food stamps, general relief, fuel assistance, or child support payments;
- b) Number of children for whom the RP and Custodial Parent share joint legal responsibility;
- c) RP's extraordinary medical and dental expenses provided for the children in question; and
- d) Custodial parent's work-related child care expenses.

### c. Immediate Withholding of Earnings (IWE)

Every Administrative Support Order will contain a provision for Immediate Withholding of Earnings. If the RP does not contest within the 10 day ASO appeal time frame, income will be immediately withheld to comply with the order. If the RP does contest and the decision is in favor of DCSE, the employer shall be notified and income will be withheld upon notice of the decision from the Hearings Officer.

#### 1) the following legal provisions apply to the IWE:

- a) An Administrative Support Order must have been properly served;
- b) Administrative Support Order which incorporates the Notice of Immediate Withholding of Earnings must not have been contested within the ten day time frame for the appeal and the time for appeal

# Emergency Regulations

has expired. The Immediate Withholding of Earnings may be contested based on a mistake of fact or whether a duty of support is owed;

c) The withholding can be issued against earnings such as wages, salary, commission, bonus, unemployment compensation benefits, debts or income or profits due the RP or payment of any type, such as lottery winnings, etc.;

d) The withholding can be transferred to future employers;

e) The employer cannot discharge, refuse to employ or take disciplinary action against the RP because of the withholding;

f) The employer is bound by law to honor the withholding until it is released by DCSE;

g) The employer may void the withholding for the following reasons by filing a reply to the order within five business days from the date of service of the order:

(1) The order does not contain the RP's Social Security number.

(2) The order does not specify an amount to be withheld per pay period.

(3) The order does not contain the maximum percentage that can be withheld by law.

(4) The order contains information in conflict with the employer's records, i.e., incorrect Social Security number.

(5) Payment is ordered other than to DCSE, the Department's designee or to the payee. The payee cannot receive child support services from DCSE if payment is sent from employer directly to payee.

(6) If payment is ordered other than by combined single payment to the Department's central office without the employer's express written consent, then the employer can void the order. By law, employers who have 10,000 or more employees can refuse and must send a single payment to DCSE listing employees names and amounts.

h) The employer may charge the employee a five dollar fee for each reply or remittance sent to DCSE;

i) The employer is bound by law to deduct and remit the amount specified on the employee's regular pay day;

j) The withholding takes priority over any other type of lien created by State law against an

employee's income except prior similar orders for support; and

k) The employer must notify DCSE of the RP's new employer and address of the employer, if known, when the RP terminates employment.

## 2) Prorating the Amount Collected by Withholding.

For RPs who are obligated for multiple cases, whether ADC or Non-ADC, the amount withheld must be prorated among the cases when the RP's disposable earnings will not allow for the full payment of each current support order. Each family is to receive full payment of the current obligation when possible. Current amounts of support are satisfied before satisfying arrearage amounts.

## 3) Modification of the Order for Immediate Withholding of Earnings.

a) This is necessary when the current support obligation or the arrears have been paid off.

b) This may be necessary when the whereabouts of the child or caretaker become unknown and cannot be ascertained by DCSE.

c) This is necessary when there has been a change in the amount of the current or arrears support obligation.

## 4) Release of the Order for Immediate Withholding of Earnings

a) The Order may be released when

(1) the current obligation to support is terminated, and all arrearages have been paid; and/or

(2) the whereabouts of the child or child and caretaker become unknown.

b) The order will not be released in cases in which there is still a current obligation, but the RP has satisfied the arrears.

NOTE: The Code of Virginia requires that the RP be given the right to appeal the Immediate Withholding of Earnings as part of the Administrative Support Order Appeal Process. The basis for the IWE appeal is a mistake of fact or whether there is a duty to support.

## d. Assignment of Earnings

An Assignment of Earnings is a voluntary agreement between the RP and the DCSE. The Assignment of Earnings is used in lieu of the MWE if it is more expeditious to do so. This is not an option if the MWE Notice has already been served on the RP.

# Emergency Regulations

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*It requires the employer to deduct a specified amount of money from the RP's earnings for current support and arrearages and send the deducted amount to the DCSE. The employer should remit the amount specified at the pay interval also specified on the form. The Investigator should complete the Assignment of Earnings Form using the employee's regular pay day.*

## *1) Legal Provisions and Application of Assignment of Earnings*

*a) For new or modified ASO's, the Assignment of Earnings begins on the effective date of the obligation unless the RP waives service of process and then the Assignment of Earnings is effective immediately; it begins at the next regular pay period for all other situations.*

*b) Continues in effect until released by DCSE and can only be released by DCSE;*

*c) Can be transferred from employer to employer as the RP changes jobs;*

*d) Is required by law to be honored by the employer;*

*e) Cannot be grounds for the employer to discharge the RP from his job;*

*f) Allows the employer to charge a five dollar fee for each answer or remittance sent to DCSE;*

*g) An Administrative Support Order, Notice and Finding or Financial Responsibility or court order for support must be in effect before initiating.*

## *e. Establishing a Default Order (An Order Based on ADC or ADC/FC Grant Amounts)*

*In Non-ADC cases, when the RP refuses to cooperate by providing a signed, sworn Financial Statement, and there is no court order and no administrative order for support, the obligation must be established based on the amount of ADC to which the RP's dependents would be eligible to receive. This is called a default order. Below is a description of the proration of grant amounts. These amounts apply to default orders entered for Non-ADC cases.*

*1) If there is one RP responsible for all dependents, the obligation is the total amount of ADC or ADC/FC paid or for Non-ADC cases, the amount that would be paid.*

*2) If there is more than one RP responsible for the dependents, divide the ADC or ADC/FC paid or to be paid in Non-ADC cases by the number of children in the family receiving assistance. Multiply this amount by the number of children for whom the RP is responsible for to get the amount of the obligation.*

*3) If both parents are absent, each parent is responsible for the entire amount of ADC or ADC/FC paid for their dependents or that would be paid in Non-ADC cases.*

*At the time the Default Administrative Support Order is issued, a petition will be filed with the appropriate court to have the support obligation established through a judicial determination. If the RP does not appear for the court hearing, then the Administrative Support Order will continue in effect until he/she does cooperate. Once the appeal period for an Administrative Support Order has passed, changes to the amount of obligation will be prospective only.*

## *f. Changing the Amount of the Obligation*

*All changes to the amount of an obligation, court order or Administrative Support Order, are made prospectively. Law does not allow the amount of arrears to be modified.*

*1) Change the Amount of the Obligation prospectively if:*

*a) The RP or Custodial Parent (CP) requests a review of his/her portion of the obligation or reports a change in his/her financial situation, and both the RP and CP cooperate by providing a signed and sworn Financial Statement.*

*b) DCSE reviews and determines the amount of the order to be inconsistent with the Child Support Scale.*

*c) The obligation was based on PA Paid because the RP did not cooperate and he/she has now provided a signed and sworn financial statement.*

*2) Review Ability to Pay When Requested by RP or When RP Reports a Change*

*Determinations made by calculating the Administrative Obligation are listed below:*

*a) No change in administrative obligation;*

*b) Custodial Parent has no ability to contribute to the total obligation (the minimum obligation for any RP is \$65 per month.);*

*c) The amount of the obligation increases/decreases.*

*3) Review Ability to Pay when case re-opens to ADC or ADC/FC.*

## *g. Calculating the Obligation, the Debt to the Commonwealth and Arrearages*

*The obligation is the amount and frequency of money to be paid as support by the RP. The amount of the obligation may exceed the amount of the debt to the*

# Emergency Regulations

## Commonwealth.

**NOTE:** It is possible that in some cases the obligation amount will exceed the amount of the debt. In such cases, the entire amount of the obligation will be collected by DCSE, but only the amount of the debt will be retained as reimbursement for assistance paid. Any excess generated is refunded to the recipient. DCSE has the responsibility to recover the arrearages or debt from RP.

The debt to the Commonwealth is the portion of the RP's obligation which the Commonwealth is entitled to keep as reimbursement for public assistance paid or the unpaid support obligation owed to his dependents in Non-ADC cases. The amount of the debt will never exceed the amount of the PA grant for Public Assistance cases. However, where there has been a court order, final decree of divorce, or an administrative support determination in an amount less than the PA grant, the debt shall be limited to the amount of such order, decree or determination.

For Non-ADC cases, the debt to the Commonwealth for public assistance paid is satisfied first when any amounts designated above the current monthly obligation are collected.

Arrearage is the obligation calculated at actual frequency minus support paid. (i.e., \$100/mo. obligation - \$75/mo. paid = \$25 arrearage)

### h. Limitations on Calculation of Debt/Arrearages

- 1) Bankruptcy filed by RP between 10/01/79 and 08/13/81 that successfully discharged the RP's support obligation. Refer case to the legal counsel for the District to determine how the case will be handled, if bankruptcy is involved;
- 2) Cases in which no previous order was established and no ADC or ADC/FC was paid;
- 3) ADC or ADC/FC payment histories not available;
- 4) ADC or ADC/FC paid before the month in which the PF acknowledged paternity;
- 5) ADC or ADC/FC paid after dependents turn 18 unless they are full time high school seniors and have not yet turned 19;
- 6) A determination of good cause has been made by IV-A;
- 7) Other limitation, at the discretion of the Commissioner of the Department of Social Services or;
- 8) Cases in which ADC, ADC/FC was paid prior to 7/1/74 (date Child Support Program began in Virginia)

### i. The Responsible Parent Fiscal Record

The Responsible Parent Fiscal Record is a required document for all cases. It is a worksheet that shows how much support has been paid for a case and how much delinquent support is owed.

### 3. APPEAL FROM AN ADMINISTRATIVE SUPPORT ORDER (ASO)

The Code of Virginia gives the RP the right to appeal an Administrative Support Order establishing an obligation to an Administrative Hearings Officer who will conduct a hearing and render a decision.

Both the RP and the CP have the right to appeal the decision of the Hearings Officer to the Juvenile and Domestic Relations District Court in their locality of residence. If the RP is a non-resident, the appeal shall be where the CP resides. If both parties are non-residents, the appeal shall be held where the property of the RP is located or where the place of business of the RP's employer is located. If there is more than one choice, the RP shall elect the location of the appeal. The appeal must be filed with the Juvenile and Domestic Relations District Court within 10 days of receipt of the Hearings Officer's decision if the RP or CP want to appeal the decision of the Hearings Officer.

#### a. The Responsible Parent Can Appeal the ASO

- 1) Based on whether a duty of support is owed
- 2) within 10 calendar days of the date of service or waiver of service of the Administrative Support Order on the R.P. If the appeal request is mailed, the postmark date must be no later than 10 days from the date of service

#### b. Summary of Facts for an Appeal of an Administrative Support Order

A summary of actions taken by DCSE that led to the RP's or custodial parent's appeal of the Administrative Support Order is prepared by the Investigator and sent to the Hearings Officer within five working days of receiving information from the Hearings Officer that an appeal has been requested. The Hearings Officer must send a copy of the Summary of Facts to the parties within 21 days of receiving the appeal request. The summary is a statement of facts, not opinions or conclusions.

#### c. Rights of the Responsible Parent and the Custodial Parent

- 1) To have the hearing continued, if there is good reason and the request is made in writing at least five days before the hearing. Continuances will not be for more than 30 days. These conditions are explained in the Notice of Hearing Letter sent by the Hearings Officer to both the Responsible Parent and the



# Emergency Regulations

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*Custodial Parent. A copy of the Summary of Facts is attached to the letter;*

- 2) To be represented at the hearing by legal counsel;*
- 3) To withdraw the appeal;*
- 4) To receive a copy of the administrative decision at the time of the appeal hearing or no later than 45 days from the date the appeal request was received by the District Office;*
- 5) To be notified that the appeal is abandoned;*
- 6) To see material relevant to their case kept in the DCSE file by making a written request; and*
- 7) To appeal the Administrative Hearings Officer's decision to the appropriate JDRDC within 10 days of receipt of the decision.*

## **4. SUPPORT OBLIGATIONS ESTABLISHED BY THE COURT**

*Support obligations ordered by a court supersede a previously established Administrative Support Order. Administrative Support Orders have the same force and effect as a court order. Once an Administrative Support Order is legally served and a certified copy of the ASO filed with the JDRDC which has jurisdiction over the custodial parent. The ASO can be enforced the same as a court order. However, under law, a court order continues to take precedence over an Administrative Support Order. Even though there is a court order, RPs are still required by law to furnish DCSE annually with a signed and sworn financial statement. Delinquent support can only be modified from the date the notice of such petition to modify a support obligation has been given to the responding party. A court ordered arrearage amount cannot be retroactively modified except from the date notice is given to the responding party.*

### **a. When to Petition the Court to Establish Support Orders**

- 1) When there is a court order for support, and physical custody of the child changes and responsibility to support is in question;*
- 2) When there is both a legal father and a biological father;*
- 3) When administrative collection remedies cannot be used;*
- 4) When extraordinary circumstances exist indicating a deviation from the Child Support Scale; or*
- 5) When a default order has been entered for Non-ADC or cases based on the ADC Standard of Need at 90%.*

### **b. Where to File a Support Petition**

*The Juvenile and Domestic Relations District Courts have primary jurisdiction for support orders. JDRDC orders can be superseded only by Circuit Court orders. The Investigator will send new petitions to the JDRDC in the locality where the spouse or children live. The Circuit Court is involved in divorces and appeals from a lower court, and can retain jurisdiction of their orders or transfer them to the appropriate JDRDC. When the Circuit Court retains jurisdiction, the case must be referred to the legal counsel for the District for advice on how to proceed.*

### **c. Who Files the Support Petition**

*The Investigator presents the petition to the Court on the form provided by the court, either civil or criminal. The Investigator or legal counsel signs his/her name as a representative of the Division in all cases, unless the Judge wishes the client to sign the petition in those cases not receiving public assistance.*

### **d. Consent Orders**

*A consent order is a support order based on a written agreement between DCSE and the RP and custodial parent for payment of support. A provision for health care coverage must be included, if the coverage is available at reasonable cost. The agreement is officially recognized by the court and is the basis of an order entered by the court, binding the parties as fully as any court order. Consent orders are prepared and endorsed by the legal counsel for the District. Consent order obligation amounts are based on the Administrative Child Support Scale.*

### **e. Divorce Decrees**

*During divorce proceedings or in the divorce decree the Circuit Court may order support. Separation agreements are not divorce decrees. However, separation agreements can be incorporated into divorce decrees once they are final. The following situations may arise with divorce decrees and should be resolved with the assistance of the legal counsel before processing a DCSE case:*

- 1) Divorce decree names the children born of the marriage but does not order support;*
- 2) Divorce decree does not name the children born of the marriage;*
- 3) Divorce decree says the RP does not have a duty to support the children;*
- 4) Divorce decree contains an agreement between the parties relieving the RP of any obligation to pay support; and/or*
- 5) Divorce decree names the custodian of the children,*

# Emergency Regulations

but does not order support.

All cases where divorce is still pending should be referred to legal counsel for a decision on how to proceed.

## f. Requesting Modification of Court Ordered Support Obligations

Court orders remain in effect until changed or rescinded by the court. Only the court has the authority to change a court order. DCSE can only change the payment frequency for mandatory withholding of earnings based on the formula established by the Committee on District Courts. The client can request that DCSE review the case for potential modification of the order by the JDRDC.

### 1) When to Request Modification of an Order of the JDRDC

a) The existing order does not specify the amount of support to be paid per child and spouse (if included), and the ADC or ADC/FC assistance unit does not include all of the minor children named in the order;

b) The RP is able to pay more than the amount of the court order, or can provide health care coverage above a reasonable cost, as shown on a Financial Statement or has other income sources which can be substantiated; and/or

c) A provision for health care coverage should be included.

d) To request payment to DCSE if a direct pay order exist.

## g. Calculating Debt to the Commonwealth and Arrearages

Debt is the total amount of unpaid support obligation established by court order, support scale, or by the payment of public assistance owed by an RP to either the Commonwealth or to his dependents. When the court order is more than PA paid on a monthly basis, DCSE may involuntarily collect the amount of arrearages, as long as the case is open to ADC. When the ADC case closes, collection will be limited to the debt to the Commonwealth if the recipient has opted not to continue receiving our services.

For direct pay orders, a hearing with the court must be scheduled to establish arrearages for the order.

### h. Redirecting Support Payments

Federal regulations require that support payments be redirected to the IV-D Agency instead of being paid to the family for all active ADC and ADC/FC cases. The support is considered to be reimbursement for ADC and ADC/FC paid.

### 1) When to Redirect In-State Orders

a) When the court orders payments to be made directly to the family, the court order will have to be amended again to have payments directed to pay DCSE.

b) When the IV-A case closes, support will continue to be collected by DCSE on behalf of the family. Regardless of whether a support obligation has been established, DCSE will

(1) receive Transition Case Report.

(2) continue to collect and enforce support on behalf of the former recipient until the recipient has notified us in writing that he/she no longer want services. The case will only be closed and money redirected in certain situations. See case closing criteria listed in Chapter C, Policy Manual.

If the parties no longer want our services, the RP will be advised to send payments directly to the recipient for Administrative Support Orders and the recipient will be advised to have his/her court order amended to have payments sent directly to him/her for court orders.

### 2) Redirecting Out-of-State Orders

When there is a non-URESAs, out-of-state court order, follow the procedures for requesting another state's IV-D services, or contact the other state directly to request redirection of support.

# Emergency Regulations

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| Gross Monthly Income | One Child | Two Children | Three Children | Four Children | Five Children | Six Children |
|----------------------|-----------|--------------|----------------|---------------|---------------|--------------|
| 0-599                | 65        | 65           | 65             | 65            | 65            | 65           |
| 600                  | 110       | 111          | 113            | 114           | 115           | 116          |
| 650                  | 138       | 140          | 142            | 143           | 145           | 146          |
| 700                  | 153       | 169          | 170            | 172           | 174           | 176          |
| 750                  | 160       | 197          | 199            | 202           | 204           | 206          |
| 800                  | 168       | 226          | 228            | 231           | 233           | 236          |
| 850                  | 175       | 254          | 257            | 260           | 263           | 266          |
| 900                  | 182       | 281          | 286            | 289           | 292           | 295          |
| 950                  | 189       | 292          | 315            | 318           | 322           | 325          |
| 1000                 | 196       | 304          | 344            | 348           | 351           | 355          |
| 1050                 | 203       | 315          | 373            | 377           | 381           | 385          |
| 1100                 | 210       | 326          | 402            | 406           | 410           | 415          |
| 1150                 | 217       | 337          | 422            | 435           | 440           | 445          |
| 1200                 | 225       | 348          | 436            | 465           | 470           | 475          |
| 1250                 | 232       | 360          | 451            | 497           | 502           | 507          |
| 1300                 | 241       | 373          | 467            | 526           | 536           | 542          |
| 1350                 | 249       | 386          | 483            | 545           | 570           | 576          |
| 1400                 | 257       | 398          | 499            | 563           | 605           | 611          |
| 1450                 | 265       | 411          | 515            | 581           | 633           | 645          |
| 1500                 | 274       | 426          | 533            | 602           | 656           | 680          |
| 1550                 | 282       | 436          | 547            | 617           | 672           | 714          |
| 1600                 | 289       | 447          | 560            | 632           | 689           | 737          |
| 1650                 | 295       | 458          | 573            | 647           | 705           | 754          |
| 1700                 | 302       | 468          | 587            | 662           | 721           | 772          |
| 1750                 | 309       | 479          | 600            | 676           | 738           | 789          |
| 1800                 | 315       | 488          | 612            | 690           | 752           | 805          |
| 1850                 | 321       | 497          | 623            | 702           | 766           | 819          |
| 1900                 | 326       | 506          | 634            | 714           | 779           | 834          |
| 1950                 | 332       | 514          | 645            | 727           | 793           | 848          |
| 2000                 | 338       | 523          | 655            | 739           | 806           | 862          |
| 2050                 | 343       | 532          | 666            | 751           | 819           | 877          |
| 2100                 | 349       | 540          | 677            | 763           | 833           | 891          |
| 2150                 | 355       | 549          | 688            | 776           | 846           | 905          |
| 2200                 | 360       | 558          | 699            | 788           | 860           | 920          |
| 2250                 | 366       | 567          | 710            | 800           | 873           | 934          |
| 2300                 | 371       | 575          | 721            | 812           | 886           | 948          |
| 2350                 | 377       | 584          | 732            | 825           | 900           | 963          |
| 2400                 | 383       | 593          | 743            | 837           | 913           | 977          |
| 2450                 | 388       | 601          | 754            | 849           | 927           | 991          |
| 2500                 | 394       | 610          | 765            | 862           | 940           | 1006         |
| 2550                 | 399       | 619          | 776            | 874           | 954           | 1020         |
| 2600                 | 405       | 627          | 787            | 886           | 967           | 1034         |
| 2650                 | 410       | 635          | 797            | 897           | 979           | 1048         |
| 2700                 | 415       | 643          | 806            | 908           | 991           | 1060         |
| 2750                 | 420       | 651          | 816            | 919           | 1003          | 1073         |
| 2800                 | 425       | 658          | 826            | 930           | 1015          | 1085         |
| 2850                 | 430       | 667          | 836            | 941           | 1027          | 1098         |
| 2900                 | 435       | 675          | 846            | 953           | 1039          | 1112         |
| 2950                 | 440       | 683          | 856            | 964           | 1052          | 1125         |
| 3000                 | 445       | 691          | 866            | 975           | 1064          | 1138         |
| 3052                 | 450       | 699          | 876            | 987           | 1076          | 1152         |
| 3100                 | 456       | 707          | 886            | 998           | 1089          | 1165         |
| 3150                 | 467       | 715          | 896            | 1010          | 1101          | 1178         |
| 3200                 | 461       | 723          | 906            | 1021          | 1114          | 1191         |
| 3250                 | 471       | 732          | 917            | 1032          | 1126          | 1205         |
| 3300                 | 476       | 740          | 927            | 1044          | 1139          | 1218         |
| 3350                 | 481       | 748          | 937            | 1055          | 1151          | 1231         |
| 3400                 | 486       | 756          | 947            | 1067          | 1164          | 1245         |
| 3450                 | 492       | 764          | 957            | 1078          | 1176          | 1258         |
| 3500                 | 497       | 772          | 967            | 1089          | 1189          | 1271         |
| 3550                 | 502       | 780          | 977            | 1101          | 1201          | 1285         |
| 3600                 | 507       | 788          | 987            | 1112          | 1213          | 1298         |
| 3650                 | 512       | 797          | 997            | 1124          | 1226          | 1311         |
| 3700                 | 518       | 806          | 1009           | 1137          | 1240          | 1326         |
| 3750                 | 524       | 815          | 1020           | 1150          | 1254          | 1342         |

## Emergency Regulations

| Gross<br>Monthly<br>Income | One<br>Child | Two<br>Children | Three<br>Children | Four<br>Children | Five<br>Children | Six<br>Children |
|----------------------------|--------------|-----------------|-------------------|------------------|------------------|-----------------|
| 3800                       | 530          | 824             | 1032              | 1163             | 1269             | 1357            |
| 3850                       | 536          | 834             | 1043              | 1176             | 1283             | 1372            |
| 3900                       | 542          | 843             | 1055              | 1189             | 1297             | 1387            |
| 3950                       | 547          | 852             | 1066              | 1202             | 1311             | 1402            |
| 4000                       | 553          | 861             | 1078              | 1214             | 1325             | 1417            |
| 4050                       | 559          | 871             | 1089              | 1127             | 1339             | 1432            |
| 4100                       | 565          | 880             | 1101              | 1240             | 1353             | 1448            |
| 4150                       | 571          | 889             | 1112              | 1253             | 1367             | 1463            |
| 4200                       | 577          | 898             | 1124              | 1266             | 1382             | 1478            |
| 4250                       | 583          | 907             | 1135              | 1279             | 1396             | 1493            |
| 4300                       | 589          | 917             | 1147              | 1292             | 1410             | 1508            |
| 4350                       | 594          | 926             | 1158              | 1305             | 1424             | 1523            |
| 4400                       | 600          | 935             | 1170              | 1318             | 1438             | 1538            |
| 4450                       | 606          | 944             | 1181              | 1331             | 1452             | 1553            |
| 4500                       | 612          | 954             | 1193              | 1344             | 1467             | 1569            |
| 4550                       | 618          | 963             | 1204              | 1357             | 1481             | 1584            |
| 4600                       | 624          | 972             | 1216              | 1370             | 1495             | 1599            |
| 4650                       | 630          | 981             | 1227              | 1383             | 1509             | 1614            |
| 4700                       | 635          | 989             | 1237              | 1395             | 1522             | 1627            |
| 4750                       | 641          | 997             | 1247              | 1406             | 1534             | 1641            |
| 4800                       | 646          | 1005            | 1257              | 1417             | 1546             | 1654            |
| 4850                       | 651          | 1013            | 1267              | 1428             | 1558             | 1667            |
| 4900                       | 656          | 1021            | 1277              | 1439             | 1570             | 1679            |
| 4950                       | 661          | 1028            | 1286              | 1450             | 1582             | 1692            |
| 5000                       | 666          | 1036            | 1295              | 1460             | 1593             | 1704            |
| 5050                       | 671          | 1043            | 1305              | 1471             | 1605             | 1716            |
| 5100                       | 675          | 1051            | 1314              | 1481             | 1616             | 1728            |
| 5150                       | 680          | 1058            | 1323              | 1492             | 1628             | 1741            |
| 5200                       | 685          | 1066            | 1333              | 1502             | 1640             | 1753            |
| 5250                       | 690          | 1073            | 1342              | 1513             | 1651             | 1765            |
| 5300                       | 695          | 1081            | 1351              | 1524             | 1663             | 1778            |
| 5350                       | 700          | 1088            | 1361              | 1534             | 1674             | 1790            |
| 5400                       | 705          | 1096            | 1370              | 1545             | 1686             | 1802            |
| 5450                       | 710          | 1103            | 1379              | 1555             | 1697             | 1815            |
| 5500                       | 714          | 1111            | 1389              | 1566             | 1709             | 1827            |
| 5550                       | 719          | 1118            | 1398              | 1576             | 1720             | 1839            |
| 5600                       | 724          | 1126            | 1407              | 1587             | 1732             | 1851            |
| 5650                       | 729          | 1133            | 1417              | 1598             | 1743             | 1864            |
| 5700                       | 734          | 1141            | 1426              | 1608             | 1755             | 1876            |
| 5750                       | 739          | 1148            | 1435              | 1619             | 1766             | 1888            |
| 5800                       | 744          | 1156            | 1445              | 1629             | 1778             | 1901            |
| 5850                       | 749          | 1163            | 1454              | 1640             | 1790             | 1913            |
| 5900                       | 753          | 1171            | 1463              | 1650             | 1801             | 1925            |
| 5950                       | 758          | 1178            | 1473              | 1661             | 1813             | 1937            |
| 6000                       | 763          | 1186            | 1482              | 1672             | 1824             | 1950            |
| 6050                       | 768          | 1193            | 1491              | 1682             | 1836             | 1962            |
| 6100                       | 773          | 1201            | 1501              | 1693             | 1847             | 1974            |
| 6150                       | 778          | 1208            | 1510              | 1703             | 1859             | 1987            |
| 6200                       | 783          | 1216            | 1519              | 1714             | 1870             | 1999            |
| 5140                       | 788          | 1223            | 1529              | 1724             | 1882             | 2011            |
| 5200                       | 792          | 1231            | 1538              | 1735             | 1893             | 2023            |
| 5240                       | 797          | 1238            | 1547              | 1745             | 1905             | 2036            |
| 6400                       | 802          | 1246            | 1557              | 1756             | 1916             | 2048            |
| 6450                       | 807          | 1253            | 1566              | 1767             | 1928             | 2060            |
| 6500                       | 812          | 1261            | 1575              | 1777             | 1940             | 2073            |
| 6550                       | 816          | 1267            | 1583              | 1786             | 1949             | 2083            |
| 6600                       | 820          | 1272            | 1590              | 1794             | 1957             | 2092            |
| 6650                       | 823          | 1277            | 1597              | 1801             | 1965             | 2100            |

# Emergency Regulations

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## 1. LEGAL BASE AND PURPOSE

Action will be taken against responsible parents (RPs) who fail to comply with their established support orders. Administrative means of enforcement, as well as the usual court procedures for enforcing delinquent accounts, are available to the Division of Child Support Enforcement. Enforcement MUST begin once the obligation has been identified as delinquent.

Federal regulations provide for collection of delinquent support through several intercept processes. Current support and/or delinquent support can be collected through the use of administrative or court-ordered wage withholding. payments collected through enforcement remedies for Non-ADC cases will be sent out promptly. The amount of money withheld from wages can only be withheld up to the amount allowed under the Consumer Credit Protection Act. This is:

- a. 50% of net pay if the RP is supporting a spouse or child other than those for whom the garnishment is being implemented; and is delinquent for a period which is equal to or less than 12 weeks prior to the initiation of withholding support payments;
- b. 55% of net pay if the RP is supporting a spouse or child other than those for whom the garnishment is being implemented; and is delinquent for a period which is more than 12 weeks prior to the initiation of withholding support payments;
- c. 60% of net pay if the RP has no other dependents; and is delinquent for a period which is equal to or less than 12 weeks prior to the initiation of withholding support payments; or
- d. 65% of net pay if the RP has no other dependents; and is delinquent for a period which is more than 12 weeks prior to the initiation of withholding support payments.

Note: The amount allowed by the Virginia Employment Commission when intercepting unemployment compensation benefits is always 50% of the benefit.

## 2. HEALTH CARE COVERAGE IN COURT ORDERS

Support orders must include a provision for health care coverage if available at a reasonable cost. Administratively established support orders can only contain a provision for health care coverage for dependent children. However, a court may make a determination for a provision for both the caretaker and dependent children. Court orders may also contain a provision ordering payments for reimbursement of medical costs.

## 3. ADMINISTRATIVE ENFORCEMENT REMEDIES

The Code of Virginia gives DCSE the authority to collect delinquent obligations involuntarily and independently of the usual court procedures. Administrative means of enforcement can be used against administratively assessed RPs or against RPs with a court order for support. The RP must either be employed in Virginia, hold attachable assets in Virginia or be a person subject to Virginia law.

### a. Mandatory Withholding of Earnings (MWE)

Mandatory Withholding of Earnings (MWE) is an involuntary means of collecting current and/or delinquent support. It can be used for in-state cases and out-of-state cases. It can be ordered administratively or through the court (when ordered by the court, it is called a Mandatory Payroll Deduction). The MWE must be issued for all IV-D cases if the RP fails to make payments in an amount equal to the support payable for one month. The amount to be withheld from disposable earnings cannot exceed that allowed by the Consumer Credit Protection Act.

The RP's employer is bound by law to honor the MWE unless there is a mistake of fact in the order for MWE. The initial MWE must be implemented against current support and/or arrears due. Once the current order is satisfied, a modified MWE can be used to collect only remaining arrears or once the arrearage is satisfied, a modified order can be sent to collect current support only. The RP cannot avoid imposition of the MWE simply by paying the overdue support.

### 1) Legal Provisions and Application of the MWE

a) An Administrative Support Order or Notice and Finding must have been properly served on the RP for administratively established obligations. For court ordered obligations, an administrative MWE can be initiated without a prior Administrative notice being issued.

b) The MWE must be issued when the RP fails to make payments equal to the support payable for one month. It can be issued against earnings, such as wages, salary, commission, bonus, benefits, debts and income or profits due the RP or payment of any type, such as lottery winnings, etc.

Note: The following types of earnings and benefits are exempted under Federal and State law from garnishment:

- (1) Supplemental Security Income (SSI) on Black lung Benefits (42 U.S.C. § 407)
- (2) Homestead and personal articles (§§ 34-4 to 34-28, Code of Virginia)

# Emergency Regulations

(3) Property of disabled veterans (§ 34-4.1, Code of Virginia)

(4) Growing Crops (§ 8.01-489, Code of Virginia)

(5) Benefits from group life insurance policies (§ 38.1-482, Code of Virginia)

(6) Proceeds from industrial sick benefits insurance (§ 38.1-488, Code of Virginia)

(7) Burial contracts (§ 11-28, Code of Virginia)

(8) Benefits for victims of crime (§ 19.2-368.12, Code of Virginia)

(9) Veterans' benefits (38 U.S.C. § 3101)

(10) Public assistance payments (§ 63.1-88, Code of Virginia)

(11) Federal civil service retirement benefits (5 U.S.C. § 8346)

(12) Annuities to survivors of federal judges (28 U.S.C. § 376(n))

(13) Assignment of certain salary and wages (§ 55-165, Code of Virginia)

(14) Longshoremen and Harborworkers Compensation Act (33 U.S.C. § 916)

(15) Workers' Compensation (§ 65.1-82, Code of Virginia)

(16) Portions or amounts of wages subject to garnishment (§ 34-29, Code of Virginia)

c) The MWE can be transferred to future employers.

d) The employer cannot discharge, refuse to employ or take disciplinary action against the RP because of the MWE.

e) The employer is bound by law to honor the MWE until it is released by the DCSE.

f) The employer may void the MWE for the following reasons by filing a reply to the order within five business days from the date of service of the order:

(1) The order does not contain the RP's Social Security number;

(2) The order does not specify an amount to be withheld per pay period;

(3) The order does not contain the maximum

percentage that can be withheld by law;

(4) The order contains information in conflict with the employer's records, i.e., incorrect Social Security number;

(5) Payment is ordered other than to DCSE, the Department's designee or to the payee. The payee cannot receive child support services from DCSE if payment is sent from the employer directly to payee; and/or

(6) If payment is ordered other than by combined single payment to the Department's central office without the employer's express written consent. This pertains to employers who have 10,000 or more employees.

g) The employer may charge a \$5.00 fee for each reply or remittance sent to DCSE.

h) The employer is bound by law to deduct and remit the amount specified on the employee's regular payday.

i) The MWE takes priority over any other types of liens created by State law against an employee's income except prior similar wage deduction orders.

j) The employer must notify DCSE of the RP's new employer and address of employee, if known, when the RP terminates employment.

k) Money will be withheld during the pendency of an appeal and refunded to the RP if the decision of the Hearings Officer is in the RP's favor.

## 2) Prorating of the Amount Collected by Mandatory Withholding of Earnings (MWE)

For RPs who are obligated for multiple cases, whether ADC or Non-ADC, the amount withheld for the MWE must be prorated among the cases when the RP's disposable earnings will not allow for the full payment of each current support order. Each family is to receive full payment of the current obligation when possible. Current amounts of support are satisfied before satisfying arrearage amounts.

## 3) Modification of the Order for MWE

a) This is necessary when the current support obligation or the arrears has been paid off.

b) This may be necessary when the whereabouts of the child or caretaker became unknown.

c) This may be necessary when there has been a change in the amount of the current or arrears support obligation.

# Emergency Regulations

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## 4) Release of the Order for MWE

### a) The Order may be released when

- (1) the current obligation to support is terminated, and all arrearages have been paid; and/or
- (2) the whereabouts of the child or child and caretaker become unknown;

b) The order will not be released in cases in which there is still a current obligation, but the RP has satisfied the arrears.

## B. ADMINISTRATIVE APPEAL OF THE MANDATORY WITHHOLDING OF EARNINGS

The Code of Virginia requires that the RP be given the right to appeal a notice of DCSE's intent to implement a Mandatory Withholding of Earnings (MWE) to an Administrative Hearings Officer. The basis for this appeal is limited to mistake of fact. A mistake of fact is limited to the identity of the RP or an error in the amount of current support or arrearage. The RP must first go through the administrative hearing process before appealing to the court.

The RP and the custodial parent have the right to appeal the decision of the Administrative Hearings Officer to the Juvenile and Domestic Relations District Court (JDRDC) in his/her locality or residence, but must go through the administrative hearing process first. If he/she is a non-resident, the appeal to the court shall be the court located where the custodial parent resides. If both parties are nonresidents, the appeal shall be held in the court where the property of the RP is located or where the RP's employer is located. The RP shall elect the location for the appeal if there is more than one choice. This appeal must be filed within 10 days of receipt of the Hearings Officer's decision. The MWE will be enforced during the pendency of an appeal. Any money collected during this time will be returned to the RP if the appeal decision is in his favor.

### a. The Responsible Person Can Appeal the MWE to the Hearings Officer

- 1) Based on a mistake of fact only;
- 2) Within 10 calendar days of the RP's receipt of the notice, verified by date of service, receipt of certified mail, or date on waiver of service form. If the appeal request is mailed, the postmark data must be no later than 10 days from the date of service. If service was by posting, the date of service is the date the notice was posted.
- 3) The RP and the custodial parent can appeal the Hearings Officer's decision to the JDRDC within 10 days of receipt of the Hearings Officer's decision.

### b. Summary of Facts for an Appeal of the Mandatory Withholding of Earnings

A summary of actions taken by DCSE that led to the RP's appeal of notice of intent to implement the MWE is prepared by the District Office and sent to the Hearings Officer within 5 calendar days of receiving information that the RP has appealed. The summary is a statement of facts, not opinions or conclusions.

### c. Rights of the Responsible Parent and the Custodial Parent

- 1) The RP can have the hearing continued if there is good reason and the request is made in writing and received at least five days before the hearing. Continuances will not be for more than 10 days. These conditions are explained in the Notice of Hearing letter sent by the Hearings Officer to both the RP and the custodial parent. A copy of the Summary of Facts is attached to this letter;
- 2) The RP can be represented at the administrative hearing by legal counsel;
- 3) The RP can withdraw the appeal;
- 4) The RP and CP must receive a copy of the decision within 45 days from the date of service of the Notice to implement or at the time of the hearing if service is waived by the RP;
- 5) The RP and CP must be notified that the appeal is abandoned;
- 6) The RP and CP can request to see material kept in the DCSE file. The request must be made in writing; and
- 7) The RP and CP can appeal the decision of the Hearings Officer to the appropriate JDRDC within 10 days of receipt of the Hearings Officer's decision.
- 8) The RP will receive a copy of the Summary of Facts.

### C. Liens

A lien is an encumbrance on real or personal property for the satisfaction of a debt. A filed lien preserves the debt for the life of the lien (20 years). After 20 years, the lien can be renewed. The lien of the Department shall be subordinate to the lien of any prior mortgagee.

#### 1) Requirements for Filing a Lien

- a) RP must reside in or be employed in Virginia or hold attachable assets, or if residing and working outside Virginia, be a federal employee. If the RP's employer has a registered agent in Virginia, the RP's income is attachable;

# Emergency Regulations

b) An Administrative Support Order or Notice and Finding must have been properly served or a waiver of service signed by the RP, and 10 days must have elapsed from the date of service or a court order must be in effect. A lien may be filed immediately upon receipt by DCSE of a support order from a jurisdiction outside of Virginia; and

c) The RP's obligation is delinquent.

## 2) Release of the Lien

The lien can be released when the debt on the lien is satisfied.

## D. Order to Withhold and Deliver (OWD)

The Order to Withhold and Deliver is one of the enforcement remedies used by DCSE to collect delinquency support. It orders the holder of the RP's assets to turn the assets over to DCSE. The Order to Withhold and Deliver can be used to collect assets such as bank accounts and trust funds, stocks, bonds, and other types of financial holdings.

### 1) Legal Provisions and Applications of the Order to Withhold and Deliver

a) In order to initiate an Order to Withhold and Deliver, an Administrative Support Order, or Notice and Finding of Financial Responsibility, for obligations established prior to July 1, 1988, must be served.

b) Lump sum resources, such as bank accounts, are withheld in total, up to the amount of delinquency owed by the RP.

c) The holder of assets can be held liable for 100% of the debt due if he fails to comply with the Order to Withhold and Deliver. The holder of the assets has 10 days, not counting the day of service, to answer the Order to Withhold and Deliver in writing and under oath;

d) The holder of assets can void the "Order to Withhold and Deliver" if he mails a reply within five working days of his receipt of the Order. The only reasons for the holder of assets voiding the Order are:

(1) it does not contain the employee's correct SSN; or

(2) it contains information which is in conflict with the holder of assets' current record i.e., Social Security number.

e) The Order to Withhold and Deliver collects accrued debt and cannot be used to collect current obligations;

f) The Order to Withhold and Deliver is effective until the amount due is collected, or until released by DCSE;

g) The RP must be served a copy of the "Order to Withhold and Deliver". Service can be made by the sheriff, a disinterested third party, or by certified mail, return receipt requested. The RP has the right to file an appeal of the Order to Withhold and Deliver on the basis of a mistake of fact.

## 2) Release of the Order to Withhold and Deliver

The Order to Withhold and Deliver shall be released when the debt on the Order to Withhold and Deliver is paid or when the RP makes satisfactory alternate arrangements for paying the debt. The Order to Withhold and Deliver should be released within 21 days if the order cannot be served on the RP.

## ADMINISTRATIVE APPEAL FROM AN ORDER TO WITHHOLD AND DELIVER

The RP has the right to appeal the Order to Withhold and Deliver to the Administrative Hearings Officer based on a mistake of fact.

The RP also has the right to appeal within 10 days of the decision of the Hearings Officer to the JDRDC in his/her locality of residence. If he/she is a nonresident, the appeal shall be where the custodial parent resides. If both parties are nonresidents, the appeal shall be held where the property of the RP is located or where the RP's employer is located. The RP shall elect the location for the appeal if there is more than one choice. The RP must first go through the administrative hearing process before appealing to the court.

### a. The Responsible Person can Appeal the OWD

1) Based on whether a mistake of fact has occurred; and

s) Within 10 calendar days of the date of service or waiver of service of the "Order to Withhold and Deliver" on the RP. If the appeal request is mailed, the postmark date must be no later than 10 days from the date of service. If service was by posting, the date of service is the date the "Order to Withhold and Deliver" was posted.

### b. Summary of Facts for an Appeal of the Order to Withhold and Deliver

A summary of actions taken by DCSE that led to the RP's appeal of the Order to Withhold and Deliver is prepared by the District Office and sent to the Hearings Officer within five calendar days of receiving the RP's request for appeal form. This summary is a statement of facts, not opinions or conclusions.



# Emergency Regulations

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## c. Rights of the Responsible Parent and Payee or Custodial Parent

1) The RP can be granted a continuance of the hearing, if there is good reason and the request is made in writing at least five days before the hearing. Continuances will not be for more than 10 days. These conditions are explained to the RP in the Notice of Hearing letter sent by the Hearings Officer;

2) The RP can be represented at the hearing by counsel;

3) The RP and CP can request to see material about the Order to Withhold and Deliver kept in DCSE's file. The request must be made in writing;

4) The RP and CP can appeal the decision of the Hearings Officer to the JDRDC within ten days of receipt of the Hearings Officer's decision;

5) The RP is to receive a copy of the District Officer's summary of facts;

6) The RP can withdraw the appeal;

7) The RP and CP must receive a copy of the Hearings Officer's decision within 45 days from the date of the request for appeal or at the time of the hearing if service is waived by the RP; and

8) The RP and CP must be notified when the appeal request is considered abandoned.

## E. Foreclosure

Foreclosure is a means of enforcement resulting in a forced judicial sale of real or personal property of the RP. The proceeds of the sale, after deduction of costs incurred, are used to pay the RP's debt to the Commonwealth, or arrearage owed to the custodial parent in Non-ADC cases.

### 1) Legal Provisions and Application of Foreclosure Proceedings

a) Foreclosure can be used when all other enforcement methods would not be effective.

(1) The RP owns real property and personal property in Virginia that could be reached using the foreclosure remedy.

(2) The RP has personal property (i.e., car, boat, camper) or real property that could be sold to pay the Commonwealth or pay the support owed to the custodial parent and children.

b) The Investigator will determine the equity in, and balance due, on the RP's property to evaluate the cost-effectiveness of the use of foreclosure. Final

approval for use of "foreclosure" will be given by the Director of the Division of Child Support Enforcement.

## F. Distraint, Seizure and Sale

Distraint, seizure and sale is an administrative means of enforcement that allows DCSE to take property of the RP, sell the property and apply the proceeds to the debt or obligation and arrears owed by the RP. Final approval for use of distraint, seizure and sale will be given by Director of the Division of Child Support Enforcement.

## G. Unemployment Compensation Benefits Intercept

Federal regulations require that unemployment compensation benefits be withheld by voluntary agreement or other legal means to collect delinquent obligations for support enforcement cases. If there is a delinquency for support equal to one month's support obligation, the MWE or Assignment of Earnings is used to collect benefits. Benefits paid by the Commonwealth to an RP who lives out of state are subject to interception as long as all service requirements on notices can be met.

### 1) Voluntary Intercept (Assignment of Benefits)

An Assignment of Benefits form can be sent to the out of state RP by mail for court orders or for administrative obligations. In most situations, the MWE or Assignment of Earnings will be used to collect benefits.

The benefit assignment is a voluntary agreement between DCSE and the RP to have the RP's obligation deducted from his unemployment compensation benefits.

#### a) Criteria for Use of the Benefit Assignment

(1) A legally enforceable obligation must exist which is either;

(a) an administratively established obligation based upon a properly served Administrative Support Order (Notice and Finding for obligations established prior to July 1, 1988); or

(b) a court order.

(2) The Virginia Employment Commission only allows a maximum of 50% of the benefits to be intercepted.

(3) The RP agrees to sign the Assignment of Benefits form.

### 2) Involuntary Intercept

The MWE or Assignment of Earnings is sent to the Virginia Employment Commission (VEC) on all IV-D

cases where a delinquency exists in the amount equal to or more than one month's support payment. The criteria and legal provisions of the MWE and Assignment of Earnings apply with the exception of the maximum amount allowed to be intercepted. VEC will only allow 50% of the benefits to be intercepted.

## H. Bonds, Securities and Guarantees

States have in effect and use administrative procedures requiring RPs to post administrative security, bond or give some other guarantee to secure payment of delinquent support. A bond is a written instrument guaranteeing performance of something or payment under certain conditions. A security constitutes a protection, assurance or indemnification in order to make sure of a payment by furnishing a resource to be used in case of failure to meet the obligation. A guarantee is a promise to answer for the debt or default of another person (i.e., the obligor).

### 1) Type of Bonds, Securities or Guarantees

- a) *Blocked Accounts* - A bank account owned by a person to which access is limited or denied until certain future obligations are met.
- b) *Cash Bonds* - A sum of money given to assure the performance of an obligation previously agreed upon.
- c) *Court-Appointed Receiver* - A person appointed by the court for the protection or collection of property. A receiver's function is the protection or preservation of property for the benefit of persons who have an interest in it.
- d) *Escrow Account* - A bank account created by a special deposit with restricted access and returned to the depositor upon the occurrence of a specified condition agreed upon in advance.
- e) *Establishment of Trusts* - Rights to real or personal property held by one party for the benefit of another.
- f) *Impoundment* - Funds or movable property held in legal custody.
- g) *Letter of Credit* - A letter addressed by a banker to a person to whom credit is given authorizing the person to draw on the issuing bank up to a certain sum and guaranteeing to accept the drafts is made.
- h) *Life/Disability Insurance* - Insurance purchased on the life or physical capacity of a person to identify those named as beneficiaries against future loss through death or incapacity of the person insured.
- i) *Promissory Note* - A written promise to pay a certain sum of money to the person or institution

named therein, at a future time, unconditionally.

j) *Use of Cosigners* - the practice of allowing a third party to assure, authorize, guarantee, etc., that a person will pay a certain sum or perform an agreed upon duty or act.

### 2) Use of Administrative Bonds, Securities or Guarantees

a) Should be used only after all other collection remedies have failed, i.e., IWE, MWE, IRS Full Collection, OWD, IRS Intercept, etc;

b) The arrearage must exceed \$1,000;

c) Should be used for RPs against whom wage/asset withholding remedies are not feasible, i.e., self-employed, or seasonal employees;

d) Must be approved by the District Administrator and reviewed by legal counsel;

e) The minimum amount required for a bond shall be equal to the amount of one month's support obligation; and

f) Must be a legally established obligation:

(1) Court order

(2) Administrative Support Order

(3) Administrative or court ordered cases referred by other state IV-D agencies.

3) Release a bond only when arrearages are satisfied and no current support obligation exists.

### REVIEW OF BOND

An administrative review will be granted to the RP based on a mistake of fact if the RP objects to information contained in the Advance Notice sent to him.

### 4. COURT ENFORCEMENT OF SUPPORT

The courts are available for the enforcement of their support orders. The penalty for failure to follow a court order depends on how the court order was filed (as a criminal or civil petition).

#### a. Mandatory Payroll Deduction (Court-Ordered)

Mandatory Payroll Deduction Order is an involuntary means of collecting current and delinquent support. The court may order a MPD upon request from DCSE after proper notice is sent by the clerk or counsel to the RP.

#### b. Judgment and Court Means of Collection

# Emergency Regulations

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If the RP is in arrears on any court order the unpaid obligation creates a judgment for the amount of the past due support.

## c. Immediate Payroll Deduction Order

Immediate deduction of wages to satisfy a support obligation can occur when the order is entered. This is at the discretion of the Judge.

## 5. TAX SET OFF

The Code of Virginia and the Code of Federal Regulations provide that State and Federal income tax refunds can be intercepted and applied in whole or in part against delinquent support obligations due the custodial parent or to the Commonwealth. Cases certified for interception of Federal tax refunds are automatically referred for interception of State tax refunds and vice versa, for those cases which were previously ADC or ADC/FC in which a debt to the State exists. Money received from a tax set off must be applied to the State debt until satisfied in the following manner:

Money received from IRS can be retained by DCSE up to the most recent amount certified. If additional arrears have accrued since the time of certification the RP must be contacted regarding allowing DCSE to keep the excess funds.

Money received from the State Department of Taxation can be retained up to the total arrears amount which exists at the due date of the Finalization Notice (Part 2 of the Notice to Claimant Agency) to Taxation.

### a. State Tax Setoff

#### 1) Criteria for Certification:

##### a) Legally established obligation

(1) court order.

(2) Administrative Support Order or (Notice and Finding of Financial Responsibility);

(3) administrative or court ordered cases referred by other state IV-D agencies;

b) Debt is due and owing and there is no appeal pending; and

c) The debt is at least \$25.00. (combined case total)

#### 2) Notifying RP of Set Off

Each certified case that matches the Department of Taxation's file (of people due a refund) produces a three part notification form which is sent to CO. CO sends the RP a letter about the impending interception of his tax refund. The RP has 30 days to

object to the certification. The objection must be in writing.

#### 3) Refunds will be issued promptly when:

a) The certification was made in error;

b) The RP paid arrears in full after the deletion deadline; or

c) The total amount intercepted from a Federal tax refund is more than the amount certified for interception and the RP will not consent to the application of the additional amount collected to be put on arrearage that has accrued since certification. However, the RP should be advised that DCSE will take action to secure the accrued arrearage.

## ADMINISTRATIVE APPEAL OF A STATE TAX INTERCEPT

The Code of Virginia requires that the RP be given the right to appeal the interception of State tax refunds to determine whether the claim is valid and whether the amount claimed by DCSE is correct. If the amount claimed by DCSE is found to be incorrect, DCSE must make the appropriate adjustment.

The RP and the custodial parent can appeal within 10 days of receipt of the Hearings Officer's decision to the Circuit Court in their locality of residence. If the RP is a non resident, they can appeal where the custodial parent resides. If both the RP and custodial parent are non-residents, the appeal shall be held where the property of the RP is located or where the place of business of the RP's employer is located. If there is more than one choice, the RP shall elect the location of the appeal.

### a. The Responsible Person/Custodial Parent Can Appeal the State Tax Intercept

1) Based on whether the claim is valid and whether the amount listed as delinquent support is correct;

2) Within 30 calendar days from the date of mailing of the State Tax Notification Letter. If the RP fails to appeal in writing within the 30 day period he has in effect waived the right to contest the claims; and

3) To Circuit Court within 10 days of receipt of the Hearings Officer's decision.

### b. Summary of Facts for an Appeal for State Tax Intercept

A summary of actions taken by DCSE that led to the RP's appeal is prepared by the District Office and sent to the Hearings Officer within five calendar days of receiving the RP's appeal request. The summary is a statement of facts, not opinions or conclusions.

# Emergency Regulations

## c. Rights of the Responsible Person and Custodial Parent

1) The RP can have the hearing continued, if there is good reason and the request is made in writing at least five days before the hearing. Continuances will not be for more than 10 days. These conditions are explained in the Notice of Hearing Letter sent by the Hearings Officer to both the RP and custodial parent. A copy of the Summary of Facts is attached to the notice.

2) The RP can be represented at the hearing by legal counsel;

3) The RP can withdraw the appeal;

4) To receive a copy of the decision within 45 days of the date the appeal request was received by the district or at the time of the hearing, if service is waived by the RP;

5) The RP and CP are to be notified that the appeal is abandoned;

6) The RP and CP can request to see material relevant and kept in the DCSE file. The request must be made in writing; and

7) The RP and CP can appeal the decision of the Hearings Officer to the appropriate circuit court within 10 days of receipt of the Hearings Officer's decision.

8) The RP is to receive a copy of the Summary of Facts.

## b. Federal Tax Set Off

### 1) Criteria for Certification of Cases to IRS

a) There must be a legally enforceable obligation by:

(1) Court order, or

(2) Administrative Support Order or Notice and Finding of Financial Responsibility

b) Amount certified is delinquent three months or longer, and is not less than \$150 (combined case total) for ADC or ADC/FC cases. The amount certified must not be less than \$500 (combined case total) for all other cases and must be delinquent, but there is no requirement for how long;

c) The client must be receiving or have received ADC or ADC/FC benefits or an application for Support Enforcement services must have been made. If an application for Support Enforcement services has been made, the applicant must be

advised that:

(1) If the tax intercept involves a joint return, the tax intercept will not be distributed for six months after the Division is notified of the offset. This is to allow the other spouse to file an amended tax return.

(2) If the applicant received public assistance in the past, any debt owed to the State must be satisfied first.

(3) Any payment the family receives may have to be returned to the IV-D Agency if there is an adjustment within three years following the end of the tax year;

d) The certifying state must have an assignment of rights/authorization to seek or enforce a support obligation;

e) For Non-ADC cases, only child support can be submitted for tax offset, no spousal support. For ADC or ADC/FC benefit cases, spousal and child support amounts may be submitted;

f) Support certified for those cases not receiving public assistance where no prior ADC or ADC/FC benefit money is owed to the State must be owed to or on behalf of a minor child. If debt is owed to the Commonwealth and was owed when child was a minor, certification is applicable.

g) The certifying state must verify accuracy of arrearages and have a copy of the court order and modifications and a payment record in the case. In situations where there has never been a payment history record, DCSE should have the client sign an affidavit attesting to the amount of support owed.

h) The certifying state must have a valid SSN and correct last name and for non-ADC cases, the custodial parents' current address.

### 2) Objections by RP to Certification

A notice is sent to the RP before the set-off stating that the debt to the State or arrearages to the custodial parent has been certified to IRS for collection. The RP is advised to contact DCSE's Central Office if there are any questions.

### 3) Deletions of Changes to Cases Certified

a) Deletions will be made when the RP's case was he certifying state must have an assignment of rights/authorization to seek or enforce a support obligation;

b) Changes to the certification amount can only be made to decrease the amount and will be made

# Emergency Regulations

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when:

(1) the RP has made a payment on the amount certified; and/or

(2) the amount certified is incorrect.

#### 4) Refunds to RPs

a) Refunds will be issued when:

(1) The certification was made in error;

(2) The RP paid arrears in full after the deletion deadline; or

(3) The total amount intercepted from State and federal tax refunds is more than the amount certified for interception plus any arrears that have accrued in addition to the certified amount.

b) Refunds will be issued before DCSE receives intercepted funds from IRS if the RP provides a copy of the intercept letter from IRS.

#### ADMINISTRATIVE APPEAL OF FEDERAL TAX OFFSET

The RP can contest the Federal Tax Intercept:

1) Based on whether the claim is valid and if the amount of past due debt is owed;

2) At the time of the pre-offset and offset notice, but not later than the time specified in the pre-offset notice; and/or

3) Within 30 calendar days from the date of the offset notice; after this date appeal rights are exhausted.

#### ADMINISTRATIVE REVIEW

An Administrative Review may be held to resolve complaints in response to:

1) the pre-offset notice, or

2) a tax refund that has already been offset for intrastate (order was established in Virginia and Virginia is certifying state) and

3) a tax refund has already been offset for interstate cases (order was established out of state and Virginia is certifying state or the order was established in state but some other state certifies).

This is an informal conference attended by the RP or his representative, custodial parent (for Non-ADC cases only), investigator, and an impartial designee who oversees the proceeding. The RP can appeal in the certifying state and also in the state which issued the order.

#### ADMINISTRATIVE APPEAL HEARING

The Code of Virginia also gives the RP the right to appeal to an administrative hearings officer if he is still dissatisfied after an administrative review is held. This must be done within 30 days after the actual offset occurs. All appeal rights expire if the appeal is not noted within 30 days of the offset. The RP and custodial parent can appeal the Hearings Officer's decision to circuit court within 10 days of receipt of the Hearings Officer's decision.

##### a. Summary of Facts for an Appeal for Federal Tax Intercept

A summary of actions taken by DCSE that led to the RP's appeal is prepared by the District Office and sent to the Hearings Officer within five calendar days of receiving the RP's appeal request. The summary is a statement of facts, not opinions or conclusions.

##### b. Rights of the Responsible Parent and Custodial Parent

1) The RP can have the hearing continued; there must be good reason and the request must be made in writing at least five days before the hearing. Continuances will not be for more than 10 days. These conditions are explained in the Notice of Hearing letter sent by the Hearings Officer to both the RP and custodial parent. A copy of the Summary of Facts is attached to the notice;

2) The RP can be represented at the hearing by legal counsel;

3) The RP can withdraw the appeal;

4) The RP and CP must receive a copy of the decision within 45 days of the date the appeal request was received by the district or at the time of the hearing when service has been waived;

5) The RP and CP must be notified that the appeal is abandoned;

6) The RP and CP can request to see material relevant to the RP kept in the DCSE file. The request must be made in writing; and

7) The RP and CP have the right to appeal the decision of the Hearings Officer to the appropriate Circuit Court within 10 days of receipt of the Hearings Officer's decision.

#### 6. IRS FULL COLLECTION SERVICE

Federal regulations provide that if IV-D agencies have made reasonable efforts to collect child support without success, IV-D agencies can request, through the Office of Child Support Enforcement (OCSE), that the IRS collect

# Emergency Regulations

the delinquent support due. IRS collection remedies include garnishment of wages and distraint, seizure and sale of property. The IRS can enforce in all 50 States, and the District of Columbia, Puerto Rico, Guam, the Virgin Islands, and any foreign country with whom the U.S. has a treaty to levy against assets.

## a. Prerequisites for Collection by IRS

### 1) Legally enforceable obligation:

- a) Court order, or
- b) Notice and Finding or Administrative Support Order;

2) IV-D has an authorization to provide services or assignment by operation of law under 45 CFR 302.33;

3) Amount certified is delinquent, and not less than \$750;

### 4) Sufficient information to identify RP including:

- a) full name,
- b) SSN, and
- c) most recent address or place of employment, date verification was received, and name of agency or individual that verified the information;

5) Reasonable efforts have been made by the IV-D agency or Support Enforcement applicant to collect the amount owed, and

6) A referral has not been made to IRS within the last six months, except to correct or update a previous request.

## 7. CREDIT BUREAU

There are two situations where DCSE information is released to a Consumer Credit Reporting Agency or Consumer Credit Bureau. These are:

a. DCSE will provide information on responsible parents to Consumer Credit Bureaus and Consumer Credit Reporting Agencies requesting this information, provided there is an arrearage amount of \$1,000 or more for that RP.

Administrative Appeal of Arrearage Information Released to a Credit Bureau

1) The RP will be notified of the release of this information and may contest within five working days the accuracy of the amount of arrearage information released. There can be an informal administrative review conference. If the RP is not satisfied, then he/she may request a formal hearing to the

Administrative Hearings Officer within 30 days of the mailing of the decision.

2) A decision must be released within 10 days of the administrative review conference.

3) A decision must be released within 45 days from the date of request for a review if a formal appeal is held.

B. DCSE will notify Consumer Credit Bureaus and Reporting Agencies each time an administrative lien is filed on an RP. The RP does not have the right to contest this.

## 8. ENFORCEMENT REMEDIES TO BE USED AGAINST FEDERAL EMPLOYEES

Federal Law (5 CFR, Part 581) allows for the garnishment/attachment of U.S. Military and Civilian active and retired personnel pay to satisfy child and spousal support orders. As long as all requirements are met, any of Virginia's administrative and court enforcement proceedings can be used to garnish/attach pay to satisfy child and spousal support orders.

The following legal provisions apply:

a. There must be a legally established Administrative Support Order, Notice and Finding of Financial Responsibility or a Court Order for Support.

b. A request for garnishment must be sent to the designated agent by certified or registered mail, return receipt requested. If the designated agent is not one of those listed in Appendix A of the Procedures Manual, then you should consult the Central Office Policy Section.

c. The following must accompany the request for garnishment:

1) A certified copy of the court or the Administrative Support Order.

2) Identifying Information about the Responsible Parent.

(a) Full name;

(b) Date of birth;

(c) Employment number, Social Security number, Veteran's Administration claim number;

(d) Component of the governmental entity for which the responsible parent works, and the official duty station or work site; and

(e) Status of the responsible parent, i.e., present employee or former employee.

# Emergency Regulations

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d. The designated agent shall respond to DCSE within 30 calendar days of the date of service to give a status report regarding the situation.

e. If the governmental entity is served with more than one garnishment for the same Responsible Parent, then the garnishments are satisfied on a first-come, first served basis.

f. Governmental entities shall not be required to vary their normal pay or disbursement cycles to comply with the garnishment.

g. The governmental entity which had the garnishment served on it will notify DCSE if there is no money due the Responsible Parent or if the Responsible Parent has transferred employment and there is a new disbursing governmental entity.

h. Listed below are remedies which may be used for active military personnel and public health service employees, if you cannot process a garnishment (i.e., IWE, MWE) under Virginia Statute.

1. **Mandatory Military Allotments - Navy, Army, Marine Corps, Air-Force, and Coast Guard Personnel**

The Federal Tax Equity and Fiscal Responsibility Act of 1982 (Public Law 97-248) requires that allotments be made from the pay and allowances of active members of the uniformed services for current or delinquent child or child and spousal support. This applies when the member has failed to pay support equal to the amount due for two months.

a) Requirements for Using Allotment Process

(1) Service Personnel must be on full-time active duty in the military (includes training duty);

(2) There must be a legally established obligation which is either a court order or an Administrative Support Order;

(3) Notification of the delinquent obligation must be sent to the designated agent of the appropriate military service; and

(4) The RP must be given the opportunity to consult with a judge advocate or legal officer. When this cannot be arranged, the allotment will begin the first end-of-month pay day 30 days from the date the notice was served.

b) Requirements for the Notice Served on the Designated Agent

A notice must be sent by regular first class mail to the designated agent of the military service paying the RP.

c) Restrictions on the Allotment

The amount of money withheld from wages withheld up to the amount allowed under the Consumer Credit Protection Act. This amount is described in Chapter F., 1.

2. **Involuntary Child Support Allotments - Public Health Service Employee's**

The Federal Tax Equity and Fiscal Responsibility Act of 1982 required that allotments be made from pay of Public Health Service commissioned officers on active duty to satisfy child and spousal current and past due support payments. This applies when the officer has failed to pay support equal to the amount due for two months.

a) Requirements For Using Allotment Process

(1) The employee must be a commissioned officer on active duty for a period of six months or more;

(2) A legally established obligation, either a court order or an Administrative Support Order, or Notice and Finding of Financial Responsibility, must be in effect;

(3) Notification of the delinquent obligation must be served on the designated agent; and

(4) The RP must be given notice of the allotment and the opportunity to consult with a legal officer. When the RP has a consultation, waives his right to consultation or the consultation could not be arranged, the allotment will begin the first end of the month payday after the PHS Personnel Division is notified.

b) Requirements for the Notice Served on the Designated Agent

A notice must be served on the designated agent by either certified mail, return receipt requested mail or by personal service.

c) Restrictions on Allotment

The amount of money withheld from wages is withheld up to the amount allowed under the Consumer Credit Protection Act. This amount is outlined in Chapter F.,1.

\* \* \*

1. **LEGAL BASE AND PURPOSE**

The Code of Virginia §§ 8.01-27.2 and 18.2-181 assess penalties to individuals who issue bad checks. Due to the number of bad checks the DCSE has received, coupled with erroneous disbursements that have resulted from

# Emergency Regulations

improperly identified checks, DCSE has developed policy to ensure the recovery of monies due the Commonwealth.

## 2. EMERGENCY PAYMENTS

### a. Background

The Division of Child Support Enforcement will issue emergency payments when all the following conditions exist.

1) the payment from the RP has been received by DCSE 10 or more working days before the CP's inquiry and the regular payment check cannot be issued within two working days under regular procedures; and

2) DCSE verifies that the CP has received or is experiencing any of the following:

- a) eviction or foreclosure notice
- b) repossession notice for furniture or automobile
- d) notice of utility cut-off
- d) loss of child care
- e) loss of medical insurance
- f) denial of required medical treatment
- g) denial of required prescription medicines
- h) loss of automobile or home insurance
- i) lack of food

An emergency payment will not be issued when:

1) the payment has been received by the Division less than 10 working days prior to the inquiry, and

2) the payment has been entered on a warrant register, and

3) the check issued by the State Treasurer's office is expected to be mailed within two working days.

### b. Process

1) Speedy and simplified procedures will be followed for all emergency payments to CP's (CP) made under authorized emergency conditions. All requests for emergency payments will be investigated, and authorized or denied. If authorized, payments will be dispatched to the petitioner as quickly as possible. If no record of payments is found, Emergency Enforcement will be requested. Every effort will be made to disburse an emergency payment to the CP or to request enforcement no later than the working

day (exclusive of weekends or holidays) following the initial request.

2) All payments will be made as "reimbursable advances against money due and owing" to the CP. All Emergency Petty Cash Fund checks are to be stamped on the reverse side with the statement

"By my acceptance of this payment I hereby authorize DCSE of the Commonwealth of Virginia to reimburse its Emergency Petty Cash Fund, the amount of this payment, from any support monies paid on my behalf."

All Emergency Petty Cash Funds are to be recovered and deposited in the Petty Cash Fund immediately. Checks identified for recovery will not be mailed to the CPs. If checks which were identified for recovery are mailed to the CP for any reason whatsoever then the Customer Service Unit shall request the CP to immediately return the check. If the CP has not returned the check before the next support payment arrives, any subsequent payments shall be withheld until the Emergency Petty Cash Fund payment amount has been fully recovered.

Custodial parents having balances prior to April 1, 1988, shall be requested by the Customer Service Unit to pay in full. If those CPs are unable or unwilling to pay in full then the Customer Service Unit shall prepare a letter to all CPs having unpaid balances stating that one or more of the following actions will be taken until the balance is paid in full:

If this is a Non-ADC case, DCSE will:

- a) Intercept and retain any RP payments on arrearage;
- b) Retain 10% of current support payment;
- c) Retain the lesser of the balance due or 100% of any IRS or State tax funds intercepted; or
- d) Retain the lesser of the balance due or any funds seized from bank accounts.

If this is an ADC case, DCSE will intercept and retain 10% of any Disregard payment or B-3 payment until the balance is paid in full.

3) All payments shall be made with particular attention to sound financial practices, the creation of an audit trail for all transactions, and timely recovery of all funds paid out.

4) Verification and authorization for emergency case payments for situations identified by item a. through ii above is the responsibility of the Customer Services Unit within the Administrative Services group of DCSE. In certain instances (e.g. initial client contact



# Emergency Regulations

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with a District Office), verification may be carried out by designated field staff.

5) Administrative processing of requests for payment, check preparation, and recovery of payments is the responsibility of the Disbursements Unit within the Financial Operations Section of DCSE.

6) Check writing is the responsibility of Financial Operations Administration. Maintenance of an Emergency Petty Cash Fund is the responsibility of the Disbursement Unit within the Financial Operations Section of DCSE.

7) Each organizational unit involved in the process (e.g., Customer Services Unit and Disbursements Unit, shall use the same form for authorization, processing, and recovery functions; and each shall keep a photocopy record of the original form (as received and processed by them) as a record (audit trail) of their share of the process.

## c. Emergency Action

When a call is received by the Customer Services Unit of DCSE wherein a client indicates that support payments have not been received as expected and an emergency exists as defined above, the following actions will occur:

1) The Customer Services Unit or District Office individual receiving the call is to take all information required on the "Emergency Payment Authorization Form".

2) In addition, the following information will be requested from the client by the person taking the call:

a) The nature of the emergency.

b) If an eviction, the name of the landlord or person responsible for receiving rent payments and means of contacting this person.

c) If a foreclosure, the name of the person or institution holding the mortgage, the mortgage number if possible, and means of contacting this person/institution.

d) If a repossession, the name of the person/institution responsible for receiving payments and a means of contacting this person/institution and account number, if possible.

e) If threatened with utility cut-off, the name of the company and account number.

f) If threatened with loss of child care service, the names of the child care provider and the child for whom day care is being provided.

g) If threatened with a loss of medical insurance, the name of the Insurance Company, the policy number and/or identification number, and the billing office address and/or phone number.

h) If threatened with denial of required medical treatment, name of person needing treatment, the name of the physician and/or medical facility threatening denial of services, and the address and/or phone number, and a general description of the intended medical treatment sought.

i) If threatened with denial of required prescription medicines, name of person needing medicine, the name of the pharmacy or medical institution threatening denial and the address and/or phone number.

j) If threatened with a loss of automobile or home insurance, the name of the Insurance Company, the policy number and/or identification number, and the billing office address and/or phone number.

k) If the client reports a lack of food, refer the client to the appropriate local welfare agency for possible assistance with emergency food stamps, and continue to process the case according to the Emergency Procedures set out in this document.

3) When this information has been received by the Customer Services Unit telephone contact, it shall be brought to the attention of the Unit Supervisor immediately.

The Unit Supervisor shall then initiate a payment search and verify the emergency nature of the situation.

If the contact originated at a District Office, all information on the "Emergency Payment Inquiry Form" (Parts I and II) shall immediately be brought to the attention of the Customer Services Supervisor in Central Office. If the District Office has received evidence that substantiates the emergency situation and/or the contention that monies are "due and owing" to the client (CP), then that evidence shall also be offered to the Customer Services Unit, and photocopies of the evidence offered immediately forwarded to Customer Services. Customer Services is authorized to accept verbal assurance of the evidence offered by the District Office.

4) Upon receipt of results of payment search and verification of the emergency nature of the situation, the Customer Services Unit Supervisor will initiate the procedures contained in Chapter G of the Procedures Manual.

## d. Verification and Consequent Actions

The client's right to receive payments in the first

## Emergency Regulations

instance will be verified (as well as the existence of an emergency) by the Customer Services Unit. The right of a client to receive a payment is dependent upon, among other things, the verifiable fact that money is "due and owing" to the client.

Verification that evidence exists that monies are "due and owing" will usually include one of three types of situations:

1) Instances where DCSE records indicate that valid payments from the RP, or payments on behalf of the RP, have been received by DCSE but payments have not been made (or sent) to the CP.

2) Instances where DCSE has no records, or at least no record of receipt of payments in DCSE by or on behalf of the RP, but where, nevertheless, evidence does exist that payment has been made by or on behalf of the RP. Such instances would include, for example, the following:

a) Presentation of a copy of the cancelled check or money order or other written evidence of payment.

b) Verbal assurance from a court representative, either in or outside of Virginia, who can be identified by name and telephone number and which payment can be identified by number.

c) Verbal assurance from an employer of wage withholding. The employer or contact person must be identified by name and telephone number.

3) Instances in which it has been determined that payments have been made by or on behalf of the RP and timely payments have been made (and sent) by DCSE to the CP, but the CP has not received the payment on a timely basis (defined as undelivered 10 days after posting in the mails) due to use of a wrong mailing address, delay/loss in the mails, or other unknown cause.

e. In cases when there is no evidence to substantiate that monies are "due and owing" to the CP:

1) Clients shall be advised that while payment cannot be issued until evidence of payment is secured, DCSE will contact creditors to explain the emergency nature of the situation and attempt to gain additional time (reasonable time) for the client to make necessary payments.

2) The Customer Services Supervisor or his/her designee shall notify the District Administrator immediately by telephone to give priority enforcement handling to that case. Written details of the case will be transmitted to that District Office the same day. Priority enforcement shall include the following activities:

a) Where no court or administrative order exists and the location of the responsible parent is unknown or paternity has not been established, the Division shall initiate the most expeditious methods of locating, establishing paternity and obtaining a legally enforceable child support obligation pursuant to the procedures as set forth in the Division's Manuals of Policy and Procedures. This action shall be initiated within five working days after the referral.

b) Where a court order for child support exists and the responsible parent is delinquent in payments, and whose employment in Virginia is verified, the Division shall initiate a Mandatory Payroll Deduction as provided by 20-79.1 of the Code of Virginia against the responsible parent's wages if the legal requirements for utilizing such action can be met. If those legal requirements cannot be met and/or the responsible parent's employment is unknown, the Division shall request the appropriate court to issue a Show Cause Order against the responsible parent. Either action shall be initiated within 5 working days after the referral.

c) Where an administrative order for child support exists not based upon a court order and the responsible parent is delinquent in payments and whose employment in Virginia is verified, the Division shall initiate a Mandatory Withholding of Earnings as provided by 63.1-250.3 of the Code of Virginia against the responsible parent's wage if the legal requirements for utilizing such action can be met. If these legal requirements cannot be met, the Division shall file a lien with the appropriate circuit court.

Once a lien has been filed, the Division shall initiate an Order to Withhold and Deliver against cash assets of the responsible parent which are known to be held by a third party. These actions shall be initiated within 5 days after the referral.

d) Where the responsible parent resides in Virginia, but is employed outside of Virginia and a Mandatory Payroll Deduction cannot be obtained by the Division, and there exists a Virginia court order for child support, the Division shall request the appropriate court to issue a Show Cause Order against the responsible parent. This action shall be initiated within five working days of the referral.

e) Where the responsible parent resides outside of Virginia and his employment is unknown or is outside Virginia and there exists an administrative or court order for child support, the Division shall take action necessary to most expeditiously enforce and collect child support. These actions include:

(1) Requesting out of state IV-D agencies to intervene to initiate a Mandatory Withholding of

# Emergency Regulations

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Earnings, if the case meets the legal requirements or issue a show cause order.

(2) Filing a URESA petition.

Either of the above actions shall be initiated within five working days after the referral.

f) Where none of the above remedies are available, the Division shall utilize the most expeditious and appropriate remedies available as determined by the Division to pursue and collect child support. This action shall be initiated within five working days of the referral.

## f. Authorization to Make Emergency Payments

Authorization to initiate a request for and make an emergency payment is limited and must be documented expressly in Part I of the Emergency Payment Authorization Form. Persons designated to approve authorized emergency payments are:

Customer Services Unit Supervisor

Any Assistant Director of DCSE

DCSE Director

## 3. BAD CHECKS

a. When a support check is returned due to insufficient funds, DCSE will initiate repayment procedures to recover the amount of the check. The repayment procedure can be used for RPs and their employers, in order to cover instances where the RPs pay by check or their employers issue the check when wage withholdings are in place.

1) the RP or his/her employer will be asked to repay the amount of the check returned for insufficient funds.

2) if the RP does not comply with the repayment request, the District Office will initiate a Mandatory Withholding of Earnings, Order to Withhold and Deliver, or take any other action that DCSE's legal counsel deems appropriate.

3) if the employer does not comply with the repayment request, the District Office will initiate legal action that the DCSE legal counsel deems appropriate.

b. Should a second check be returned due to insufficient funds, DCSE will not accept any further checks from that RP or his/her employer.

c. If the DCSE does not recover the payment made by a check with insufficient funds, and the support payment is sent to the Custodial Parent, the amount of the support payment will be added to the RP's debt. A bad check is

equal to a non-payment and, therefore, causes a debt to the Commonwealth in ADC cases, or an arrearage owed to the Custodial Parent in non-ADC cases.

## 4. ERRONEOUS PAYMENT TO CUSTODIAL PARENTS

a. If DCSE is notified by an employer that an erroneous payment has been made to DCSE, and the erroneous payment has already been disbursed to the Custodial Parent, DCSE will ask the Custodial Parent to repay the amount sent in error.

b. If DCSE erroneously disburses a payment to the Custodial Parent, the Custodial Parent will be asked to repay the amount disbursed in error.

## 5. BAD CHECK AND ERRONEOUS PAYMENT SET-OFF

a. When DCSE is notified that a check written by the Custodial Parent has been returned due to insufficient funds, DCSE will pursue the repayment of the check with the Custodial Parent; or

b. In situations where DCSE has distributed a payment in error to the Custodial Parent, DCSE will:

1) in ADC cases, attempt to recover the amount in question by asking the CP to return the money. When this is not possible, DCSE will recover the amount due by retaining monies (excluding the ADC grant) that would otherwise be due the Custodial Parent. This includes:

a) B-5 Payment

b) B-3 Payment

c) B-1 Disregard Payment.

2) in non-ADC cases, attempt to recover the amount due from the Custodial Parent by asking that the payment be returned to the DCSE. When this is not possible, DCSE will recover the amount due by retaining support money that otherwise would be due the Custodial Parent. This includes:

a) collections received on arrearages in order not to affect the current support going to the family.

b) retention of 10% of the current monthly support until the amount due DCSE is repaid. This is used only when there are no arrearages being paid by the RP that could be used to repay the DCSE.

## 1. LEGAL BASE AND PURPOSE

45 CFR 302.51 describes the distribution of child support payments received by a State IV-D Agency. Support Payments received by DCSE must be distributed and disbursed as described in this chapter.

# Emergency Regulations

When support monies are received by the DCSE Financial Unit, each payment must be identified and processed in the manner described in this chapter.

## 2. PRORATION

When the RP submitting the payment is identified, the system is checked to locate all DCSE cases that are linked with him/her. Each support payment, regardless of the ID# on the payment is prorated between the multiple custodial parents as follows:

a. Prorate all monies designated as child support payments (with the exception of tax intercepts) between the DCSE cases using the ratio of the current support obligation, until all current obligations are satisfied.

b. Any remaining monies will be prorated between the DCSE cases by applying the balance to:

- 1) current miscellaneous
- 2) current spousal support
- 3) court ordered arrears on current obligation
- 4) court ordered arrears on miscellaneous obligation
- 5) court ordered arrears on spousal support
- 6) payment of fees (excluding application fees)

The above proration is based on the ratio of the specific obligation.

## 3. DISTRIBUTION AND DISBURSEMENTS

When the system has prorated the support payment between the cases, the money belonging to Non-ADC cases is immediately disbursed to the client. The monies belonging to the ADC cases must be distributed according to Federal guidelines as follows:

a. The money received is applied first to the disregard payment to the client. The maximum amount sent to the client, regardless of number of RP's attached to the case is \$50.00 and cannot exceed the amount of current support. This is also known as a B-1 payment.

b. Any remaining monies from the support payment are used to satisfy the State and federal shares of public assistance paid for current month. This is also known as a B-2 distribution.

c. Any remaining monies from the support payment are paid to the client up to the deficit between the amount of PA received and the amount of the support order. This is also known as a B-3 refund.

d. Any remaining monies from the support payment are

applied to State and federal shares of arrearage for past public assistance paid. This is a B-4 distribution.

e. Any remaining monies will be paid to the family in the month following the month in which the amount of the collection was used to determine continued eligibility for an assistance payment under the IV-A plan. This is also known as a B-5 refund.

/s/ Larry D. Jackson, Commissioner  
Date: June 27, 1988

/s/ Gerald L. Baliles, Governor  
Date: June 30, 1988

/s/ Joan W. Smith, Registrar  
Date: July 1, 1988 - 1:02 p.m.

## COMMISSION ON THE VIRGINIA ALCOHOL SAFETY ACTION PROGRAM

Title of Regulation: VR 647-01-2. Commission on the Virginia Alcohol Safety Action Program Policy and Procedure Manual.

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

Effective Dates: July 1, 1988 through June 30, 1989.

### Preamble:

During the 1988 Session, the General Assembly passed legislation to move the Commission on VASAP under the auspices of the Secretary of Transportation and Public Safety. The Commission is responsible for overseeing the operation of twenty-six local ASAP programs and for establishing minimum standards and criteria for those programs. As a legislative body, the Commission did not originally adopt its Policy and Procedure Manual under the Administrative Process Act and has had insufficient time between April and July 1, 1988, to obtain the necessary public comment to re-adopt this Manual in accordance with the Act's requirements. To avoid a potential loss of continuity in the use of these guidelines occasioned by the Commission's transfer to the Executive Branch, emergency regulations are needed on or before July 1, 1988, until permanent regulations can be adopted with the benefit of public comment.

Respectfully submitted,  
/s/ Donald R. Henck, Executive Director

Approved:

/s/ Vivian E. Watts, Secretary  
Date: June 29, 1988

/s/ Gerald L. Baliles, Governor  
Date: June 30, 1988

# Emergency Regulations

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/s/ Joan W. Smith, Registrar of Regulations  
Date: June 30, 1988 - 3:49 p.m.

**EDITORS NOTE:** This Policy and Procedure Manual is on file and available for public inspection at the office of the Registrar of Regulations and VASAP in the General Assembly Building, Richmond, Virginia.

# STATE CORPORATION COMMISSION

## STATE CORPORATION COMMISSION

Bureau of Insurance

June 30, 1988

Administrative Letter 1988-11

TO: All Health Services Plans, Health Maintenance Organizations, Dental, Optometric or Legal Services Plans

RE: Administrative Letter 1988-10

This letter is to rescind the application of Administrative Letter 1988-10 to all health services plans, health maintenance organizations, and dental, optometric or legal services plans.

Administrative Letter 1988-10 outlines requirements for a consumer notice that is to accompany all insurance policies. The requirements are provided in House Bill 176 which was added to existing code section 38.2-305 by the 1988 General Assembly. Through an oversight, Administrative Letter 1988-10 extended the statutory requirements of the new legislation beyond the scope of that section. Please be advised that no health service plan, health maintenance organization, dental, optometric or legal services plan is required to comply with the provisions of House Bill 176.

/s/ Steven T. Foster  
Commissioner of Insurance

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State Corporation Commission

AT RICHMOND, JUNE 30, 1988

COMMONWEALTH OF VIRGINIA, ex rel.

STATE CORPORATION COMMISSION

CASE NO. SEC880059

Ex Parte, in re  
Promulgation of rules pursuant to  
the Securities Act, Take-Over-Bid  
Disclosure Act and Retail Franchising Act

### ORDER RESCINDING AND ADOPTING RULES

On June 27, 1979, the Commission, by order, adopted rules relating to the disclosure of information and documents deemed confidential to the disclosure of information and documents deemed confidential and nonpublic by the provisions of Va. Code §§ 13.1-518, 13.1-534 and 13.1-567. This order is recorded in the Commission's Securities Order Book No. 23, at page 275.

Based on information from the Division of Securities and Retail Franchising, it now appears to the Commission that

these rules should be amended in various respects. Given the number and nature of the changes warranted, the Commission is of the opinion and finds that the rules adopted by the order dated June 27, 1979, should be rescinded and replaced by new provisions. It is, therefore,

ORDERED:

(1) That the rules relating to the disclosure of confidential data adopted pursuant to Va. Code §§ 13.1-518, 13.1-534 and 13.1-567 by order dated June 27, 1979, effective July 1, 1979, be, and hereby are, rescinded as of July 1, 1988;

(2) That the following rule pertaining to the disclosure of information and documents deemed confidential by Va. Code §§ 13.1-518, 13.1-534 and 13.1-567 be, and hereby is, adopted and shall become effective on July 1, 1988:

### RULE GOVERNING DISCLOSURE OF CONFIDENTIAL INFORMATION

§ 1. This rule governs the disclosure by the Commission of information or documents obtained or prepared by any member, subordinate or employee of the Commission in the course of any examination or investigation conducted pursuant to the provisions of the Securities Act (Va. Code § 13.1-501 et seq.), the Take-Over-Bid Disclosure Act (Va. Code § 13.1-528 et seq.) or the Retail Franchising Act (Va. Code § 13.1-557 et seq.) (hereinafter "data"). It is designed to implement the provisions of §§ 13.1-518, 13.1-534 and 13.1-567 that permit disclosure of such data to quasi-governmental and governmental entities approved by rule of the Commission.

§ 2. The Director or the Deputy Director of the Division of Securities and Retail Franchising is hereby authorized to disclose data to the entities enumerated in §§ 6, 7 and 8, below.

§ 3. Disclosure of data shall be made only for the purpose of aiding in the detection or prevention of possible violations of law or to further administrative, legislative or judicial action resulting from possible violations of law.

§ 4. As a condition precedent to disclosure of data, the Director or Deputy Director shall obtain in writing from the receiving entity an undertaking that it will exercise reasonable measures to preserve the confidential nature of the data.

§ 5. Disclosure may be made only under the following circumstances:

(a) In response to an entity's request for data relating to a specific subject or person.

(b) By disseminating to an entity data which may indicate a possible violation of law within the

# State Corporation Commission

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administrative, regulatory or enforcement responsibility of that entity.

(c) To participate in a centralized program or system designed to collect and maintain information pertaining to possible violations of securities, investment advisory, take-over-bid, retail franchising or related laws.

§ 6. The Director or Deputy Director may disclose data under the conditions set forth in §§ 3, 4, and 5, above, to the following governmental entities (including any agencies, bureaus, commissions, divisions or successors thereof) of the United States:

- (a) Board of Governors of the Federal Reserve System.
- (b) Commodity Futures Trading Commission.
- (c) Congress of the United States, including either House, any committee or subcommittee thereof.
- (d) Department of Defense.
- (e) Department of Housing & Urban Development.
- (f) Department of Justice.
- (g) Department of Treasury.
- (h) Federal Deposit Insurance Corporation.
- (i) Federal Savings & Loan Insurance Corporation.
- (j) Federal Trade Commission.
- (k) Postal Service.
- (l) Securities & Exchange Commission.

§ 7. The Director or Deputy Director may disclose data under the conditions set forth in §§ 3, 4 and 5, above, to the following nonfederal governmental entities:

- (a) The securities or retail franchising regulatory entity of any state, territory or possession of the United States, the District of Columbia, and the Commonwealth of Puerto Rico, including their legislative bodies as well as their state and local law enforcement entities involved in the detection, investigation or prosecution of violations of law.
- (b) The securities or retail franchising regulatory entity of any foreign country, whether such entity is on a national, provincial, regional, state or local level, including the law enforcement entities within such countries.

§ 8. The Director or Deputy Director may disclose

data under the conditions set forth in §§ 3, 4, and 5, above, to the following quasi-governmental entities:

- (a) American Stock Exchange.
- (b) Chicago Board Options Exchange.
- (c) Midwest Stock Exchange.
- (d) Municipal Securities Rulemaking Board.
- (e) National Association of Attorneys General.
- (f) National Association of Securities Dealers, Inc.
- (g) New York Stock Exchange.
- (h) North American Securities Administrators Association, Inc.
- (i) Pacific Stock Exchange.
- (j) Philadelphia Stock Exchange.
- (k) Securities Investor Protection Corporation.

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# STATE LOTTERY DEPARTMENT

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## STATE LOTTERY DEPARTMENT (AND STATE LOTTERY BOARD)

**Title of Regulation:** VR 447-01-1. Guidelines for Public Participation in Regulation Development and Promulgation.

**Statutory Authority:** § 58.1-4007 of the Code of Virginia.

**Public Hearing Date:** September 19, 1988 - 2 p.m.  
(See Calendar of Events section for additional information)

### Summary:

The State Lottery Department is promulgating public participation guidelines which include methods for the identification and notification of interested parties, and specific means of seeking input from interested persons or groups.

These promulgated regulations will replace temporary guidelines currently in force.

VR 447-01-1. Guidelines for Public Participation in Regulation Development and Promulgation.

### § 1. Generally.

A. In developing any regulation, the State Lottery Board ("board") and the State Lottery Department ("department") are committed to obtaining comments from interested people.

B. Anyone who is interested in participating in the process of developing regulations should notify the department in writing. This notification should be sent to: Director, State Lottery Department, P.O. Box 4689, Richmond, Virginia 23220.

1. The department will maintain a list of the people who notified the department in writing.

2. The department will mail to everyone on the list a copy of the Notice of Intended Regulatory Action discussed in § 4 of these guidelines.

### § 2. Identification of needed regulations.

A. Anyone may identify the need for a new regulation or for an amendment, or addition to, or a repeal of any existing regulation. The request for a new regulation or suggested change to a current regulation should be made in writing and sent to: Director, State Lottery Department, P.O. Box 4689, Richmond, Virginia 23220.

B. The department and board, at their discretion, may consider any regulatory request or change.

### § 3. Identification of interested parties.

Before the department develops a regulation, it will identify persons who would be either interested in or affected by the proposal. The methods for identifying interested parties shall include, but not be limited to, the following:

1. Obtaining the statewide listing of business, professional and civic associations published by the Virginia State Chamber of Commerce. This list will be used to identify groups which might be interested in the regulation.

2. Using department files to identify people who have raised questions or expressed an interest in the regulations.

3. Using a list, compiled by the department, of persons who previously participated in public proceedings.

4. Obtaining annually from the Secretary of the Commonwealth a list of all persons, associations and others who have registered as lobbyists for the General Assembly session. This list will be used to identify groups which may be interested in the subject matter of the proposed regulation.

### § 4. Notification of interested parties.

#### A. Generally.

The department will prepare a Notice of Intended Regulatory Action ("Notice") before developing any regulation. The notice will identify the subject matter and purpose of the new regulation(s). The notice will specify a time deadline and location for interested persons to submit written comments.

#### B. Notifying those interested.

The methods for notifying interested persons will include, but not be limited to, the following:

1. Sending the notice to all persons identified as interested parties through the methods described in § 3 above;

2. Publishing the notice in the Virginia Register of Regulations (Virginia Register); and

3. Requesting that groups, associations, and organizations to whom the notice is sent publish the notice in newsletters or journals or use other means available to them to inform their members.

### § 5. Public participation in regulation development.

#### A. Initial comment.

After interested parties have responded to the notice, the department will determine the level of interest.



# State Lottery Department

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1. If sufficient interest exists, the department may schedule informal meetings before the development of the regulation. The meetings will determine the specific areas of interest and concern and will gather factual information on the subject of the regulation.

2. Instead of informal meetings, the department may ask for additional written comments, concerns or suggestions on the development of the regulation from those who responded to the notice.

3. The department may decide that the notice resulted in receipt of enough information so that it can develop the regulation without an informal meeting or additional written comments.

## B. Preparing a working draft.

After the initial public input on the intended regulatory action, the department will develop a working draft of the proposed regulation for the board to review, revise and approve, after consultation with the director.

## § 6. Submission of regulation under the Administrative Process Act.

1. After the drafting process ends, the board-approved regulation will be submitted to the Registrar of Regulations under the Administrative Process Act (APA), Title 9, Chapter 1.1:1, of the Code of Virginia. The board-approved regulation will be published as a proposed regulation in the Virginia Register.

2. The department will furnish a copy of the regulation published in the Virginia Register to persons who make such a request. A copy of the "Notice of Comment Period" form may be sent with the copy of the regulation.

3. If the department elects to hold a public hearing, the time, date, and place will be specified. In addition, the cutoff date for people to notify the department that they will participate in the public hearing will be set out. People who choose to participate in the public hearing will be asked to submit, in advance, written copies of their comments. These copies will help to ensure that comments are accurately recorded in the formal transcript of the hearing.

4. When the board issues an order adopting a regulation, the department may elect to send a notice to people who participated in the APA comment process. The notice will state that the regulation will be published in the Virginia Register and will specify the issue number.

## § 7. Publication and distribution of final regulation.

1. The board will adopt all final regulations after consultation with the director. The final regulations will be submitted for publication in the Virginia

Register.

2. The board will order the department to print all adopted final regulations and make appropriate distribution.

3. The distribution of any regulation will be made with a goal of increasing public knowledge of the policies of the department and compliance with the department's regulations.

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Title of Regulation: VR 447-02-1. The State Lottery Regulations.

Statutory Authority: § 58.1-4007 of the Code of Virginia.

Public Hearing Date: September 19, 1988 - 2 p.m.  
(See Calendar of Events section for additional information)

## Summary:

The State Lottery Department is promulgating proposed regulations which set out the general operational parameters for the department and board, including setting standards and requirements for licensing lottery retailers and procedures for appeals on licensing actions; setting the general framework for operations of instant lottery games and payment of lottery game prizes; setting board procedures for conduct of business and promulgation of regulations; setting requirements for approval of banks and depositories as lottery agents; and setting standards for agency procurement actions and procedures for procurement appeals and disputes.

These regulations replace temporary regulations currently in force.

Reporting forms which will be used in implementing the proposed regulations are being developed.

VR 447-02-1. The State Lottery Regulations.

## PART I.

### GENERAL PARAMETERS.

#### § 1.1. Definitions.

The following words and terms, when used in these regulations, shall have the following meaning, unless the context clearly indicates otherwise:

"Award" means a decision to contract with a specific vendor for a specific contract.

"Bank" means and includes any commercial bank, savings bank, savings and loan association, credit union,

# State Lottery Department

trust company, and any other type or form of banking institution organized under the authority of the Commonwealth of Virginia or of the United States of America whose principal place of business is within the Commonwealth of Virginia and which is designated to perform functions, activities or services in connection with the operations of the lottery for the deposit and handling of lottery funds, the accounting of those funds and the safekeeping of records.

"Bearer instrument" means a lottery ticket which has not been signed by or on behalf of a person or a legal entity. Any prize won on an unsigned ticket is payable to the holder, or bearer, of that ticket.

"Bid" means a competitively priced offer made by an intended seller, usually in reply to an invitation for bids.

"Bid bond" means an insurance agreement in which a third party agrees to be liable to pay a certain amount of money in the event a specific bidder fails to accept the contract as bid.

"Board" means the State Lottery Board established by the state lottery law.

"Book," "ticket book," or "pack" generally means a set quantity of individually wrapped unbroken, consecutively numbered, fanfolded instant game tickets which is unique to that book or pack among all the tickets printed for a particular game.

"Competitive bidding" means the offer of firm bids by individuals or firms competing for a contract, privilege, or right to supply specified services or goods.

"Competitive negotiation" means a method for purchasing goods and services, usually of a highly complex and technical nature where qualified individuals or firms are solicited by using a Request For Proposal. Discussions are held with selected vendors and the best offer, as judged against criteria contained in the Request For Proposal, is accepted.

"Consideration" means something of value given for a promise to make the promise binding. It is one of the essentials of a legal contract.

"Contract" means an agreement, enforceable by law, between two or more competent parties. It includes any type of agreement or order for the procurement of goods or services.

"Department" means the State Lottery Department created by the state lottery law.

"Depository" means any person, including a bonded courier service, armored car service, bank, central or regional offices of the department, or state agency, which performs any or all of the following activities or services for the lottery:

1. The safekeeping and distribution of tickets to retailers,
2. The handling of lottery funds,
3. The deposit of lottery funds, or
4. The accounting of lottery funds.

"Director" means the Director of the State Lottery Department or his designee.

"Electronic funds transfer (EFT)" means a computerized transaction that withdraws or deposits money against a bank account on a set day based on the balance owed by the bank account holder to the lottery department or due to the bank account holder from the lottery department.

"Game" means any individual or particular type of lottery authorized by the board.

"Goods" means any material, equipment, supplies, and printing.

"Household" means members of a group who live together as a family unit. It includes, but is not limited to, members who may be claimed as dependents for income tax purposes.

"Instant game" means a game that uses preprinted tickets with a latex covering over a portion of the ticket. The covering is scratched off by the player to reveal immediately whether the player has won a prize or entry into a prize drawing.

"Instant ticket" means a ticket for an instant game.

"Invitation for Bids (IFB)" means a document used to solicit bids for buying goods or services. It contains or references the specifications or scope of work and all contractual terms and conditions.

"Kickbacks" means gifts, favors or payments to improperly influence procurement decisions.

"Legal entity" means an entity, other than a natural person, which has sufficient existence in legal contemplation that it can function legally, sue or be sued and make decisions through agents, as in the case of a corporation.

"License approval notice" means the form sent to the retailer by the lottery department notifying him that his application for a license has been approved and giving him instructions for obtaining the required surety bond and setting up his lottery bank account.

"Lottery" or "state lottery" means the lottery or lotteries established and operated in response to the provisions of the state lottery law.

# State Lottery Department

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**"Lottery retailer" or "lottery sales retailer" or "retailer"** means a person licensed by the director to sell and dispense lottery tickets, materials or lottery games for instant or on-line lottery games, or both.

**"Lottery license" or "retailer license"** means the official document issued by the department to a person authorizing him to sell or dispense lottery tickets, materials or lottery games at a specified location in accordance with all regulations, terms and conditions, and instructions and directives issued by the board and the director.

**"Low-tier winner" or "low-tier winning ticket"** means an instant game ticket which carries a cash prize of \$25 or less or a prize of additional unplayed instant tickets.

**"Minor informalities"** means defects or variations of a bid or proposal from the exact requirements of the Invitation for Bid or the Request for Proposal, which do not affect the price, quality, quantity, or delivery schedule for the goods or services being purchased.

**"Negotiation"** means a bargaining process between two or more parties, each with its own viewpoints and objectives, seeking to reach a mutually satisfactory agreement on, or settlement of, a matter of common concern.

**"Notice of Award"** means a written notification to a vendor stating that the vendor has received a contract with the department.

**"Notice of Intent to Award"** means a written notice which is publicly displayed, prior to signing of a contract, that shows the selection of a vendor for a contract.

**"Pack"** means the same thing as "book."

**"Performance bond"** means a contract of guarantee executed in the full sum of the contract amount subsequent to award by a successful bidder to protect the department from loss due to his inability to complete the contract in accordance with its terms and conditions.

**"Person"** means an individual, association, partnership, corporation, club, trust, estate, society, company, joint stock company, receiver, trustee, assignee, referee, or any other person acting in a fiduciary or representative capacity, whether appointed by a court or otherwise, and any combination of individuals. "Person" also means all departments, commissions, agencies and instrumentalities of the Commonwealth, including its counties, cities, and towns.

**"Prize"** means any cash or noncash award to holders of winning tickets.

**"Procurement"** means the procedures for obtaining goods or services. It includes all activities from the planning steps and preparation and processing of a request

through the processing of a final invoice for payment.

**"Protest"** means a complaint about an administrative action or decision brought by a vendor to the department with the intention of receiving action. The only grounds for filing a protest are (i) that a procurement action was not based upon competitive principles, or (ii) that a procurement action violated the standards of ethics promulgated by the board.

**"Request for Information (RFI)"** means a document used to get information from the general public or potential vendors on a good or service. The department may act upon the information received to enter into a contract without issuing an IFB or an RFP.

**"Request for Proposals (RFP)"** means a document used to solicit offers from vendors for buying goods or services. It permits negotiation with vendors (to include prices) as compared to competitive bidding used in the invitation for bids.

**"Responsible vendor"** means a person or firm who has the capability in all respects to fully satisfy the requirements of a contract as well as the business integrity and reliability to assure good faith performance. In determining a responsible vendor, a number of factors including but not limited to the following are considered. The vendor should:

1. Be a regular dealer or supplier of the goods or services offered;
2. Have the ability to comply with the required delivery or performance schedule, taking into consideration other business commitments;
3. Have a satisfactory record of performance; and
4. Have the necessary facilities, organization, experience, technical skills, and financial resources to fulfill the terms of the contract.

**"Sales," "gross sales," "annual sales" and similar terms** mean total ticket sales including any discount allowed to a retailer for his commission and, in the case of instant game sales, any discount or adjustment allowed for the retailer's payment of prizes of less than \$600.

**"Services"** means any work performed by a vendor where the work is primarily labor or duties and is other than providing equipment, materials, supplies or printing.

**"Sole source"** means a product or service which is available only from one vendor.

**"Solicitation"** means an Invitation for Bids (IFB), a Request for Proposals (RFP), a Request for Information (RFI) or any other document issued by the department to obtain bids or proposals or information for the purpose of entering into a contract.

# State Lottery Department

"Surety bond" means an insurance agreement in which a third party agrees to be liable to pay a specified amount of money to the department in the event the retailer fails to meet his obligations to the department.

"Ticket number" means the preprinted unique number or combination of letters and numbers which identifies that particular ticket as one of a series of tickets.

"Validation code" means the multi-letter or multi-number code which appears among the play symbols under the latex covering on an instant ticket. The validation code is used to verify prize winning tickets.

"Validation number" means the unique number or number-and-letter code printed on the front of an instant ticket sometimes under a latex covering bearing the words "Do not remove," "Void if removed" or similarly worded label.

"Vendor" means one who can sell, supply or install goods or services for the department.

## § 1.2. Generally.

The purpose of the state lottery is to produce revenue consistent with the integrity of the Commonwealth and the general welfare of its people. The operations of the State Lottery Board and the State Lottery Department will be conducted efficiently, honestly and economically.

## § 1.3. State Lottery Board.

### A. Monthly meetings.

The board will hold monthly public meetings to receive information and recommendations from the director on the operation and administration of the lottery and to take official action. It may also request information from the public. The board may have additional meetings as needed. (See Part VI, Board Procedures.)

### B. Inspection of department records.

At the board's request, the department shall produce for review and inspection the department's books, records, files and other information and documents.

## § 1.4. Director.

The director shall administer the operations of the State Lottery Department following the authority of the Code of Virginia and these regulations.

## § 1.5. Ineligible players of the lottery.

Board members, officers or employees of the lottery, or any person residing in the same household as any board member, officer or employee may not purchase tickets or receive prizes of the lottery.

## § 1.6. Advertising.

### A. Generally.

Advertising may include but is not limited to print advertisements, radio and television advertisements, billboards, point of purchase and point of sale display materials. The department will not use funds for advertising which is for the primary purpose of inducing people to play the lottery.

### B. Lottery retailer advertising.

Any lottery retailer may use his own advertising materials if the department has approved its use in writing before it is shown to the public.

C. The department may provide information displays or other material to the retailer. The retailer shall position the material so it can be seen easily by the general public.

D. The department may produce special posters, brochures or flyers describing various aspects of the lottery and provide these to lottery retailers to post or distribute.

E. The department may use interviews, pictures or statements from people who have won lottery prizes to show that prizes are won and awarded.

F. The department may use other informational and advertising items which may include any materials deemed appropriate advertising, informational, and educational media which are not for the primary purpose of inducing people to play the lottery.

## § 1.7. Operations of the department.

### A. Generally.

The department shall be operated in a manner which considers the needs of the Commonwealth, the public-at-large, the convenience of the ticket purchasers, and winners of lottery prizes.

### B. Employment.

The department shall hire people without regard to race, sex, color, national origin, religion, age, handicap, or political affiliation.

1. All employees shall be recruited and selected in a manner consistent with the policies which apply to classified positions.

2. Sales and marketing employees are exempt from the Virginia Personnel Act.

### C. Internal operations.

# State Lottery Department

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The department will operate under the internal administrative, accounting and financial controls specifically developed for the State Lottery Department under the applicable policies required by the Departments of Accounts, Planning and Budget, Treasury, State Internal Auditor and by the Auditor of Public Accounts.

1. Internal operations include, but are not limited to, ticket controls, money receipts and payouts, payroll and leave, budgeting, accounting, revenue forecasting, purchasing and leasing, petty cash, bank account reconciliation and fiscal report preparation.

2. Internal operations apply to automated and manual systems.

#### D. External operations.

The department will conduct business with the public, lottery retailers, vendors and others with integrity and honesty.

#### E. Apportionment of lottery revenue.

Moneys received from lottery sales will be divided approximately as follows:

|            |  |
|------------|--|
| 50 percent | Prizes   |
| 45 percent | State Lottery Fund Account<br>(After July 1, 1989,<br>administrative costs of the<br>lottery shall not exceed 10<br>percent of gross sales.) |
| 5 percent  | Lottery retailer discounts   |

#### F. State Lottery Fund Account.

The State Lottery Fund will be established as an account in the Commonwealth's accounting system. The account will be established following usual procedures and will be under regulations and controls as other state accounts. Prior to the start of the first lottery game, the account will be funded from the proceeds of a Department of Treasury loan or loans (treasury loan). Thereafter, funding will be from gross sales.

1. An "Operations Special Reserve Fund" subaccount for administrative and operations costs will be created in the State Lottery Fund account. The amount of the Operations Special Reserve Fund will be approximately 10% of the gross lottery revenue from sales. Commencing with lottery operations, but prior to initial sales, all funds derived from the start-up treasury loan(s) shall be deposited to the Operations Special Reserve Fund. Except as otherwise provided in these regulations, start-up treasury loan fund balances shall remain in the Operations Special Reserve Fund until exhausted, until transferred to the Lottery Start-up Payback Special Reserve Fund or until 12 months after initial lottery sales at which

time any fund balance from the start-up treasury loan(s) shall revert to the General Fund.

2. A "Lottery Prize Special Reserve Fund" subaccount will be created in the State Lottery Fund account and will be used when lottery prize pay-outs exceed department cash on hand. Immediately prior to initial lottery sales, \$500,000 shall be transferred to the Lottery Prize Special Reserve Fund from start-up treasury loan funds in the State Lottery Fund. Thereafter, 5.0% of monthly gross sales shall be transferred to the Lottery Prize Special Reserve Fund until the amount of the Lottery Prize Special Reserve Fund reaches 5.0% of the gross lottery revenue from the previous year's annual sales or \$5 million dollars, whichever is less.

a. The calculation of the 5.0% will be made for each instant or on-line game.

b. The funding of this subaccount may be adjusted at any time by the board.

3. Until July 1, 1989, or when start-up funds are totally repaid, a special subaccount titled "Lottery Start-up Payback Special Reserve Fund" will be established to retire the start-up treasury loan(s).

a. Five percent of the state lottery fund balance, excluding funds derived from start-up treasury loan(s), at the beginning of each month will be placed in this subaccount. The director may increase this percentage when, in his judgment, sufficient funds remain in the State Lottery Fund to meet other needs and shall increase the percentage when necessary to retire the treasury loan(s) within the first 12 months from initial lottery sales.

b. The director may, at any time, direct the transfer from the State Lottery Fund balance to the "Lottery Start-up Payback Special Reserve Fund" of all or any portion of any funds derived from the start-up treasury loan(s) which, in his judgment are no longer required to fund lottery operations.

c. The director may, from time to time, direct the transfer of all or a portion of the Lottery Start-up Payback Special Reserve Fund to the General Fund of the Treasury to retire all or a portion of the start-up treasury loan(s). The director shall ensure that the entire amount of the start-up treasury loan(s) is repaid within the first 12 months of lottery sales.

4. Other subaccounts may be established in the State Lottery Fund account as needed at the direction of the board upon the request of the director or the internal auditor with concurrence of the State Comptroller, State Treasurer and the Auditor of Public Accounts.

# State Lottery Department

## G. Administrative and operations costs.

Lottery expenses include, but are not limited to, ticket costs, vendor fees, consultant fees, advertising costs, salaries, rents, utilities, and telecommunications costs.

## H. Audit of lottery revenues.

The cost of any audit shall be paid from the State Lottery Fund.

1. The Auditor of Public Accounts or his designee shall conduct a monthly post-audit of all accounts and transactions of the department. When, in the opinion of the Auditor of Public Accounts, monthly post-audits are no longer necessary to ensure the integrity of the lottery, the Auditor of Public Accounts shall notify the board in writing of his opinion and fix a schedule of less frequent post-audits. The schedule of post-audits may, in turn, be further adjusted by the same procedure to require either more or less frequent audits in the future.

2. Annually, the Auditor of Public Accounts shall conduct a fiscal and compliance audit of the department's accounts and transactions.

## I. Other matters.

The board and director may address other matters not mentioned in these regulations which are needed or desired for the efficient and economical operation and administration of the lottery.

## PART II.

### LICENSING OF RETAILERS FOR INSTANT GAMES.

#### § 2.1. Licensing.

##### Generally.

The director may license as lottery retailers for instant games persons who will best serve the public convenience and promote the sale of tickets and who meet the eligibility criteria and standards for licensing.

#### § 2.2. Eligibility.

##### A. Eighteen years of age and bondable.

Any person who is 18 years of age or older and who is bondable may submit an application for licensure, except no person may submit an application for licensure:

1. Who will be engaged solely in the business of selling lottery tickets; or
2. Who is a board member, officer or employee of the State Lottery Department or who resides in the same household as a board member, officer or employee of the department; or

3. Who is a vendor of lottery tickets or material or data processing services, or whose business is owned by, controlled by, or affiliated with a vendor of lottery tickets or materials or data processing services.

## B. Application not an entitlement to license.

The submission of an application for licensure does not in any way entitle any person to receive a license to act as a lottery retailer.

#### § 2.3. Application procedure.

##### Filing of forms with the department.

Any eligible person shall first file an application with the department on forms supplied for that purpose, along with the required fees as specified elsewhere in these regulations. The applicant shall complete all information on the application forms in order to be considered for licensing. The forms to be submitted include:

1. Retailer License Application;
2. Personal Data Form(s); and
3. Preliminary Marketing Evaluation Form.

#### § 2.4. General standards for licensing.

##### A. Selection factors for licensing.

The director may license those persons who, in his opinion, will best serve the public interest and public trust in the lottery and promote the sale of lottery tickets. The director will consider the following factors before issuing or renewing a license:

1. The financial responsibility and security of the applicant, to include:
  - a. A credit and criminal background investigation;
  - b. Outstanding state tax liability;
  - c. Required business licenses, tax and business permits;
  - d. Physical security at the place of business, including insurance coverage.
2. The accessibility of his place of business to the public, to include:
  - a. The hours of operation;
  - b. The availability of parking and transit routes, where applicable;
  - c. The location in relation to major employers,

# State Lottery Department

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*schools, or retail centers;*

*d. The population level and rate of growth in the market area;*

*e. The traffic density, including levels of congestion in the market area.*

*3. The sufficiency of existing lottery retailers to serve the public convenience, to include:*

*a. The number of and proximity to other lottery retailers in the market area;*

*b. The expected sales volume and profitability of potentially competing lottery retailers;*

*c. The adequacy of coverage of all regions of the Commonwealth with lottery retailers.*

*4. The volume of expected lottery ticket sales, to include:*

*a. Type and volume of the products and services sold by the retailer;*

*b. Dollar sales volume of business;*

*c. Sales history of business and market area;*

*d. Volume of customer traffic in place of business.*

*B. Additional factors for selection.*

*The director may develop additional criteria which, in his judgment, are necessary to serve the public interest and public trust in the lottery.*

*§ 2.5. Bonding of lottery retailers.*

*A. Approved retailer to secure bond.*

*A lottery retailer approved for licensing shall obtain a surety bond from a surety company entitled to do business in Virginia. The purpose of the surety bond is to protect the Commonwealth from a potential loss in the event the retailer fails to perform his responsibilities.*

*1. The surety bond shall be in the amount and penalty specified by the director in the "License Approval Notice" and shall be payable to the State Lottery Department and conditioned upon the faithful performance of the lottery retailer's duties.*

*2. Within 15 calendar days of receipt of the "License Approval Notice," the lottery retailer shall return the properly executed "Bonding Requirement" portion of the "License Approval Notice" to the State Lottery Department to be filed with his record.*

*B. Continuation of surety bond on renewal of license.*

*A lottery retailer applying for renewal of a license shall:*

*1. Obtain a letter or certificate from the surety company to verify that the surety bond is being continued for the license renewal period; and*

*2. Submit the surety company's letter or certificate with the required license renewal fee to the State Lottery Department.*

*C. Sliding scale for surety bond amounts.*

*The director may establish a sliding scale for surety bonding requirements based on the average volume of lottery ticket sales by a retailer to ensure that the Commonwealth's interest in tickets to be sold by a licensed lottery retailer is adequately safeguarded.*

*D. Effective date for sliding scale.*

*The sliding scale for surety bonding requirements will become effective when the director determines that sufficient data on lottery retailer ticket sales volume activity are available. Any changes in a retailer's surety bonding requirements that result from instituting the sliding scale will become effective only at the time of the retailer's next renewal action.*

*§ 2.6. Lottery bank accounts and EFT authorization.*

*A. Approved retailer to establish lottery bank account.*

*A lottery retailer approved for licensing shall establish a separate checking account to be used exclusively for lottery business in a bank participating in the Automatic Clearing House (ACH) system.*

*B. Retailer's use of lottery account.*

*The lottery account will be used by the retailer to make funds available to permit withdrawals and deposits initiated by the department through the electronic funds transfer (EFT) process to settle a retailer's account for funds owed or due from the purchase of tickets and the payment of prizes. All retailers shall make payments to the department through the electronic funds transfer (EFT) process unless the director designates another form of payment and settlement under terms and conditions he deems appropriate.*

*C. Retailer responsible for bank charges.*

*The retailer shall be responsible for payment of any fees or service charges assessed by the bank for maintaining the required account.*

*D. Retailer to authorize electronic funds transfer.*

*Within 15 calendar days of receipt of the "License Approval Notice," the lottery retailer shall return the properly executed "Electronic Funds Transfer*

# State Lottery Department

Authorization" portion of the "License Approval Notice" to the department to record establishment of his account.

## E. Change in retailer's bank account.

If a retailer finds it necessary to change his bank account from one bank to another, he must submit a newly executed "Electronic Funds Transfer Authorization" form for the new bank account. The retailer may not discontinue use of his previously approved bank account until he receives notice from the department that the new account is approved for use.

## F. Director to establish EFT account settlement schedule.

The director will establish a schedule for processing the EFT transactions against retailers' lottery bank accounts and issue instructions to retailers on how settlement of accounts will be made.

## § 2.7. License term and renewal.

### A. License term.

A general license for an approved lottery retailer shall be issued for a one-year period.

### B. License renewal.

A general license shall be renewed annually at least 30 days before its expiration date and shall be accompanied by the appropriate fee(s) as specified elsewhere in these regulations. The director may implement a staggered, monthly basis for annual license renewals and allow for the proration of annual license fees to credit licensees for the time remaining on their current license when the staggered renewal requirement is imposed. This section shall not be deemed to allow for a refund of license fees when a license is terminated, revoked or suspended for any other reason.

### C. Temporary license.

The director may issue a temporary license for the convenience of the department based on terms and conditions he deems appropriate, provided that:

1. The temporary license term shall expire immediately upon receipt of approval of a general license, but in no case shall the temporary license term extend beyond November 30, 1988; or

2. The temporary license term shall expire on the date the director specifies in a notice to the license applicant that his application for a general license has been denied. On the date specified, the applicant shall stop the sale of tickets and surrender to a department representative his temporary license and department property and make settlement of his lottery account.

## D. Amended license term.

An amended license issued under the requirements of § 2.9.C shall be valid for the remainder of the period of the license it replaces.

## E. Special license.

The director may issue special licenses to persons for specific events and activities. Special licenses shall be for a limited duration and under terms and conditions that he determines appropriate to serve the public interest.

## § 2.8. License fees.

### A. License application fee.

The fee for a license application for a lottery retailer general license shall be an amount as approved by the board. The general license fee shall be paid for each location to be licensed. This fee is nonrefundable.

### B. License renewal fee.

The annual fee for renewal of a lottery retailer general license shall be an amount as approved by the board. The renewal fee shall be paid for each location for which a license is renewed. This fee is nonrefundable. The renewal fee shall be submitted at least 30 days before a retailer's general license expires.

### C. Amended license application fee.

The fee for processing an amended license application for a lottery retailer general license shall be an amount as approved by the board. The amended license fee shall be paid for each location affected. This fee is nonrefundable. An amended license application shall be submitted in cases where a business change occurs as specified in § 2.9.B.

## § 2.9. Transfer of license prohibited; invalidation of license.

### A. License not transferrable.

A license issued by the director authorizes a specified person to act as a lottery retailer at a specified location as set out in the license. The license is not transferrable to any other person or location.

### B. License invalidated.

A license shall become invalid for any of the following reasons:

1. Change in business location;
2. Change in business structure (e.g., from a partnership to a sole proprietorship);



# State Lottery Department

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3. Change in the business owners listed in the original application form for which submission of a Personal Data Form is required under the license application procedure.

C. Amended application required.

A licensed lottery retailer who anticipates a change as listed in subsection B shall notify the department of the anticipated change at least 15 calendar days before it takes place and submit an amended application. The director shall review the changed factors in the same manner that would be required for a review of an original application.

§ 2.10. Display of license.

License displayed in general view.

Every licensed lottery retailer shall conspicuously display his lottery license in an area visible to the general public where lottery tickets are sold.

§ 2.11. Denial, suspension, revocation or nonrenewal of license.

A. Grounds for refusal to license.

The director may refuse to issue a license to a person if the person has been:

1. Convicted of a felony;
2. Convicted of a crime involving moral turpitude;
3. Convicted of any fraud or misrepresentation in any connection;
4. Convicted of bookmaking or other forms of illegal gambling.

B. Grounds for refusal to license partnership or corporation.

The director may refuse to issue a license to any partnership or corporation if he finds that any general or limited partner or officer or director of the partnership or corporation has been convicted of any of the offenses cited in subsection A.

C. Grounds for suspension, revocation or refusal to renew license.

After notice and a hearing, the director may suspend, revoke, or refuse to renew a license for any of the following reasons:

1. Failure to properly account for lottery tickets received, for prizes claimed and paid or for the proceeds of the sale of lottery tickets;

2. Failure to file or maintain the required bond or the required lottery bank account;

3. Failure to comply with applicable laws, instructions, terms and conditions of the license, or rules and regulations of the department concerning the licensed activity, especially with regard to the prompt payment of claims.

4. Conviction, following the approval of the license, of any of the offenses cited in subsection A;

5. Failure to file any return or report or to keep records or to pay any fees or other charges as required by the state lottery law or the rules and regulations of the department.

6. Commission of any act of fraud, deceit, misrepresentation, or conduct prejudicial to public confidence in the state lottery;

7. Failure to maintain lottery ticket sales at a level sufficient to meet the department's administrative costs for servicing the retailer, provided that the public convenience is adequately served by other retailers;

8. Failure to notify the department of a material change, after the license is issued, of any matter required to be considered by the director in the licensing application process;

9. Failure to comply with lottery game rules.

10. Failure to meet minimum point of sale standards.

D. Notice of intent to suspend, revoke or deny renewal of license.

Before taking action under subsection C, the director will notify the retailer in writing of his intent to suspend, revoke or deny renewal of the license. The notification will include the reason or reasons for the proposed action and will provide the retailer with the procedures for requesting a hearing before the board.

E. Temporary suspension without notice.

If the director deems it necessary in order to serve the public interest and maintain public trust in the lottery, he may temporarily suspend a license without first notifying the retailer. Such suspension will be in effect until any prosecution, hearing or investigation into possible violations is concluded.

F. Surrender of license and lottery property upon revocation or suspension.

A retailer shall surrender his license to the director by the date specified in the notice of revocation or suspension. The retailer shall also surrender the lottery

# State Lottery Department

property in his possession and give a final lottery accounting of his lottery activities by the date specified by the director.

## § 2.12. Responsibility of lottery retailers.

Each retailer shall comply with all: applicable state and federal laws, rules and regulations of the department, license terms and conditions, specific rules for all applicable lottery games, and directives and instructions which may be issued by the director.

## § 2.13. Display of material.

### A. Material in general view.

Lottery retailers shall display lottery point-of-sale material provided by the director in a manner which is readily seen by and available to the public.

### B. Prior approval for retailer-sponsored material.

A lottery retailer may use or display his own promotional and point-of-sale material, provided it has been submitted to and approved for use by the department in accordance with instructions issued by the director.

### C. Removal of unapproved material.

The director may require removal of any retailer's lottery material that has not been approved for use by the department.

## § 2.14. Inspection of premises.

### Access to premises by department.

Each lottery retailer shall provide access during normal business hours or at such other times as may be required by the director for state lottery representatives to enter the premises of the licensed retailer. The premises include the licensed location where lottery tickets are sold or any other location under the control of the licensed retailer where the director may have good cause to believe lottery materials or tickets are stored or kept in order to inspect the lottery materials or tickets and the licensed premises.

## § 2.15. Examination of records; seizure of records.

### A. Inspection, auditing or copying of records.

Each lottery retailer shall make all books and records pertaining to his lottery activities available for inspection, auditing or copying as required by the director between the hours of 8 a.m. and 5 p.m., Mondays through Fridays and during the normal business hours of the licensed retailer.

### B. Records subject to seizure.

All books and records pertaining to the licensed retailer's lottery activities may be seized with good cause by the director without prior notice.

## § 2.16. Audit of records.

The director may require a lottery retailer to submit to the department an audit report conducted by an independent certified public accountant on the licensed retailer's lottery activities. The retailer shall be responsible for the cost of only the first such audit in any one license term.

## § 2.17. Reporting requirements and settlement procedures.

Instructions for purchasing tickets, reporting transactions and settling accounts.

Before a retailer may begin lottery sales, the director will issue to him instructions and report forms that specify the procedures for (i) ordering tickets; (ii) paying for tickets purchased; (iii) reporting receipts, transactions and disbursements pertaining to lottery ticket sales; and (iv) settling the retailer's account with the department.

## § 2.18. Deposit of lottery receipts; interest and penalty for late payment; dishonored EFT transfers or checks.

### A. Forms of payment for tickets; deposit of lottery receipts.

Each lottery retailer shall purchase the tickets distributed to him. The moneys for payment of these tickets shall be deposited to the credit of the State Lottery Fund by the department. The retailer shall make payments to the department by Electronic Funds Transfers (EFT); however, the director reserves the right to specify one or more of the following alternative forms of payment under such conditions as he deems appropriate:

1. Cash;
2. Cashier's check;
3. Certified check;
4. Money order; or
5. Business check.

### B. Payment due date.

Payments shall be due as specified by the director in the instructions to retailers regarding the purchasing and payment of tickets and the settlement of accounts.

### C. Penalty and interest charge for late payment.

Any retailer who fails to make payment when payment is due will be assessed an interest charge on the moneys due plus a \$25 penalty. The interest charge will be equal

# State Lottery Department

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to the "Underpayment Rate" established pursuant to § 6621(a)(2) of the Internal Revenue Code of 1954, as amended. The interest charge will be calculated beginning the date following the retailer's due date for payment through the day preceding receipt of the late payment by the department for deposit.

D. Service charge for dishonored EFT transfer or bad check.

The director will assess a service charge of \$25 against any retailer whose payment through electronic funds transfer (EFT) or by check is dishonored.

E. Service charge for debts referred for collection.

If the department refers a debt of any retailer to the Attorney General, the Department of Taxation or any other central collection unit of the Commonwealth, the retailer owing the debt shall be liable for an additional service charge which shall be in the amount of the administrative costs associated with the collection of the debt that are incurred by the department and the agencies to which the debt is referred.

§ 2.19. Training of retailers and their employees.

Retailer training.

Each retailer or his designated representative or representatives is required to participate in training given by the department in the operation of each game. The director may consider nonparticipation as grounds for suspending or revoking the retailer's license.

§ 2.20. License termination by retailer.

Voluntary termination of license.

The licensed retailer may voluntarily terminate his license with the department by first notifying the department in writing at least 15 calendar days before the proposed termination date. The department will then notify the retailer of the date by which settlement of the retailer's account will take place. The retailer shall maintain his bond and the required accounts and records until settlement is completed and all lottery property belonging to the department has been surrendered.

## PART III. INSTANT GAMES.

§ 3.1. Director's duties and responsibilities.

The director shall select, operate, and contract for the operation of instant games which meet the general criteria set forth in these regulations. The director shall determine the specific details of each instant game after consultation with the board. These details include, but are not limited to:

1. The length of the game,
2. Prize amounts and prize structure,
3. Types of noncash prizes, if any, and
4. The amount and type of any jackpot or grand prize which may be awarded.

§ 3.2. Prize structure.

The prize structure for any instant game shall be designed to return to winners approximately 50% of gross sales.

A. The specific prize structure for each instant game shall be approved in advance by the board.

B. Prizes may be cash or noncash awards, including instant game tickets.

§ 3.3. Ticket price.

A. The price of a ticket for each game will be determined by the board. Lottery retailers may not discount the sale price of instant game tickets or offer free tickets as a promotion with the sale of instant tickets. This section shall not prevent a retailer from giving away free instant tickets with the purchase of other goods or services.

B. This section shall not apply to the redemption of a winning instant ticket the prize for which is another free ticket.

C. Lottery tickets purchased by nonlottery retailers from licensed lottery retailers may be given away and used as promotional items.

D. As a part of special promotional events or activities, the board may approve the sale by the department of instant tickets at a reduced price or the distribution of instant tickets at no charge.

§ 3.4. Sales, gift of tickets to minors prohibited.

An instant game ticket shall not be sold to, purchased by, or given as a gift to any individual under 18 years old.

§ 3.5. Odds of winning.

The director shall publicize the overall odds of winning a prize in each instant game. The odds may be printed on the ticket or contained in informational materials, or both.

§ 3.6. End of game.

Each instant game will end when all tickets have been sold or on a date announced in advance by the director.

The director may suspend or terminate an instant game without advance notice if he finds that this action will serve and protect the public interest.

**§ 3.7. Sale of tickets from expired games prohibited.**

No instant game tickets shall be sold after that game ends.

**§ 3.8. Licensed retailers' commissions.**

A. Licensed retailers shall receive a 5.0% discount on all instant game tickets purchased from the department for resale by the retailer.

B. The director may award cash bonuses or other incentives to retailers. The board shall approve any bonus or incentive system. The director will publicize any such system in rules of the game(s) to which it applies.

**§ 3.9. Price for ticket packs.**

For each pack, retailers shall pay the retail value, less the 5.0% retailer discount and less the value of the low-tier winning tickets in the pack. For example, for a pack of tickets with a retail value of \$500, and guaranteed low end prize structure of \$165, the retailer would pay \$310: \$500 (the pack value) minus \$165 for low-tier winners, less the retailer's \$25 discount.

**§ 3.10. Purchase of instant tickets.**

A. Retailers shall purchase books of tickets directly from the department or through designated depositories.

B. Retailers shall pay for tickets via an electronic funds transfer (EFT) initiated by the department.

1. The department will initiate the EFT after tickets are delivered to the retailer. The schedule will be determined by the director.

2. If, for any reason, an electronic funds transfer is refused, the retailer shall be subject to interest and penalty charges as provided for in these regulations.

3. The director may approve another form of payment for designated retailers under conditions to be determined by the director.

4. If the director permits payment by check and if payment on any check is denied, the retailer shall be subject to interest and penalty charges as provided for in these regulations.

C. Once tickets are accepted by a retailer, the department will not replace mutilated or damaged tickets, unless specifically authorized by the director.

D. Ticket sales to retailers are final.

1. The Department will not accept returned tickets except as provided for elsewhere in these regulations or with the director's advance approval.

2. The retailer is responsible for lost, stolen or destroyed tickets unless otherwise approved by the director.

**§ 3.11. Retailers' conduct.**

A. Retailers shall sell instant tickets at the price fixed by regulation, unless the board allows reduced prices or ticket give-aways.

B. All ticket sales shall be for cash. A ticket shall not be purchased with food stamps or food coupons.

C. All ticket sales shall be final. Retailers shall not accept ticket returns except as allowed by department regulations or policies or with the department's specific approval.

D. Tickets shall be sold during all normal business hours unless the director approves otherwise.

E. Tickets shall be sold only at the location listed on each retailer's license from the department.

F. Retailers shall not sell instant tickets after the announced end of an instant game.

G. Retailers shall not break apart ticket packs to sell instant tickets except to sell tickets from the same pack at separate selling stations within the same business establishment.

H. Retailers shall not exchange ticket books or tickets with one another or sell ticket books or tickets to one another.

I. On the back of each instant ticket sold by a retailer, the retailer shall print or stamp the retailer's name, address and retailer number. This shall be done in a manner that does not conceal any of the preprinted material.

J. No retailer or his employee or agent shall try to determine the numbers or symbols appearing under the removable latex coverings or otherwise attempt to identify unsold winning tickets. However, this shall not prevent the removal of the covering over the validation code or validation number after the ticket is sold and a prize is claimed.

**§ 3.12. Returns of unsold tickets.**

A. After the date announced by the director as the end of an instant game, each retailer may return all unbroken ticket books and one partly-sold book per cash register on the retailer's premises.

# State Lottery Department

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B. Retailers shall return unsold tickets to the department or to the depository which services the retailer for the department within 21 calendar days after the end of each instant game or after any final prize drawing.

C. The department will show the value of each retailer's unsold tickets in the department's accounting records. However, no funds will be returned to the retailer until after the settlement procedures are completed.

§ 3.13. Settlement of accounts after game ends. (See Part IV of these regulations for payment of prizes before the game ends.)

Because players may redeem low-tier prize-winning tickets directly through the department instead of through the retailer where the ticket was purchased, and because the retailer already has been granted an allowance for such low-tier winning tickets sold through his establishment, it is necessary to reconcile each retailer's account against returned, unsold tickets after the instant game ends.

A. Within 30 calendar days after an instant game ends, the department will calculate the amount of low-tier prizes paid by the department on winning tickets sold by each retailer.

B. If a retailer's credit for returned unsold tickets is less than the dollar amount of low-tier prizes paid by the department on tickets sold by that retailer, the department will give the retailer written notice of the amount owed to the department by the retailer.

C. If a retailer's credit for returned unsold tickets exceeds the dollar amount of low-tier prizes paid by the department on tickets sold by that retailer, the retailer will receive written notice of the amount owed by the department to the retailer.

D. A retailer shall inform the department of any discrepancies between its records and the department's records as stated in the notice within seven calendar days after the notice is received.

E. After a discrepancy, if any, is corrected, the department will use electronic funds transfers to collect moneys due to the department or to pay moneys owed to the retailer. However, the director may specify another form of payment to settle these accounts.

§ 3.14. If low-tier prizes paid by department after game account settled. (See Part IV of these regulations for payment of prizes before settlement.)

Retailers shall reimburse the department for low-tier prizes paid by the department on tickets sold by the retailer. Reimbursement shall be made even if the retailer's account for that game has been settled.

A. The department will provide the retailer with an

invoice and supporting documentation on prizes paid.

B. Any discrepancies between the department's invoice and the retailer's records shall be brought to the department's attention within seven days after the invoice is received.

C. After any discrepancies are resolved, the department shall use an electronic funds transfer to collect the amount owed by the retailer, unless the director specifies another form of payment.

§ 3.15. If larger prizes are paid by retailer after game account settled. (See Part IV of these regulations for payment of prizes before settlement.)

The department will reimburse a retailer for prizes of between \$26 and \$599 paid up to 180 days after an instant game ends. Reimbursement will be made even if the retailer's account for that game has been settled.

A. A retailer shall follow all ticket validation and prize payment procedures for the game for which the ticket was sold.

B. The director may require the retailer to submit the ticket and a completed prize claim form before the retailer is reimbursed.

## PART IV. PAYMENT OF PRIZES FOR INSTANT GAMES.

§ 4.1. Prize winning tickets.

Prize-winning instant tickets are those that have been validated and determined in accordance with the rules of the department to be official prize winners. Criteria and specific rules for winning prizes shall be published for each instant game and available for all players. Final validation and determination of prize winning tickets remains with the department.

§ 4.2. Unclaimed prizes.

All instant game winning tickets shall be submitted for payment as prescribed in these regulations within 180 days after the announced end of the game or of the event which caused the ticket to be a winning entry, whichever is later.

A. Any non-low-tier instant game prize which has been won as a result of a drawing but which is not claimed within 180 days after the instant game drawing shall revert to the State Lottery Fund.

B. Any non-low-tier instant game prize which has been won other than by drawing, but which is not claimed within 180 days after the announced end of the instant game shall revert to the State Lottery Fund.

C. Any instant game low-tier prize-winning ticket which

# State Lottery Department

has been purchased but which is not claimed within 180 days after the announced end of the instant game shall revert as a bonus commission to the account of the retailer which sold the instant game low-tier prize-winning ticket.

## § 4.3. Using winners' names.

The department shall have the right to use the names of prize winners. Photographs of prize winners may be used with the permission of the winners. No additional consideration shall be paid by the department for this purpose.

## § 4.4. No prize paid to people under 18.

No prize shall be claimed by or paid to any individual under 18 years of age.

## § 4.5. Where prizes claimed.

Winners may claim instant game prizes from the retailer from whom the ticket was purchased or the department in the manner specified in these regulations.

## § 4.6. Validating winning tickets.

Winning tickets shall be validated by the retailer or the department as set out in these regulations or in any other manner which the director may determine.

## § 4.7. How prize claim entered.

A prize claim shall be entered in the name of a single person or legal entity. If the prize claimed is \$600 or greater, the person or entity also shall furnish a tax identification number.

A. An individual shall provide his social security number if a claim form is required by these regulations.

B. A claim may be entered in the name of an organization only if the organization is a legal entity and possesses a federal employer's identification number (FEIN) issued by the Internal Revenue Service.

1. If the department, a retailer or these regulations require that a claim form be filed, the FEIN shall be shown on the claim form.

2. A group, family unit, club or other organization which is not a legal entity or which does not possess a FEIN may file Internal Revenue Service (IRS) Form 5754, "Statement by Person(s) Receiving Gambling Winnings," with the department. This form designates to whom winnings are to be paid and the person(s) to whom winnings are taxable.

3. A group, family unit, club or other organization which is not a legal entity or which does not possess a FEIN and which does not file IRS Form 5754 with

the department shall designate one individual in whose name the claim shall be entered and that person's social security number shall be furnished.

## § 4.8. Right to prize not assignable.

No right of any person to a prize shall be assignable, except that:

1. The director may pay any prize to the estate of a deceased prize winner, and

2. The prize to which a winner is entitled may be paid to another person pursuant to an appropriate judicial order.

## § 4.9. No accelerated payments.

The director shall not accelerate payment of a prize for any reason.

## § 4.10. Liability ends with prize payment.

All liability of the Commonwealth, its officials, officers and employees, and of the department, the director and employees of the department, terminates upon payment of a lottery prize.

## § 4.11. Delay of payment allowed.

The director or the board may refrain from making payment of the prize pending a final determination by the director, the board or by a court of competent jurisdiction under any of the following circumstances:

1. If a dispute occurs or it appears that a dispute may occur relative to any prize;

2. If there is any question regarding the identity of the claimant;

3. If there is any question regarding the validity of any ticket presented for payment; or

4. If the claim is subject to any set off for delinquent debts owed to any agency eligible to participate in the Set-Off Debt Collection Act.

No liability for interest for such delay shall accrue to the benefit of the claimant pending payment of the claim.

## § 4.12. When periodic prize payment may be delayed.

The director may, at any time, delay any payment in order to review a change in circumstance relative to the prize awarded, the payee, the claim, or any other matter that has been brought to the department's attention. All delayed payments shall be brought up to date immediately upon the director's confirmation. Delayed payments shall continue to be paid according to the original payment schedule after the director's decision is given.

# State Lottery Department

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## § 4.13. Ticket is bearer instrument.

A ticket that has been legally issued by a lottery retailer is a bearer instrument until the ticket has been signed. The person who signs the ticket is considered the bearer of the ticket.

## § 4.14. Payment made to bearer.

Payment of any prize will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification and the submission of a prize claim form if one is required, unless otherwise delayed in accordance with these regulations.

## § 4.15. Marking tickets prohibited; exceptions.

Marking of tickets in any way is prohibited except by a player to claim a prize or by the department or a retailer to identify or to void the ticket.

## § 4.16. Penalty for counterfeit or altered ticket.

Knowingly presenting a counterfeit or altered ticket for prize payment or transferring such a ticket to another person to be presented for prize payment is a Class 6 felony in accordance with the state lottery law.

## § 4.17. Lost, stolen, destroyed tickets.

The department is not responsible for lost, stolen or destroyed tickets.

## § 4.18. Erroneous or mutilated ticket.

The department is not responsible for erroneous or mutilated tickets. The director, at his option, may replace an erroneous or mutilated ticket with an unplayed ticket for the same or a later instant game.

## § 4.19. Retailer to pay low-tier prizes.

Low-tier prizes (those of \$25 or less in cash or free instant game tickets) shall be paid by the retailer who sold the winning ticket, or by the department at the option of the ticket holder, or by the department when the ticket cannot be validated by the retailer.

## § 4.20. Retailers' prize payment procedures.

Procedures for prize payments by retailers are as follows:

1. Retailers may pay cash prizes in cash, by certified check, cashier's check, business check, or money order, or by any combination of these methods.

2. If payment of a prize by a check presented to a claimant by a retailer is denied for any reason, the retailer is subject to the same interest and penalty payments that would apply if the check were made

payable to the department. A claimant whose prize check is denied shall notify the department to obtain the prize.

3. Retailers shall pay claims for low-tier prizes during all normal business hours.

4. Prize claims shall be paid only at the location specified on the license.

## § 4.21. Retailer to validate winning ticket.

Before paying a prize claim, the retailer shall validate the winning ticket. The retailer shall follow validation procedures listed in these regulations or obtained from the department.

## § 4.22. When retailer cannot validate ticket.

If, for any reason, a retailer is unable to validate a prize-winning ticket, the retailer shall provide the ticket holder with a department claim form and instruct the ticket holder on how to file a claim with the department.

## § 4.23. No reimbursement for retailer errors.

The department shall not reimburse retailers for prize claims paid in error.

## § 4.24. Retailer to void winning ticket.

After a winning ticket is validated and signed by the ticket holder, the retailer shall physically void the ticket to prevent it from being redeemed more than once. The manner of voiding the ticket will be prescribed by the director.

## § 4.25. Prizes of less than \$600.

A retailer may elect to pay instant prizes between \$26 and \$599 won on tickets validated and determined by the department to be official prize winners, regardless of where the tickets were sold. If the retailer elects to pay prizes of up to \$599, the following terms and conditions apply:

1. The retailer shall execute an agreement with the department to pay higher prize limits.

2. The retailer shall pay all prizes of \$599 or less on validated tickets.

3. The retailer shall display special informational material provided by or approved by the department informing the public of the exceptional prize payments available from that retailer.

## § 4.26. Additional validation requirements.

Before paying any prize between \$26 and \$599, the retailer shall:

1. Require the claimant to fill out a prize claim form;
2. Inspect the ticket to assure that it conforms to each validation criterion listed in these regulations and to any additional criteria the director may specify;
3. Report to the department the ticket number, validation code and validation number of the ticket; and
4. Obtain an authorization number for prize payment from the department.

§ 4.27. When prize shall be claimed from the department.

The department will pay prizes in any of the following circumstances:

1. If a retailer cannot validate a claim which the retailer otherwise would pay, the ticket holder shall send or present to the department a completed claim form and the signed ticket.
2. If a ticket holder is unable to return to the retailer from which the ticket was purchased, a completed claim form and the signed ticket may be presented or mailed to the department.
3. If the prize amount is over the limit paid by the retailer from which the ticket was purchased, a completed claim form and the signed ticket shall be presented or mailed to the department.

§ 4.28. Prizes of \$5,000 or less.

Prizes of \$5,000 or less may be claimed from any of the department's regional offices. Regional offices will pay prizes by check after tickets are validated and after any other applicable requirements contained in these regulations are met.

§ 4.29. Prizes of more than \$5,000.

Prizes of more than \$5,000 and noncash prizes other than free lottery tickets may be claimed from the department's central office in Richmond. The central office will pay prizes by check, after tickets are validated and after any other applicable requirements contained in these regulations are met.

§ 4.30. When claims form required.

A claims form for a winning ticket may be obtained from any department office or any lottery sales retailer.

A. Claims forms shall be required to claim any prize from the department's central and regional offices.

B. Claims forms shall be required to claim prizes of between \$26 and \$599 from lottery retailers.

C. The department or any lottery retailer may require claims forms to claim prizes of \$100 or less from a lottery retailer.

§ 4.31. Department action on claims for prizes submitted to department.

The department shall validate the winning ticket claim according to procedures contained in these regulations.

A. If the claim is not valid, the department will notify the ticket holder promptly.

B. If the claim is mailed to the department and the department validates the claim, a check for the prize amount will be mailed to the winner.

C. If an individual presents a claim to the department in person and the department validates the claim, a check for the prize amount will be presented to the bearer.

§ 4.32. Withholding, notification of prize payments.

A. When paying any prize of \$600 or more, the department shall:

1. File the appropriate income reporting form(s) with the state Department of Taxation and the federal Internal Revenue Service; and
2. Withhold any moneys due for delinquent debts listed with the Department of Taxation's set-off debt collection program.

§ 4.33. Grand prize event.

If an instant game includes a grand prize or jackpot event, the following general criteria shall be used:

1. Entrants in the event shall be selected from tickets which meet the criteria stated in specific game rules set by the director.
2. Participation in the drawing(s) shall be limited to those tickets which are actually received and validated by the department on or before the date announced by the director.
3. If, after the event is held, the director determines that a ticket should have been entered into the event, the director may place that ticket into a grand prize drawing for the next equivalent instant game. That action is the extent of the department's liability.
4. The director shall determine the date(s), time(s) and procedures for selecting grand prize winner(s) for each instant game. The proceedings for selection of the winners shall be open to members of the news media and to either the general public or entrants or both.

§ 4.34. Director may postpone drawing.



# State Lottery Department

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The director may postpone any drawing to a certain time and publicize the postponement if he finds that the postponement will serve and protect the public interest.

## § 4.35. Valid ticket described.

To be valid, a Virginia lottery game ticket shall meet all of the validation requirements listed here:

1. The ticket shall have been issued by the department in an authorized manner.
2. The ticket shall not be altered, unreadable, reconstructed, or tampered with in any way.
3. The ticket shall not be counterfeit in whole or in part.
4. The ticket shall not have been stolen or appear on any list of void or omitted tickets on file with the department.
5. The ticket shall be complete and not blank or partly blank, miscut, misregistered, defective, or printed or produced in error.
6. The ticket shall have exactly one play symbol and exactly one caption under each of the rub-off spots, exactly one ticket number, exactly one validation code, and exactly one validation number. These items shall be present in their entirety, legible, right side up, and not reversed in any manner.
7. The validation number of an apparent winning ticket shall appear on the department's official list of validation numbers of winning tickets provided by the vendor of the instant tickets. A ticket with that validation number shall not have previously been paid.
8. The ticket shall pass all additional confidential validation requirements set by the department.

## § 4.36. Invalid ticket.

An instant ticket which does not pass all the validation requirements listed here and any validation requirements contained in the rules for its instant game is invalid. An invalid ticket is not eligible for any prize.

## § 4.37. Replacement of ticket.

The director may replace an invalid ticket with an unplayed ticket from the same or another instant game. If a defective ticket is purchased, the department's only liability or responsibility shall be to replace the defective ticket with an unplayed ticket from the same or another instant game or to refund the purchase price, at the department's option.

## § 4.38. When ticket is partially mutilated or not intact.

If an instant ticket is partially mutilated or if the ticket is not intact but can still be validated by other validation tests, the director may pay the prize for that ticket.

## § 4.39. Director's decision final.

All decisions of the director regarding ticket validation shall be final.

## § 4.40. When prize payable over time.

Unless the rules for any specific instant game provide otherwise, any cash prize of \$500,000 or more will be paid in multiple payments over time. The schedule of payments shall be designed to pay the winner equal dollar amounts each year until the total payments equal the prize amount.

## § 4.41. Rounding total prize payment.

When a prize or share is to be paid over time, the director may round the actual amount of the prize or share to facilitate purchase of an appropriate funding mechanism.

## § 4.42. When prize payable for "life."

If a prize is advertised as payable for the life of the winner, only an individual may claim the prize. If a claim is filed on behalf of a group, company, corporation or any other type of organization, the life of the claim shall be 20 years.

## PART V. BANKS AND DEPOSITORIES.

### § 5.1. Approval of banks.

The director, with the concurrence of the Department of the Treasury, and in accordance with applicable Treasury directives, shall approve a bank or banks to provide services to the department.

A. A bank or banks shall serve as agents for electronic funds transfers between the department and lottery retailers as required by these regulations and by contracts between the department, the State Treasury, retailers, and the banks.

B. In selecting the bank or banks to provide these services, the director and the Department of the Treasury shall consider quality of services offered, the ability of the banks to guarantee the safekeeping of department accounts and related materials, the cost of services provided and the sophistication of bank systems and products.

C. There shall be no limit on the number of banks approved under this section.

### § 5.2. Approval of depositories.

The director may contract with depositories to distribute lottery tickets and materials from the department's central warehouse to the department's regional offices and from the department to retailers, and to collect funds, lottery tickets and lottery materials from retailers.

## § 5.3. Compensation.

A. The contract between each bank or depository and the department shall fix the compensation for services rendered to the department.

B. Compensation of banks will be in the form of compensating balances, direct fees, or some combination of these methods, at the discretion of the department.

C. Depositories will be compensated based on vouchers for services rendered.

## § 5.4. Depository for transfer of tickets.

A. The department may designate one or more depositories to transfer lottery tickets, lottery materials, and related documents between the department and lottery retailers.

B. In instances where a retailer wishes delivery of tickets or other materials sooner than scheduled by a lottery depository, the retailer may use his own depository or transfer agent. However, use of a retailer's depository or transfer agency shall have the department's advance approval.

C. In determining whether to use depositories for transferring tickets, materials and documents between the department and lottery retailers, the department may consider any relevant factor including, but not limited to, cost, security, timeliness of delivery, marketing concerns, sales objectives and privatization of governmental services.

## PART VI. LOTTERY BOARD PROCEDURES.

### Article 1.

#### Board Procedures for the Conduct of Business.

## § 6.1. Officers of the board.

### A. Chairman and vice-chairman.

The board shall have a chairman and a vice-chairman who shall be elected by the board members.

### B. Term of officers.

The board will elect its officers annually at its January meeting to serve for the calendar year.

## § 6.2. Board meetings.

### A. Monthly meetings.

The board will hold monthly public meetings to receive information and recommendations from the director on the operation and administration of the lottery and to take official action. The board may also request information from the public.

### B. Special meetings.

The board may hold additional meetings as may be necessary to carry out its work. The chairman may call a special meeting at any time and shall call a special meeting when requested to do so by at least two board members or at the request of the director. Notice of special meetings shall be given to all board members at least two calendar days before the meeting. Written notice is preferred but telephonic notice may be accepted by any board member in lieu of written notice.

### C. Quorum.

Three or more board members shall constitute a quorum for the conduct of business at both regular and special meetings of the board. A simple majority vote at a regular meeting is sufficient to take official action but official action at a special meeting requires three affirmative votes. The chairman is eligible to vote at all meetings.

### D. Conflict of Interest.

If any board member determines that he has a conflict of interest or potential conflict relating to a matter to be considered, that board member shall not take part in such deliberations.

## § 6.3. Committees of the board.

### A. Ad hoc committees.

The board chairman may at his discretion appoint such ad hoc committees as he deems necessary to assist the board in its work.

### B. Purpose of committees.

An ad hoc committee may be established to advise the board on a matter referred to it or to act on a matter on behalf of the board if so designated.

1. A committee established to act on a matter on behalf of the board shall be composed entirely of board members and shall have at least three members.

a. Three members shall constitute a quorum.

b. Official action of such a committee shall require not fewer than three affirmative votes with each member including the chairman having one vote.

# State Lottery Department

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c. If a committee's vote results in an affirmative vote of only two members, the committee shall present a recommendation to the board and the board shall then take action on the matter.

2. A committee established to act in an advisory capacity to the board may include members of the general public. At least two members shall be board members and the chairman shall be a board member appointed by the board chairman.

a. A majority of the members appointed to an advisory committee constitutes a quorum.

b. Recommendations of an advisory committee may be adopted by a majority vote of those present and voting. The chairman of an advisory committee shall be eligible to vote on all recommendations.

c. All actions of advisory committees shall be presented to the board in the form of recommendations.

## Article 2.

### Procedures for Appeals on Licensing Actions.

§ 6.4. Hearings on denial, suspension or revocation of a retailer's license.

#### A. Generally.

An applicant who is denied a license or a retailer whose license is denied for renewal or is suspended or revoked may appeal the licensing decision and request a hearing on the licensing action.

B. Hearings to conform to Administrative Process Act provisions.

The conduct of license appeal hearings will conform to the provisions of Article 3 (§ 9-6.14:11 et seq.) of Chapter 1.1:1 of Title 9 of the Code of Virginia relating to Case Decisions.

1. An initial hearing consisting of an informal fact finding process will be conducted by the director in private to attempt to resolve the issue to the satisfaction of the parties involved.

2. If an appeal is not resolved through the informal fact finding process, a formal hearing will be conducted by the board in public. The board will then issue its decision on the case.

3. Upon receipt of the board's decision on the case, the appellant may elect to pursue court action in accordance with the provisions of the Administrative Process Act (APA) relating to Court Review.

§ 6.5. Procedure for appealing a licensing decision.

#### A. Form for appeal.

Upon receiving a notice that (i) an application for or the renewal of a license has been denied by the director, or (ii) the director intends to or has already taken action to suspend or revoke a current license, the applicant or licensed retailer may appeal in writing for a hearing on the licensing action. The appeal shall be submitted within 30 days of receipt of the notice of the licensing action.

1. Receipt is presumed to have taken place not later than the third day following mailing of the notice to the last known address of the applicant or licensed retailer. If the third day falls upon a day on which mail is not delivered by the United States Postal Service, the notice is presumed to have been received on the next business day. The "last known address" means the address shown on the application of an applicant or licensed retailer.

2. The appeal will be timely if it bears a United States Postal Service postmark showing mailing on or before the 30th day prescribed in § 6.5.A.

#### B. Where to file appeal.

An appeal to be mailed shall be addressed to:

State Lottery Director  
State Lottery Department  
Post Office Box 4689  
Richmond, Virginia 23220

An appeal to be hand delivered shall be delivered to:

State Lottery Director  
State Lottery Department  
Bookbindery Building  
2201 West Broad Street  
Richmond, Virginia 23220

1. An appeal delivered by hand will be timely only if received at the headquarters of the State Lottery Department within the time allowed by § 6.5.A.

2. Delivery to State Lottery Department regional offices or to lottery sales personnel by hand or by mail is not effective.

3. The appellant assumes full responsibility for the method chosen to file the notice of appeal.

#### C. Content of appeal.

The appeal shall state:

1. The decision of the director which is being appealed;

2. The basis for the appeal;

# State Lottery Department

3. The retailer's license number or the Retailer License Application Control Number; and

4. Any additional information the appellant may wish to include concerning the appeal.

## § 6.6. Procedures for conducting informal fact finding

### A. Director to conduct informal hearing.

The director will conduct an informal fact finding hearing with the appellant for the purpose of resolving the licensing action at issue.

### B. Hearing date and notice.

The director will hold the hearing as soon as possible but not later than 30 days after the appeal is filed. A notice setting out the hearing date, time and location will be sent to the appellant at least 10 days before the day set for the hearing.

### C. Place of hearings.

All informal hearings shall be held in Richmond, Virginia, unless the director decides otherwise.

### D. Conduct of hearings.

The hearings shall be informal. They shall not be open to the public.

1. The hearings will be electronically recorded. The recordings will be kept until any time limits for any subsequent appeals have expired.

2. A court reporter may be used. The court reporter shall be paid by the person who requested him. If the appellant elects to have a court reporter, a transcript shall be provided to the department at no cost. The transcript shall become part of the department's records.

3. The appellant may appear in person or may be represented by counsel to present his facts, argument or proof in the matter to be heard and may request other parties to appear to present testimony.

4. The department will present its facts in the case and may request other parties to appear to present testimony.

5. Questions may be asked by any of the parties at any time during the presentation of information subject to the director's prerogative to regulate the order of presentation in a manner which serves the interest of fairly developing the factual background of the appeal.

6. The director may exclude information at any time

which he believes is not germane or which repeats information already received.

7. The director shall declare the hearing completed when both parties have finished presenting their information.

### E. Director to issue written decision.

Normally, the director shall issue his decision within 15 days after the conclusion of an informal hearing. However, for a hearing with a court reporter, the director shall issue his decision within 15 days after receipt of the transcript of the hearing. The decision will be in the form of a letter to the appellant summarizing the case and setting out his decision on the matter. The decision will be sent to the appellant by certified mail, return receipt requested.

### F. Appeal to board for hearing.

After receiving the director's decision on the informal hearing, the appellant may elect to appeal to the board for a formal hearing on the licensing action. The appeal shall be:

1. Submitted in writing within 15 days of receipt of the director's decision on the informal hearing;

2. Mailed to:

Chairman, State Lottery Board  
State Lottery Department  
Post Office Box 4689  
Richmond, Virginia 23220

OR

Hand delivered to:

Chairman, State Lottery Board  
State Lottery Department  
Bookbindery Building  
2201 West Broad Street  
Richmond, Virginia 23220

3. The same procedures in § 6.5.B. for filing the original notice of appeal govern the filing of the notice of appeal of the director's decision to the board.

4. The appeal shall state:

a. The decision of the director which is being appealed;

b. The basis for the appeal;

c. The retailer's license number or the Retailer License Application Control Number; and

# State Lottery Department

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*d. Any additional information the appellant may wish to include concerning the appeal.*

## *§ 6.7. Procedures for conducting formal licensing hearings.*

### *A. Board to conduct formal hearing.*

*The board will conduct a formal hearing within 45 days of receipt of an appeal on a licensing action.*

### *B. Number of board members hearing appeal.*

*Three or more members of the board are sufficient to hear an appeal. If the chairman of the board is not present, the members present shall choose one from among them to preside over the hearing.*

*C. Board chairman may designate an ad hoc committee to hear appeals.*

*The board chairman at his discretion may designate an ad hoc committee of the board to hear licensing appeals and act on its behalf. Such committee shall have at least three members who will hear the appeal on behalf of the board.*

### *D. Conflict of interest.*

*If any board member determines that he has a conflict of interest or potential conflict, that board member shall not take part in the hearing. In the event of such a disqualification on a subcommittee, the board chairman shall appoint an ad hoc substitute for the hearing.*

### *E. Notice, time and place of hearing.*

*A notice setting the hearing date, time and location will be sent to the appellant at least 10 days before the day set for the hearing. All hearings will be held in Richmond, Virginia, unless the board decides otherwise.*

### *F. Conduct of hearings.*

*The hearings shall be conducted in accordance with the provisions of the Virginia Administrative Process Act (APA). The hearings shall be open to the public.*

*1. The hearings will be electronically recorded and the recordings will be kept until any time limits for any subsequent court appeals have expired.*

*2. A court reporter may be used. The court reporter shall be paid by the person who requested him. If the appellant elects to have a court reporter, a transcript shall be provided to the department at no cost. The transcript shall become part of the department's records.*

*3. The provisions of §§ 9-6.14:12 through 9-1.14:14 of the APA shall apply with respect to the rights and responsibilities of the appellant and of the department.*

### *G. Board's decision.*

*Normally, the board will issue its written decision within 21 days of the conclusion of the hearing. However, for a hearing with a court reporter, the board will issue its written decision within 21 days of receipt of the transcript of the hearing.*

*1. A copy of the board's written decision will be sent to the appellant by certified mail, return receipt requested. The original written decision shall be retained in the department and become a part of the case file.*

*2. The written decision will contain:*

*a. A statement of the facts to be called "Findings of Facts";*

*b. A statement of conclusions to be called "Conclusions" and to include as much detail as the board feels is necessary to set out the reasons and basis for its decision; and*

*c. A statement, to be called "Decision and Order," which sets out the board's decision and order in the case.*

### *H. Court review.*

*After receiving the board's decision on the case, the appellant may elect to pursue court review as provided for in the Administrative Process Act.*

## *Article 3.*

### *Procedures for Promulgating Regulations*

## *§ 6.8. Board procedures for promulgating regulations.*

### *A. Generally.*

*Except for temporary regulations issued under the exemption provided by the Virginia Lottery Law, the board shall promulgate regulations, in consultation with the director, in accordance with the provisions of the Administrative Process Act (Chapter 1.1:1 of Title 9 of the Code of Virginia).*

*1. The board will provide for a public participation process to be set out in "Guidelines for Public Participation in Regulation Development and Promulgation."*

*2. Public hearings may be held if the subject matter of a proposed regulation and the level of interest generated through the public participation process warrant them.*

### *B. Temporary regulations.*

*Temporary regulations to be issued under the exemption*

provided by law will be adopted by the board at public meetings. The public may provide written comments on newly adopted temporary regulations. The board will consider these comments for later revisions to the regulations.

## PART VII. PROCUREMENT.

### § 7.1. Procurement in general.

A. To promote the free enterprise system in Virginia, the State Lottery Department will purchase goods or services by obtaining competitive bids whenever possible. In its operations and to ensure efficiency, effectiveness and economy, the department will consider using goods and services offered by private enterprise.

B. The Office of the Attorney General shall review each contract for more than \$10,000 before the department signs it.

C. The director may request other state agencies to review contracts before the department signs them.

D. The department may purchase goods or services which are under state term contracts established by the Department of General Services, Division of Purchases and Supply, when in the best interest of the State Lottery Department.

### § 7.2. Exemption and restrictions.

A. Purchase of goods and services may be exempted from the competitive bidding procedure when the director determines the best interests of the Commonwealth will be served. An exemption may also be declared by the director when an immediate or emergency need exists for goods or services.

B. All purchases shall be made in compliance with the standards of ethics in § 7.19 of these regulations.

C. The department shall not take any procurement action which discriminates on the basis of the race, religion, color, sex, or national origin of any vendor.

D. It is the policy of the Commonwealth of Virginia to contribute to the establishment, preservation, and strengthening of small businesses and businesses owned by women and minorities and to encourage their participation in state procurement activities. Towards that end, the Virginia Lottery Department encourages these firms to compete and encourages nonminority firms to provide for the participation of small businesses and businesses owned by women and minorities through partnerships, joint ventures, subcontracts, and other contractual opportunities.

### § 7.3. Requests for Information.

A. A Request for Information (RFI) may be used by the department to determine available sources for goods or services.

B. The RFI shall set out a description of the good or service needed, its purpose and the date by which the department needs the information.

C. The RFI may be mailed to interested parties or published by summary notice in general circulation newspapers.

1. The number of RFI's made for each good or service will be decided on a case-by-case basis.

2. To help ensure competition, the department will ask for information from as many private sector vendors as it determines are necessary.

D. All costs of developing and presenting the information furnished will be paid for by the vendor.

E. The department shall have unlimited use of the information furnished in the reply to an RFI. The department accepts no responsibility for protection of the information furnished unless the vendor requests that proprietary information be protected in the manner prescribed by § 11-52 D of the Code of Virginia.

F. The department shall have no obligation to any vendor who furnishes information.

G. The department may, at its option, use the responses to the RFI as a basis for entering directly into negotiation with one or more vendors for the purpose of entering into a contract.

### § 7.4. Request for Proposals.

A. A written Request for Proposal (RFP) may be used by the department to describe in general terms the goods or services to be purchased. An RFP may result in a negotiated contract.

B. The RFP will set forth the due date and list the requirements to be used by the vendors in writing the proposal. It may contain other terms and conditions and essential vendor characteristics.

C. The department shall make a public notice of the RFP.

1. The notice may be: mailed to vendors who responded to a Request for Information; published in general circulation newspapers in areas where the contract will be performed; posted at the department's central office in a public area used to post purchase notices; if time permits and at the option of the department, reported to the Virginia Business Opportunities at the Department of General Services, Division of Purchases and Supply; and given to any

# State Lottery Department

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*other interested vendor.*

*2. The department shall decide the method of giving public notice on a case-by-case basis. The decision will consider the means which will best serve competition in the private sector.*

*D. Public openings of the RFP's are not required. If the RFP's are opened in public, only the names of the vendors who submitted proposals will be available to the public.*

*E. The department will evaluate each vendor proposal.*

*1. The evaluation will consider the vendor's response to the factors in the RFP.*

*2. The evaluation will consider whether the vendor is qualified, responsive and responsible for the contract.*

*F. The department may conduct contract negotiations with one or more qualified vendors. The department may also determine, in its sole discretion, that only one vendor is fully qualified or that one vendor is clearly more highly qualified than the others and negotiate and award a contract to that vendor.*

*G. Award of RFP Contract.*

*1. The vendor selected shall be qualified and best suited on the basis of the proposal and contract negotiations.*

*2. Price will be considered but need not be the only determining factor.*

*3. The award document shall be a contract. It shall include requirements, terms and conditions of the RFP and the final contract terms agreed upon.*

## *§ 7.5. Invitations for Bids.*

*A. A written Invitation for Bid (IFB) may be used by the department to describe in detail the specifications, contractual terms and conditions which apply to a purchase of goods or services.*

*B. The IFB will list special qualifications needed by a vendor. It will describe the contract requirements and set the due date for bid responses.*

*1. The IFB may contain inspection, testing, quality, and other terms essential to the contract.*

*2. It may contain other optional data.*

*C. Public notice of the IFB shall be given.*

*1. The IFB may be mailed to potential bidders. In addition, it may be published in summary form stating where a full copy may be obtained in general*

*circulation newspapers in areas where the contract will be performed. The IFB shall be posted at the department's central office in a public area used to post purchase notices, and shall be given to any other interested vendor.*

*2. The publication of the IFB notice will consider the means which will best serve competition in the private sector.*

*D. Receiving IFB's.*

*1. Bids shall be received until the date and time set forth in the IFB.*

*2. Late bids shall not be considered.*

*E. Opening IFB's.*

*Bids shall be publicly opened and read aloud.*

*F. Evaluating IFB's.*

*The department shall evaluate each vendor bid.*

*1. The evaluation shall consider whether the bid responds to the factors in the IFB.*

*2. All bids which respond completely to the IFB shall be evaluated to determine which bid presents the lowest dollar price.*

*3. The vendor presenting the lowest price bid shall be evaluated to determine whether he is a responsible bidder.*

*G. Award of IFB contract.*

*The department shall award the contract to the lowest responsible bidder.*

## *§ 7.6. Sole source contracts.*

*A. A sole source contract shall be made when there is only one source available for goods or services.*

*B. The director will state in writing for the file that only one source was determined to be available, the vendor selected, the goods or services contracted for and the date of the contract.*

*C. If the contract is over \$10,000, on the day the director awards the contract, he will post the written statement in a public area used to post purchase notices at the department's central office.*

## *§ 7.7. Emergency purchase contract.*

*A. An emergency purchase contract shall be made when an unexpected, sudden, serious, or urgent situation demands immediate action.*

# State Lottery Department

*B. The department will state in writing the nature of the emergency, the vendor selected, the goods or services contracted for and the date of the contract.*

*C. If the contract is over \$10,000, on the day the director awards the contract, he will post the written statement in a public area used to post purchase notices at the department's central office.*

## *§ 7.8. Procedures for small purchases.*

### *A. Generally.*

*Small purchases are those where the estimated one-time or annual contract for cost of goods or services does not exceed \$10,000.*

### *B. Price quotations.*

*Price quotations may be obtained through oral quotations in person or by telephone.*

### *C. Written confirmation.*

*If the contract is \$1,200 or less, no written confirmation is needed. Written price confirmation from the vendor is needed for small purchases over \$1,200.*

*D. Except in the case of an emergency under § 7.7, the department will attempt to obtain at least three quotations.*

*E. In letting small purchase contracts, the department may consider factors in addition to price.*

## *§ 7.9. Time to submit and accept information proposals or bids.*

*A. All vendors shall submit requests for information, proposals or bids in time to reach the department before the set time and due date.*

*1. All vendors shall take responsibility for their chosen method of delivery to the department.*

*2. The department will date stamp the vendors' answers to RFI's, RFP's and IFB's when received. The department's stamped date shall be considered the official date received.*

*3. Any information which the department did not request or is received after the due date may be disregarded or returned to the vendor.*

*4. All vendors who received invitations will be notified of any changes in the bidding process times and dates or if a bid is cancelled.*

*B. Any proposal or bid quotation submitted by a vendor to the department shall remain valid for at least 45 days after the submission due date. The vendor must agree to*

*accept a contract if offered within the 45-day time period. The department may require a longer or shorter period for specific goods or services.*

## *§ 7.10. How to modify or withdraw proposals or bids.*

*A. A vendor may modify or withdraw a proposal or bid before the due time and date set out in the request without any formalities except that the modification or withdrawal shall be in writing.*

*B. A request to modify or withdraw a bid or proposal after the due date may be given special review by the director.*

*1. A vendor shall put in writing and deliver to the department a statement which details how the proposal would be modified or why it should be permitted to be withdrawn.*

*2. A proposal or bid may be withdrawn after opening if the director receives prompt notice and sufficient information to show that an honest error will cause undue financial loss.*

## *§ 7.11. Rejection of bids.*

*The department reserves the right to reject any or all bids. The decision may be made that a vendor is ineligible, disqualified, not responsive or responsible, or involved in fraud, or that the best interest of the Commonwealth will not be served. New bids may be requested at a time which meets the needs of the department.*

## *§ 7.12. Testing of product.*

*Various items or services may require testing either before or after the final award of a contract. The vendor shall guarantee price and quality before and after testing.*

## *§ 7.13. Proposal bid or performance security.*

*A. The department may require performance security on proposals or bids. The security is to protect the interests of the Commonwealth.*

*1. When required, security must be in the form of a certified check, certificate of deposit or letter of credit made payable to the State Lottery Department, or on a form issued by a surety company authorized to do business in Virginia.*

*2. When required, security will not be waived.*

*B. Security provided by vendors to whom a contract is awarded will be kept by the department until all provisions of the contract have been completed.*

## *§ 7.14. Contract or purchase order may not be assigned.*



# State Lottery Department

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*A vendor may not assign any contract to another party without permission of the director.*

## *§ 7.15. Strikes, lockouts or acts of God.*

*Whenever a vendor's place of business, mode of delivery or source of supply has been disrupted by a strike, lockout or act of God, the vendor will promptly advise the department by telephone and in writing. The department may cancel all orders on file with the vendor and place an order with another vendor.*

## *§ 7.16. Remedies for the department on goods and services which do not meet the contract.*

*A. In any case where the vendor fails to deliver, or has delivered goods or services which do not meet the contract standards, the department will send a written "Notice to Cure" to the vendor for correction of the problem.*

*B. If the vendor does not respond adequately to the "Notice to Cure," the department may cancel the contract and buy goods or services from another vendor. Any increase between the contract price and market price will be paid by the vendor who failed to follow the contract.*

## *§ 7.17. Administration of contracts.*

### *A. Generally.*

*The department will follow procedures in administering its contracts that will ensure that the vendor is complying with all terms and conditions of the contract.*

### *B. Records.*

*The department shall keep all records relating to a contract for three years after the end of a contract.*

*1. The records shall include the requirements, a list of the vendors bidding, methods of evaluation, a signed copy of the contract, comments on vendor performance, and any other information necessary.*

*2. Records shall be open to the public except for proprietary information for which protection has been properly requested.*

### *C. Change orders.*

*1. Contracts may need to be adjusted for minor changes. The department may change the contract to correct errors, to add or delete small quantities of goods, or to make other minor changes.*

*2. The department shall send the changes in writing to the vendor. Vendors who change the contract without receiving the written changes from the department do so at their own risk.*

### *D. Cancellation orders.*

*The department shall cancel orders in writing. Contracts may be cancelled if the vendor fails to fulfill his obligations.*

### *E. Overshipments and overruns.*

*The department may refuse to accept goods which exceed the number ordered. The goods may be returned to the vendor at the vendor's expense.*

### *F. Inspection, acceptance and rejection of goods or services.*

*1. The department shall be responsible for inspecting, accepting or rejecting goods or services purchased.*

*2. In rejecting goods or services, the department will notify the vendor as soon as possible.*

*3. The department will state the reasons for rejecting the goods or services and request prompt replacement.*

*4. Replacement goods or services shall be made available at a date acceptable to the department and vendor.*

### *G. Complaints.*

*The department will report complaints in writing to the vendor as they occur. The reports will be part of the department's purchase records.*

### *H. Invoice processing.*

*To maintain good vendor relations and a competitive environment, the department will process invoices promptly. The department shall follow the requirements for prompt payment found in Title 11, Chapter 7, Article 2.1 of the Code of Virginia. The department will use rules and regulations issued by the Department of Accounts to process invoices.*

### *I. Default actions.*

*Before the department finds a vendor in default of a contract, it will consider the specific reasons the vendor failed and the time needed to get goods or services from other vendors.*

## *§ 7.18. Vendor background.*

*A. A vendor shall allow the department to check his background. The background check may extend to any parent or subsidiary corporation of the vendor and shareholders of 5.0% or more of the vendor, parent or subsidiary corporation. The check may include officers and directors of the vendor or parent or subsidiary corporation.*

B. Before contracting with the department, the vendor shall sign an agreement with the department to allow a criminal investigation of the entities and persons named in § 7.18.A.

C. The vendor shall allow the department to audit, inspect, examine or photocopy the vendor's records related to the State Lottery Department business during normal business hours.

## 1 7.19. Ethics in contracting.

### A. Generally.

The department will follow the ethics in public contracting requirements of the Virginia Public Procurement Act, Title 11, Chapter 7, Article 4 of the Code of Virginia.

### B. Employee role with vendors restricted.

A department employee who has responsibility to buy from a vendor shall not participate in any transaction when:

1. The employee is employed by the vendor at the same time;
2. The employee, his business associate or a member of his household is an officer, director, trustee, partner or has a similar position with a vendor and plays a role in soliciting contracts for the vendor;
3. The employee, his business associate or a member of his household owns or controls an interest in the vendor of at least 5.0%;
4. The employee, his business associate or a member of his household has a financial interest in the contract;
5. The employee, his business associate or a member of his household is negotiating or has an arrangement about prospective employment with a vendor.

### C. Offers, requests, or acceptance of gifts.

No vendor or employee of the department involved in purchasing will offer, request or accept, at the present or in the future, any payment, loan, advance, deposit of money, services or anything of more than nominal value for which nothing of comparable value is exchanged.

### D. Kickbacks.

No vendor will demand or receive from any of his suppliers or subcontractors, as an incentive for a contract, any kickback.

E. Vendors to give certified statement on ethics in contracting.

Each vendor shall give the department a certified statement that the proposal, bid, or contract or any claim is not the result of, or affected by, collusion with another vendor. The statement will also state that no act of fraud has been involved in negotiating, signing and meeting the contract.

F. Department employees to give notice of subsequent employment with vendors.

Any department employee or former employee who dealt in an official capacity with vendors on procurement actions who intends to accept employment from any such vendor within one year terminating his employment with the department shall give notice to the director of his intention prior to his first day of employment with the vendor.

G. Any contract which violates the contracting ethics in the Code of Virginia and these regulations may be voided and rescinded immediately by the department.

## PART VIII. PROCUREMENT APPEALS AND DISPUTES.

### § 8.1. Generally.

The State Lottery Department is not subject to the Virginia Public Procurement Act or its procedures. In lieu thereof, this regulation applies to all vendors. It sets out the procurement appeals and disputes process to be used by the director until November 30, 1988. In the event of a protest on a procurement action, the vendor shall follow the remedies available in this regulation. The vendor assumes whatever risks are involved in the selected method of delivery to the director. The director will conduct a hearing on each appeal.

§ 8.2. Appeals, protests, time frames and remedies related to solicitation and award of contracts.

#### A. If a vendor is considered ineligible or disqualified.

1. The vendor may appeal the department's decision. The written appeal shall be filed within 10 days after the vendor receives the department's decision.
2. If appealed and the department's decision is reversed, the sole relief will be to consider the vendor eligible for the particular contract.

B. If a vendor is not allowed to withdraw a bid in certain circumstances.

1. The vendor may appeal the department's decision. The written appeal shall be filed within 10 days after the vendor receives the department's decision.
2. If no bond has been posted by the vendor, then before appealing the department's decision the vendor shall provide to the department a certified check or

# State Lottery Department

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cash bond for the amount of the difference between the bid sought to be withdrawn and the next lowest bid.

a. The certified check shall be payable to the State Lottery Department.

b. The cash bond shall name the State Lottery Department as obligor.

c. The security shall be released if the vendor is allowed to withdraw the bid or if the vendor withdraws the appeal and agrees to accept the bid or if the department's decision is reversed.

d. The security shall go to the State Lottery Department if the vendor loses all appeals and fails to accept the contract.

3. If appealed and the department's decision is reversed, the sole relief shall be to allow the vendor to withdraw the bid.

C. If a vendor is considered not responsible for certain contracts.

1. Any vendor, despite being the low bidder, may be determined not to be responsible for a particular contract. The vendor may appeal the department's decision. The written appeal shall be filed within 10 days after the vendor receives the department's decision.

2. If appealed and the department's decision is reversed, the sole relief shall be that the vendor is a responsible vendor for the particular contract under appeal.

3. A vendor protesting the department's decision that he is not responsible, shall appeal under this section and shall not protest the award or proposed award under subsection D.

4. Nothing contained in this subsection shall be construed to require the department to furnish a statement of the reasons why a particular proposal was not deemed acceptable.

D. If a vendor protests an award or decision.

1. Any vendor or potential vendor may protest the award or the department's decision to award a contract. The written protest shall be filed within 10 days after the vendor receives the department's decision.

2. If the protest depends upon information contained in public records pertaining to the purchase, then a five-day time limit for a protest begins to run after the records are made available to the vendor for inspection, so long as the vendor's request to inspect

the records is made within 10 days after the vendor receives the department's decision.

3. No protest can be made that the selected vendor is not a responsible vendor. The only grounds for filing a protest are (i) that a procurement action was not based upon competitive principles, or (ii) that a procurement action violated the standards of ethics promulgated by the board.

4. If, prior to an award, it is determined by the director that the department's decision to award the contract is erroneous, the only relief will be that the director will cancel the proposed award or revise it.

5. No protest shall delay the award of a contract.

6. Where the award has been made, but the work has not begun, the director may stop the contract. Where the award has been made and the work begun, the director may decide that the contract is void if voiding the contract is in the best interest of the public. Where a contract is declared void, the performing vendor will be paid for the cost of work up to the time when the contract was voided. In no event shall the performing vendor be paid for lost profits.

§ 8.3. Appeals, time frames and remedies related to contract disputes and claims.

A. Generally.

In the event a vendor has a dispute with the department over a contract awarded to him, he may file a written claim with the director.

B. Contract claims.

Claims for money or other relief, shall be submitted in writing to the director, and shall state the reasons for the action.

1. All vendor's claims shall be filed no later than 30 days after final payment is made by the department.

2. If a claim arises while a contract is still being fulfilled, a vendor shall give a written notice of the vendor's intention to file a claim. The notice shall be given to the director at the time the vendor begins the disputed work or within 10 days after the dispute occurs.

3. The vendor shall notify all other vendors bidding on the disputed contract within 10 days after the appeal has been filed with the director.

4. Nothing in this regulation shall keep a vendor from submitting an invoice to the department for final payment after the work is completed and accepted.

5. Pending claims shall not delay payment from the department to the vendor for undisputed amounts.

6. Unless specified in the contract, the director will not grant claims for money or other relief. Claims for money or other relief not in the contract, shall be referred to the Office of the Attorney General for resolution. The resolution between the Attorney General and vendor will be included as part of the director's decision.

7. The director's decision will state the reasons for the action.

### C. Claims relief.

Relief from administrative procedures, liquidated damages, or minor informalities may be given by the director. The circumstances allowing relief usually result from acts of God, sabotage, and accidents, fire or explosion not caused by negligence.

## § 8.4. Form and content of appeal to the director.

### A. Form for appeal.

The vendor shall make the appeal to the director in writing. The appeal shall be mailed to the State Lottery Director, State Lottery Department, P.O. Box 4689, Richmond, Virginia 23220 or hand delivered to the department's central office at the Bookbindery Building, 2201 West Broad Street, Richmond, Virginia 23220.

### B. Content of appeal.

The appeal shall state the:

1. Decision of the department which is being appealed;
2. Basis for the appeal;
3. Contract number;
4. Other information which identifies the contract; and
5. Reasons for the action.

### C. Vendor notification.

The director's decision on an appeal will be sent to the vendor by registered mail, return receipt requested.

1. The director shall follow the time limits in the regulations and shall not make exceptions to the filing periods for the vendor's appeal and rendering the director's decision.

2. The director's decision will state the reasons for the action.

## § 8.5. State Lottery Department appeal hearing procedures.

### A. Generally.

The director will conduct a hearing on every appeal within 45 days after the appeal is filed with the director. The hearings before the State Lottery Department are not trials and shall not be conducted like a trial.

1. The Administrative Process Act does not apply to the hearings.

2. The hearings shall be informal. The vendor and the department will be given a reasonable time to present their position.

3. Legal counsel may represent the vendor or the department. Counsel is not required.

4. The director may exclude evidence which it feels is not germane or repeats information already received.

5. The director may limit the number of witnesses, testimony and oral presentation in order to hear the appeal in a reasonable amount of time.

6. Witnesses may be asked to testify. The director does not have subpoena power. No oath will be given.

7. The director may ask questions at any time. The director may not question the vendor in closed session.

### B. Public hearings for appeals.

1. Hearings shall be open to the public. The director may adjourn the public hearing to discuss and reach his decision in private.

2. The hearings shall be electronically recorded. The department will keep the recordings for 60 days.

3. A court reporter may be used. The court reporter shall be paid by the person who requested him.

a. The court reporter's transcript shall be given to the director at no expense, unless the director requests the use of a court reporter.

b. The transcript shall become part of the department's records.

### C. Order during the hearing.

Unless the director determines otherwise, hearings will be in the following order:

1. The vendor will explain his reasons for appealing and the desired relief.

# State Lottery Department

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2. The vendor will present his witnesses and evidence. The director and the department will be able to ask questions of each witness.

3. Other vendors may present their response, the relief they desire, if any, and their witnesses and evidence. The director and the department may ask questions of each party and witness.

4. The department will present its witnesses and evidence. The appellant may ask questions of each party and witness.

5. After all evidence has been presented, the director shall reach his decision in private.

## § 8.6. Notice, time and place of hearings.

### A. Notice and setting the time.

All people involved in the hearing will be given at least 10 days notice of the time and place of the appeal hearing.

1. Appeals may be heard sooner if everyone agrees.

2. In scheduling hearings, the director may consider the desires of the people involved in the hearing.

### B. Place of hearings.

All hearings shall be held in Richmond, Virginia, unless the director decides otherwise.

## § 8.7. Who may take part in the appeal hearing.

### A. Generally.

The director may request specific people to take part in the hearing.

B. Hearings on ineligibility, disqualification, responsibility or denial of a request to withdraw a bid.

The protesting vendor and the department shall participate.

### C. Hearings on an award or decision.

The protesting vendor, the vendor who received the contract, any other vendor who bid on the contract, and the department may participate.

### D. Hearings on claims or disputes.

The protesting vendor and the department shall participate.

## § 8.8. Director's decision.

### A. Generally.

The director will issue a written decision within 30 days after the hearing date except for hearings with a court reporter.

### B. Hearings with court reporter.

For hearings with a court reporter, the director's decision will be issued within 30 days after a transcript of the hearing is received by the director.

### C. Format of decision.

1. The director's decision will include a brief statement of the facts. This will be called "Findings of Fact."

2. The director will give his decision. The decision will include as much detail as the director feels is necessary to set out reasons for his decision.

3. The decision will be signed by the director.

### D. Copies of the decision.

Copies will be mailed to the appealing vendor, all other vendors who participated in the appeal and the department. The director will give copies of the decision to other people who request it.

## § 8.9. Appeal to courts.

A. The department is not subject to the Virginia Public Procurement Act. Thus, a vendor may not appeal a decision to award, an award, a contract dispute, or a claim with the department.

B. Nothing in these regulations shall prevent the director from taking legal action against a vendor.

# GOVERNOR

## EXECUTIVE ORDER NUMBER FIFTY-EIGHT (88)

### CREATING THE POSITION OF STATE GEOGRAPHER

By virtue of the authority vested in me as Governor by Article V, Section 7 of the Constitution of Virginia and Section 2.1-41.1 of the Code of Virginia, and subject always to my continuing and ultimate authority and responsibility to act in such matters and to reserve to myself any and all such powers, I hereby establish the position of State Geographer. The State Geographer shall be vested with the duties and responsibilities enumerated below:

1. Develop programs and materials to advocate and advance geography education in the Commonwealth, including the coordination of an annual statewide program of activities to promote geography education;
2. Serve as an advisor to state agencies in geography education;
3. Submit an annual report to the Secretary of Education on the nature and quality of geography education in the Commonwealth; and
4. Serve as a resource for teachers of geography and publishers of geography teaching materials.

The State Geographer shall possess an advanced degree in geography or a closely related field and have a record of active involvement in geography education. The State Geographer shall be appointed by the Governor from a list compiled by the Office of the Secretary of Education of nominees from higher education, elementary and secondary education, and from public and private organizations. The State Geographer shall serve without remuneration at the pleasure of the Governor for a term of two years.

The position of State Geographer is intended as an opportunity for public service. No salary or benefits commensurate with classified state positions shall apply. The State Geographer shall be reimbursed for travel expenses incurred in the fulfillment of the official duties of the position.

Such staff support as is necessary for the fulfillment of the responsibilities of the State Geographer shall be provided by the Office of the Secretary of Education.

This Executive Order becomes effective on the date of its signing and shall remain in full force and effect until June 30, 1990, unless amended or rescinded by further executive order.

Given under my hand and under the Seal of the Commonwealth of Virginia, this 29th day of June, 1988.

/s/ Gerald L. Baliles  
Governor

## EXECUTIVE ORDER NUMBER FIFTY-NINE (88)

### CONTINUING THE COMMISSION ON THE TERCENTENARY OBSERVANCES OF THE COLLEGE OF WILLIAM AND MARY IN VIRGINIA

By virtue of the authority vested in me as Governor by Sections 2.1-51.36 and 2.1-51.37 of the Code of Virginia, and subject to my continuing and ultimate authority and responsibility to act in such matters, I hereby continue Executive Order Number 50 (87), relating to the Commission on the Tercentenary Observances of the College of William and Mary in Virginia.

This Executive Order will become effective on July 1, 1988 and will remain in full force and effect until June 30, 1989, unless amended or rescinded by further executive order.

Given under my hand and under the Seal of the Commonwealth of Virginia this 30th day of June, 1988.

/s/ Gerald L. Baliles  
Governor

## EXECUTIVE ORDER NUMBER SIXTY (88)

### CONTINUING CERTAIN DECLARATIONS OF STATES OF EMERGENCY DUE TO NATURAL DISASTERS IN THE COMMONWEALTH

By virtue of the authority vested in me as Governor by Section 44-146.17 of the Code of Virginia, and subject always to my continuing and ultimate authority and responsibility to act in such matters, and to reserve powers, I hereby continue the states of emergency declared in the following executive orders:

Executive Order Number 46 (87), Continuing Declaration of State of Emergency Arising From Flash Flooding and Mudslides Throughout the Commonwealth;

Executive Order Number 47 (87), Continuing Declaration of State of Emergency Arising From Flooding in Southwestern Virginia;

Executive Order Number 48 (87), Declaration of State of Emergency Arising From Flooding in Dickenson and Buchanan Counties, Virginia; and

Executive Order Number 55 (87), Declaration of State of Emergency Due to Landslides in Clifton Forge, Virginia.

This Executive Order will become effective July 1, 1988, and will remain in full force and effect until June 30, 1989, unless amended or rescinded by further executive order.

# Governor

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Given under my hand and under the Seal of the Commonwealth of Virginia this 30th day of June, 1988.

/s/ Gerald L. Baliles

Governor

## EXECUTIVE ORDER NUMBER SIXTY-ONE (88)

### DECLARATION OF STATE OF EMERGENCY ARISING FROM A FOREST FIRE IN YORK COUNTY, VIRGINIA

On June 27, 1988, a fire was discovered in a remote section of York County, Virginia. Due to the inaccessibility of the area, firefighters were unable to bring in the proper amount and type of ground equipment necessary to extinguish the blaze. Accordingly, helicopter-borne water buckets from the Virginia Army National Guard were deployed to the scene in order to help contain, and eventually, to extinguish the fire.

The health and general welfare of the citizens of the affected locality required that state action be taken to help alleviate the conditions brought about by this situation, which constituted an emergency as contemplated under the provisions of Section 44-146.16 of the Code of Virginia.

By virtue of the authority vested in me as Governor by Sections 44-75 and 44-146.17 of the Code of Virginia, as Commander in Chief of the armed forces of the Commonwealth, and as Director of Emergency Services, and subject to my continuing and ultimate authority and responsibility to act in such matters, I do hereby proclaim that on June 27, 1988, I determined that a state of emergency existed in York County, Virginia, and directed that appropriate assistance be rendered by agencies of state and local governments to alleviate these conditions. I further directed that the Adjutant General of Virginia make available, on state active duty service, such members of the Virginia National Guard and such equipment as might be necessary to combat the forest fire in York County, Virginia.

Should service under this Executive Order result in the injury or death of any member of the Virginia National Guard, the following benefits will be provided to the member and the member's dependents or survivors:

(a) Workers' Compensation benefits provided to members of the National Guard by the Virginia Workers' Compensation Act; and in addition,

(b) The same benefit for injury, disability and/or death, or their equivalent, as would be provided by the federal government if the member were serving on federal active duty at the time of injury or death. Any such federal-type benefits due to a member and his/her dependents or survivors during any calendar month shall be reduced by any payments due under

the Virginia Workers' Compensation Act during the same month. If and when the time period for payment of Workers' Compensation benefits has elapsed, the member and his/her dependents or survivors shall thereafter receive full federal-type benefits for as long as they would have received such benefits if the member had been serving on federal active duty at the time of injury or death. Any federal-type benefits due shall be computed on the basis of military pay grade E-5 or the member's military grade at the time of injury or death, whichever produces the greater benefit amount. Pursuant to Section 44-14 of the Code of Virginia and subject to the concurrence of the Board of Military Affairs, I now approve of future expenditures out of the appropriations to the Department of Military Affairs for such federal-type benefits as being manifestly for the benefit of the military service.

This Executive Order will become effective upon its signing and will remain in full force and effect until June 30, 1989, unless amended or rescinded by further executive order.

Given under my hand and under the Seal of the Commonwealth of Virginia this 30th day of June, 1988.

/s/ Gerald L. Baliles  
Governor

## EXECUTIVE ORDER NUMBER SIXTY-TWO (88)

### DECLARATION OF STATE OF EMERGENCY ARISING FROM A FIRE IN ROCKBRIDGE COUNTY, VIRGINIA

On July 4, 1988, a fire was started on a ten-acre site at Goshen's Pass near Wilson Springs in Rockbridge County. Fireworks are assumed to be the cause of the fire. The area in question is extremely inaccessible to land-based firefighting equipment. For this reason, it is necessary to use helicopter-borne water buckets from the Virginia Army National Guard to extinguish the fire.

The health and general welfare of the citizens of the affected locality require that state action be taken to help alleviate the conditions brought about by this situation, which constitutes an emergency as contemplated under the provisions of Section 44-146.16 of the Code of Virginia.

By virtue of the authority vested in me as Governor by Sections 44-75 and 44-146.17 of the Code of Virginia, as Commander in Chief of the armed forces of the Commonwealth, and as Director of Emergency Services, and subject to my continuing and ultimate authority and responsibility to act in such matters, I do hereby proclaim that a state of emergency exists in the affected area of the Commonwealth and direct that appropriate assistance be rendered by agencies of state and local government to alleviate these conditions.

I further direct that the Adjutant General of Virginia make available, on state active duty service, such members of the Virginia National Guard and such equipment as might be necessary to combat the forest fire in Rockbridge County.

Should service under this Executive Order result in the injury or death of any member of the Virginia National Guard, the following benefits will be provided to the member and the member's dependents or survivors:

(a) Workers' Compensation benefits provided to members of the National Guard by the Virginia Workers' Compensation Act; and, in addition,

(b) The same benefit for injury, disability and/or death, or their equivalent, as would be provided by the federal government if the member were serving on federal active duty at the time of injury or death. Any such federal-type benefits due to a member and his/her dependents or survivors during any calendar month shall be reduced by any payments due under the Virginia Workers' Compensation Act during the same month. If and when the time period for payment of Workers' Compensation benefits has elapsed, the member and his/her dependents or survivors shall thereafter receive full federal-type benefits for as long as they would have received such benefits if the member had been serving on federal active duty at the time of injury or death. Any federal-type benefits due shall be computed on the basis of military pay grade E-5 or the member's military grade at the time of injury or death, whichever produces the greater benefit amount. Pursuant to Section 44-14 of the Code of Virginia and subject to the concurrence of the Board of Military Affairs, I now approve of future expenditures out of the appropriations to the Department of Military Affairs for such federal-type benefits as being manifestly for the benefit of the military service.

This Executive Order will become effective upon its signing and will remain in full force and effect until June 30, 1989, unless amended or rescinded by further executive order.

Given under my hand and under the Seal of the Commonwealth of Virginia this 6th day of July, 1988.

/s/ Gerald L. Baliles  
Governor

**GOVERNOR'S COMMENTS ON PROPOSED  
REGULATIONS**

(Required by § 9-6.12:9.1 of the Code of Virginia)

**STATE WATER CONTROL BOARD**

Title of Regulation: VR 680-21-01.13. Water Quality Standards for Tributyltin in Surface Waters.

**Governor's Comment:**

I have no objections to the proposed regulations as presented.

/s/ Gerald L. Baliles  
July 10, 1988



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# GENERAL NOTICES/ERRATA

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| † Indicates entries since last publication of the Virginia Register |
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## DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

### Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Virginia Department of Agriculture and Consumer Services intends to consider amending regulations entitled: **VR 115-03-01. Rules and Regulations - Controlled Atmosphere (CA) Apples.** The purpose of the proposed action is to provide specifications for use by the Virginia Department of Agriculture and Consumer Services in identifying for the marketplace apples which have met the requirements for Controlled Atmosphere (CA) Storage. The purpose of the proposed amendments is to prescribe grade and condition standards applicable to CA apples.

Statutory Authority: § 3.1-997 of the Code of Virginia.

Written comments may be submitted until August 4, 1988, to Raymond D. Vaughan, Secretary, 1100 Bank Street, Room 210, Richmond, Virginia 23219.

**Contact:** Donald B. Ayers, Chief, Virginia Department of Agriculture and Consumer Services, 1100 Bank St., Room 701, Richmond, Va. 23219, telephone (804) 786-3549 or SCATS 786-3549

## DEPARTMENT OF CONSERVATION AND HISTORIC RESOURCES

### † Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Department of Conservation and Historic Resources intends to consider amending regulations entitled: **Standards for Classification of Real Estate as Devoted to Open Space Use Under the Virginia Land Use Tax Assessment Law.** The purpose of the proposed action is to amend the Standards for Classification of Real Estate as Devoted to Open Space under the Virginia Land Use Assessment Law to clarify the standards and strengthen eligibility requirements for participation in accordance with the current law as amended by the 1988 Acts of Assembly.

Statutory Authority: §§ 10.1-104 and 58.1-3230 of the Code of Virginia.

Written comments may be submitted until September 1, 1988, to B.C. Leynes, Jr., Director, Department of

Conservation and Historic Resources, 203 Governor Street, Suite 302, Richmond, Virginia 23219.

**Contact:** Leon A. App, Executive Assistant, Department of Conservation and Historic Resources, 203 Governor St., Suite 302, Richmond, Va. 23219, telephone (804) 786-6124

## VIRGINIA FIRE SERVICES BOARD

### Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Virginia Fire Services Board intends to consider promulgating regulations entitled: **Regulations Governing the Certification of Instructors Providing Training at Local Fire Training Facilities.** The purpose of the proposed action is to regulate the qualifications of individuals providing fire related training at local fire training facilities constructed, improved or expanded using Fire Programs Fund.

Statutory Authority: § 38.2-401 of the Code of Virginia.

Written comments may be submitted until August 1, 1988.

**Contact:** Carl N. Cimino, Executive Director, James Monroe Bldg., 101 N. 14th St., 17th Floor, Richmond, Va. 23219, telephone (804) 225-2681 or SCATS 225-2681

## DEPARTMENT OF HEALTH (BOARD OF)

### † Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Department of Health intends to consider amending regulations entitled: **Regulations for Disease Reporting and Control.** The purpose of the proposed action is to amend the regulations and thereby comply with current disease control policies and new statutory requirements.

Statutory Authority: §§ 32.1-12 and 32.1-35 of the Code of Virginia.

Written comments may be submitted until September 2, 1988.

**Contact:** C. Diane Woolard, M.P.H., Senior Epidemiologist, Department of Health, Office of Epidemiology, 109 Governor St., Richmond, Va. 23219, telephone (804) 786-6261

## † Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Department of Health intends to consider amending regulations entitled: **Rules and Regulations Governing Emergency Medical Services (EMS)**. The purpose of the proposed action is to amend the standards for licensure of EMS agencies and EMS vehicles by type of services rendered, required medical equipment, supplies, vehicle specifications and the personnel required for each classification. By reference EMS Agency guidelines and EMT and First Responder Guidelines and Procedures are part of the regulations and include updated amendments.

Statutory Authority: § 32.1-112 of the Code of Virginia.

Written comments may be submitted until September 2, 1988, to the Division of Emergency Medical Services, 109 Governor Street, Room 1001, Richmond, Virginia 23219.

**Contact:** Susan D. McHenry, Director, 109 Governor St., Room 1001, Richmond, Va. 23219, telephone (804) 786-5188, toll-free 1-800-523-6019 or SCATS 786-5188

## † Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Department of Health intends to consider amending regulations entitled: **Rules and Regulations Governing Financial Assistance for Emergency Medical Services (EMS)**. The purpose of the proposed action is to amend the requirements and conditions for EMS nonprofit organizations applying for financial assistance from the Virginia Rescue Squad Assistance Fund. The amendments will revise the application form, use of funds, and the review and evaluation process including new procedures and guidelines.

Statutory Authority: § 32.1-115 of the Code of Virginia.

Written comments may be submitted until September 2, 1988, to the Division of Emergency Medical Services, 109 Governor Street, Room 1001, Richmond, Virginia 23219.

**Contact:** Susan D. McHenry, Director, Department of Health, 109 Governor St., Room 1001, Richmond, Va. 23219, telephone (804) 786-5188, toll-free 1-800-523-6019, or SCATS 786-5188

## † Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Department of Health intends to consider amending regulations entitled: **Commonwealth of Virginia Sanitary Regulations for Marinas and Boat Moorings**. The purpose of the proposed action is to allow a marina/boat mooring to provide pump-out service through a contractual agreement with another marina/boat mooring.

Statutory Authority: § 32.1-246 of the Code of Virginia.

Written comments may be submitted until September 2, 1988.

**Contact:** A. F. Golding, Marina Supervisor, Department of Health, 109 Governor St., Room 903A, Richmond, Va. 23219, telephone (804) 786-1761 or SCATS 786-1761

## STATE COUNCIL OF HIGHER EDUCATION FOR VIRGINIA

### Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the State Council of Higher Education for Virginia (SCHEV) intends to consider amending regulations entitled: **Virginia Scholars Program Regulations**. The purpose of the proposed action is to clarify definitions and make minor technical changes to program administration.

Statutory Authority: §§ 23-38.51 and 23-38.53:1 through 23-38.53:3 of the Code of Virginia.

Written comments may be submitted until August 12, 1988, to Barry M. Dorsey, Associate Director, SCHEV, James Monroe Building, 101 North 14th Street, Richmond, Virginia 23219.

**Contact:** David J. Carr, Coordinator of Financial Aid, State Council of Higher Education for Virginia, James Monroe Bldg., 101 N. 14th St., Richmond, Va. 23219, telephone (804) 225-2623 or SCATS 225-2623

### Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the State Council of Higher Education for Virginia (SCHEV) intends to consider promulgating new and repealing existing regulations entitled: **Regulations Concerning the Administration of the College Scholarship Assistance Program**. The purpose of the proposed action is to repeal the existing program regulations and promulgate new program regulations to include part-time students and decentralize the program's administration.

Statutory Authority: §§ 23-38.45 through 23-38.51 of the Code of Virginia.

Written comments may be submitted until August 12, 1988, to Barry M. Dorsey, Associate Director, SCHEV, James Monroe Building, 101 North 14th Street, Richmond, Virginia 23219.

**Contact:** David J. Carr, Coordinator of Financial Aid, State Council of Higher Education for Virginia, James Monroe Bldg., 101 N. 14th St., Richmond, Va. 23219, telephone (804) 225-2623 or SCATS 225-2623

# General Notices/Errata

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## Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the State Council of Higher Education for Virginia (SCHEV) intends to consider promulgating regulations entitled: **Regulations Concerning the Administration of the Virginia Work-Study Program**. The purpose of the proposed action is to establish policies and procedures for administering the Virginia Work-Study Program.

Statutory Authority: §§ 23-38.51, 23-38.70 and 23-38.71 of the Code of Virginia.

Written comments may be submitted until August 12, 1988, to Barry M. Dorsey, Associate Director, SCHEV, James Monroe Building, 101 North 14th Street, Richmond, Virginia 23219.

**Contact:** David J. Carr, Coordinator of Financial Aid, State Council of Higher Education for Virginia, James Monroe Bldg., 101 N. 14th St., Richmond, Va. 23219, telephone (804) 225-2623 or SCATS 225-2623

## DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

### † Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Department of Medical Assistance Services intends to consider amending regulations entitled: **Transfer of Assets**. The purpose of the proposed action is to implement the requirements of the Catastrophic Health Care Act as relate to Medicaid's transfer of assets policies.

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

Written comments may be submitted until August 16, 1988, to Ann E. Cook, Director, Division of Medical Social Services, 600 East Broad Street, Suite 1300, Richmond, Virginia 23219.

**Contact:** Victoria P. Simmons, Regulatory Coordinator, 600 E. Broad St., Suite 1300, Richmond, Va. 23219, telephone (804) 786-7933

## VIRGINIA STATE BOARD OF MEDICINE

### Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board of Medicine intends to consider amending regulations entitled: **VR 465-02-1. Regulations Governing the Practice of Medicine, Osteopathic Medicine, Chiropractic, Podiatry, Clinical Psychology and Acupuncture**. The purpose of the proposed action is to govern the treatment of certain diseased or abnormal conditions of the human eye and its

adnexa with certain therapeutic pharmaceutical agents by certified optometrists as are deemed reasonable and necessary to ensure an appropriate standard of medical care for the patient.

Statutory Authority: § 54-291 of the Code of Virginia.

Written comments may be submitted until August 4, 1988.

**Contact:** Eugenia K. Dorson, Board Administrator, 1601 Rolling Hills Dr., Surry Bldg., 2nd Floor, Richmond, Va. 23229-5005, telephone (804) 662-9925

## DEPARTMENT OF MENTAL HEALTH, MENTAL RETARDATION AND SUBSTANCE ABUSE SERVICES

### † Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Department of Mental Health, Mental Retardation and Substance Abuse Services intends to consider amending regulations entitled: **Rules and Regulations to Assure the Rights of Residents of Facilities Operated by the Department of Mental Health and Mental Retardation**. The purpose of the proposed action is to assure the department's regulations on the rights of residents are current and adequately protect the rights of the residents served. The Task Force will meet regularly throughout the state in hopes of completing the process in 12 months.

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

Written comments may be submitted until October 19, 1988, to Elsie D. Little, State Human Rights Director, P. O. Box 1797, Richmond, Virginia 23214.

**Contact:** Rubyjean Gould, Administrative Services Director, Department of Mental Health, Mental Retardation and Substance Abuse Services, P. O. Box 1797, Richmond, Va. 23214, telephone (804) 786-3915 or SCATS 786-3915

## DEPARTMENT OF MINES, MINERALS AND ENERGY

### † Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Department of Mines, Minerals and Energy intends to consider promulgating regulations entitled: **Rules and Regulations Governing Certification of Diesel-Engine Mechanics**. The purpose of the proposed action is to ensure that qualified personnel are responsible for the repair and maintenance of diesel engines used in underground coal mines.

Statutory Authority: § 45.1-13(4) of the Code of Virginia.

Written comments may be submitted until September 1, 1988.

**Contact:** Bill Edwards, Policy Analyst, Department of Mines, Minerals and Energy, 2201 West Broad Street, Richmond, Va. 23220, telephone (804) 367-6898 or SCATS 367-6898

## DEPARTMENT OF REHABILITATIVE SERVICES (BOARD OF)

### Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Department of Rehabilitative Services intends to consider amending regulations entitled: **Provision of Vocational Rehabilitation Services**. The purpose of the proposed action is to amend certain portions to (i) comply with new federal regulations and (ii) broaden the service capabilities of the department.

Statutory Authority: § 51.01-5 of the Code of Virginia.

Written comments may be submitted until October 1, 1988, to Charles H. Merritt, P. O. Box 11045, Richmond, Virginia 23230.

**Contact:** James L. Hunter, Board Administrator, 4901 Fitzhugh Ave., Richmond, Va. 23230, telephone (804) 367-6446, SCATS 367-6466, toll-free 1-800-552-5019 , or (804) 367-0280

## DEPARTMENT OF SOCIAL SERVICES (BOARD OF)

### † Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Department of Social Services intends to consider amending regulations entitled: **Child Protective Services Client Appeals Procedures**. The purpose of the proposed action is to alter the procedures by which child protective services clients can appeal founded or reason to suspect dispositions.

Statutory Authority: §§ 63.1-25 and 63.1-248.1 of the Code of Virginia.

Written comments may be submitted until September 1, 1988.

**Contact:** Janine Tondrowski, Program Specialist, Department of Social Services, 8007 Discovery Dr., Richmond, Va. 23229-8699, telephone (804) 662-9081 or toll-free 1-800-552-7091

### Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Department of Social Services intends to consider amending regulations

entitled: **Aid to Dependent Children (ADC) Program - Lump Sum, Shortening the Period of Ineligibility**. The purpose of the proposed action is to delete language giving final authority to the local social services agency for decisions regarding conditions deemed to have occurred beyond the control of the assistance unit, that could shorten the period of ineligibility established due to receipt of a lump sum.

Statutory Authority: § 63.1-25 of the Code of Virginia.

Written comments may be submitted until August 17, 1988, to I. Guy Lusk, Director, Division of Benefits Programs, Department of Social Services, 8007 Discovery Drive, Richmond, Virginia 23229-8699.

**Contact:** Carol Holmes, Program Specialist, Division of Benefit Programs, Department of Social Services, 8007 Discovery Dr., Richmond, Va. 23229-8699, telephone (804) 662-9046 or SCATS 662-9046

## DEPARTMENT OF TAXATION

### † Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participations guidelines that the Department of Taxation intends to consider amending regulations entitled:

**VR 630-02-490.1. Virginia Declaration of Estimated Income Tax by Individuals: Definitions.**

**VR 630-2-490.2. Virginia Declaration of Estimated Income Tax by Individuals: Declarations of Estimated Tax.**

**VR 630-2-492. Virginia Declaration of Estimated Income Tax by Individuals: Failure by Individual to Pay Estimated Tax.**

The purpose of the proposed action is to amend and conform to the changes made by the 1987 General Assembly to §§ 58.1-490 and 58.1-492 (1987 Acts, Chapter 599). These code sections were amended to increase the threshold for filing a declaration of estimated income tax and to increase the percentage of individual income tax that must be remitted by means of estimated and/or withholding payments for individuals from 80% to 90%. These regulations are to permanently amend and to replace the Emergency Regulations adopted January 1, 1988, which will expire December 31, 1988.

Statutory Authority: § 58.1-203 of the Code of Virginia.

Written comments may be submitted until August 15, 1988.

**Contact:** Danny M. Payne, Director, Tax Policy Division, Department of Taxation, P. O. Box 6-L, Richmond, Va. 23282, telephone (804) 367-8010 or SCATS 367-8010

# General Notices/Errata

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## Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Department of Taxation intends to consider promulgating regulations entitled: **VR 630-3-323.1. Excess Cost Recovery (Corporation Income Tax)**. The purpose of the proposed regulation is to provide guidance to taxpayers in how the outstanding balance of excess cost recovery will be returned to taxpayers over the five year period 1988-1992.

The Virginia Tax Reform Act of 1987 (1987 Acts c. 9, HB 1119) eliminated the ACRS addition and added § 58.1-323.1 which permits individual and corporate taxpayers to recover the outstanding balance of ACRS additions. Section 58.1-323.1 was amended (1988 Acts c. 773, SB 441) relating to recovery by a taxpayer who filed a final federal and Virginia return before 1988.

This regulation will supersede the following Emergency Regulation recently promulgated on this subject:

VR 630-3-323.1 (Corporation Income Tax), adopted May 31, 1988, and published in 4:21 VA.R. July 18, 1988. The text is identical to the individual emergency regulation.

Statutory Authority: § 58.1-203 of the Code of Virginia.

Written comments may be submitted until August 19, 1988.

**Contact:** Danny M. Payne, Director, Tax Policy Division, P. O. Box 6-L, Richmond, Va. 23282, telephone (804) 367-8010 or SCATS 367-8010

## Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Department of Taxation intends to consider promulgating regulations entitled: **VR 630-2-323.1. Excess Cost Recovery (Individual Income Tax)**. The purpose of the proposed regulation is to provide guidance to taxpayers in how the outstanding balance of excess cost recovery will be returned to taxpayers over the five year period 1988-1992.

The Virginia Tax Reform Act of 1987 (1987 Acts c. 9, HB 1119) eliminated the ACRS addition and added § 58.1-323.1 which permits individual and corporate taxpayers to recover the outstanding balance of ACRS additions. Section 58.1-323.1 was amended (1988 Acts c. 773, SB 441) relating to recovery by a taxpayer who filed a final federal and Virginia return before 1988.

This regulation will supersede the following Emergency Regulation:

VR 630-2-323.1 (Individual Income Tax), adopted May 31, 1988, effective May 31, 1988, and published in 4:19 VA.R. 1978-1985 June 20, 1988.

Statutory Authority: § 58.1-203 of the Code of Virginia.

Written comments may be submitted until August 19, 1988.

**Contact:** Danny M. Payne, Director, Tax Policy Division, P. O. Box 6-L, Richmond, Va. 23282, telephone (804) 367-8010 or SCATS 367-8010

## † Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Department of Taxation intends to consider promulgating regulations entitled:

**VR 630-5-490. Virginia Fiduciary Income Tax: Declaration of Estimated Tax.**

**VR 630-5-491. Virginia Fiduciary Income Tax: Payments of Estimated Tax.**

**VR 630-5-492. Virginia Fiduciary Income Tax: Failure to Pay Estimated Tax.**

The purpose of the proposed action is to implement changes made by the 1987 General Assembly to subject estates and trusts to estimated tax. These regulations will supersede emergency regulations published in 4:14 VA.R. 1530-1535 April 11, 1988.

Statutory Authority: § 58.1-203 of the Code of Virginia.

Written comments may be submitted until August 15, 1988.

**Contact:** Danny M. Payne, Director, Tax Policy Division, Department of Taxation, P. O. Box 6-L, Richmond, Va. 23282, telephone (804) 367-8010 or SCATS 367-8010

## DEPARTMENT OF TRANSPORTATION (COMMONWEALTH TRANSPORTATION BOARD)

### Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Department of Transportation intends to consider promulgating regulations entitled: **Subdivision Street Requirements**. The purpose of the proposed regulations is to provide a reference source of the Department of Transportation's requirements for the acceptance of subdivision streets into the Secondary System of State Highways.

Statutory Authority: §§ 33.1-12, 33.1-69 and 33.1-229 of the Code of Virginia.

Written comments may be submitted until August 31, 1988, to Gerald E. Fisher, State Secondary Roads Engineer, Department of Transportation, 1401 East Broad Street, Richmond, Virginia 23219.

**Contact:** D. L. Camper, Assistant Secondary Roads Engineer, Department of Transportation, 1401 E. Broad St., Richmond, Va. 23219, telephone (804) 786-2745 or SCATS 786-2745

## COMMISSION ON VIRGINIA ALCOHOLIC SAFETY ACTION PROGRAM (VASAP)

### Notice of Intended Regulatory Action

Notice is hereby given that the Commission on Virginia Alcohol Safety Action Program intends to consider promulgating regulations entitled: **Guidelines for Public Participation in the Development and Promulgation of Regulations as set forth in the Commission on VASAP Policy and Procedures Manual.** The purpose of the proposed regulation is to set forth the procedures for public participation in the development of regulations and standards for corrections.

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

Written comments may be submitted until August 8, 1988.

**Contact:** Kim Morris, Administrative Assistant, Commission on VASAP, P. O. Box 3-AG, Richmond, Va. 23208, telephone (804) 786-3591 or SCATS 786-3591

## GENERAL NOTICES

### BUREAU OF CAPITAL OUTLAY MANAGEMENT

#### † Procedures for the Receipt and Consideration of Written Public Comment on Survey Standards for Buildings other than School Buildings Developed Pursuant to Article 5.2.[Section] 2.1-526.14 of Chapter 32 of Title 2.1 of the Code of Virginia

Comment pursuant to the above section of the Code of Virginia must in written format and be received by the Bureau of Capital Outlay Management not later than September 30, 1988. It is requested that the comments identify the specific section of the standards referenced and that substitute language be provided which will accomplish the recommended change. General comments will also be accepted; however, it will be more difficult to incorporate "general" concepts into the specific standards.

At the conclusion of the comment period, the Asbestos Management Section will collate the responses to each section of the standard and will review each comment for merit. Proposed changes will be incorporated into the standards and will be presented to the Director for his approval.

Upon the approval of the Director, a copy of the revised survey standards will be submitted to the Agency Head

responsible for the implementation of the standards. Copies will be available at a small charge.

Written comments are to be mailed to:

Asbestos Management Section  
Bureau of Capital Outlay Management  
805 East Broad Street  
Richmond, Virginia 23219

Please submit separate comments for each survey standard reviewed. Please include the name, address and telephone number of a contact person who can, if necessary, address specific questions.

## BOARD OF HOUSING AND COMMUNITY DEVELOPMENT

### Notice of Grant Program

The Department of Housing and Community Development was designated administrative agency for distribution of state funds appropriated by the General Assembly under the Virginia Housing Partnership Fund for the 1988-90 biennium. Three state housing grant programs were authorized under this initiative, and the department has established funding procedures for each. Additionally, funding for the continuation of the State Emergency Shelter Support Program begun in 1987, was approved. Informal advisory committees and a public information meeting were used to gather broad input on program design.

Notice is hereby given of the availability of grants to eligible project sponsors under the following programs: Seed-Money For Nonprofit Organizations (application deadline - September 1, 1988 - amount available statewide - \$300,000 first year; \$375,000 second), Emergency Home Repair Grants (application deadline August 5, 1988 - amount available statewide - \$250,000 each year), Homeless Facilities Expansion Program (application deadline August 15, 1988 - amount available statewide - \$750,000 each year), State Emergency Shelter Support Program (application deadline July 15, 1988 - amount available statewide - \$400,000 each year)

For requesting program information or application manuals contact: Warren C. Smith, Housing Program Manager, Virginia Department of Housing and Community Development, 205 N. Fourth St., Richmond, Va. 23219, telephone (804) 786-7891 or SCATS 786-7891

## NOTICES TO STATE AGENCIES

RE: Forms for filing material on dates for publication in the Virginia Register of Regulations.

All agencies are required to use the appropriate forms when furnishing material and dates for publication in the

# General Notices/Errata

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Virginia Register of Regulations. The forms are supplied by the office of the Registrar of Regulations. If you do not have any forms or you need additional forms, please contact: Jane Chaffin, Virginia Code Commission, P.O. Box 3-AG, Richmond, Va. 23208, telephone (804) 786-3591.

## FORMS:

NOTICE OF INTENDED REGULATORY ACTION - RR01  
NOTICE OF COMMENT PERIOD - RR02  
PROPOSED (Transmittal Sheet) - RR03  
FINAL (Transmittal Sheet) - RR04  
EMERGENCY (Transmittal Sheet) - RR05  
NOTICE OF MEETING - RR06  
AGENCY RESPONSE TO LEGISLATIVE OR GUBERNATORIAL OBJECTIONS - RR08  
DEPARTMENT OF PLANNING AND BUDGET (Transmittal Sheet) - DPBRR09

Copies of the 1987 Virginia Register Form, Style and Procedure Manual may also be obtained from Jane Chaffin at the above address.

## ERRATA

### DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

Title of Regulation: VR 115-05-09. Rules and Regulations - Official Standards for Enforcement of the Virginia Apples: Grading, Packing, and Marking Law.

Publication: 4:20 VA.R. 2019-2035 July 4, 1988

#### Correction to the proposed regulation:

Page 2020, insert comma after "depressed."

Page 2020, following paragraph (ii), insert and strike the following paragraph:

~~(iii) Sooty blotch or fly speck which is thinly scattered over more than one-tenth of the surface, or dark, heavily-encountered spots which affect an area of more than one-half inch in diameter.~~

Page 2020 and page 2021, delete the "NOTE" which is the last line of column 2, page 2020 and which continues on to the first line of page 2021.

Page 2021, column 1, line 2, insert and strike the following line:

Definition of Terms:

Page 2025, § 2, line 8; delete "Apple Section VDACS"

and replace with "United States Standards for Grades of Apples."

Page 2027, column 1, subsection A (Domestic Grade), lines 8 and 9, delete "(See Requirement for Size)" and insert and strike "(See Size Requirement (H) of this section)"

### DEPARTMENT OF AIR POLLUTION CONTROL

Title of Regulation: VR 120-01. Regulations for the Control and Abatement of Air Pollution - Documents Incorporated by Reference.

Publication: 4:20 VA.R. 2036-2050 July 4, 1988

#### Correction to the proposed regulation:

Page 2045, item (4), "Subpart Dd" should be changed to "Subpart Db."

# CALENDAR OF EVENTS

## Symbols Key

- † Indicates entries since last publication of the Virginia Register
- ☒ Location accessible to handicapped
- ☎ Telecommunications Device for Deaf (TDD)/Voice Designation

### NOTICE

Only those meetings which are filed with the Registrar of Regulations by the filing deadline noted at the beginning of this publication are listed. Since some meetings are called on short notice, please be aware that this listing of meetings may be incomplete. Also, all meetings are subject to cancellation and the Virginia Register deadline may preclude a notice of such cancellation.

For additional information on open meetings and public hearings held by the Standing Committees of the Legislature during the interim, please call Legislative Information at (804) 786-6530.

..... VIRGINIA CODE COMMISSION

### EXECUTIVE

#### DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES (BOARD OF)

**October 4, 1988 - 2 p.m. - Public Hearing**  
Washington Building, 1100 Bank Street, 2nd Floor, Board Room, Richmond, Virginia. ☒

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of Agriculture and Consumer Services intends to amend regulations entitled: **VR 115-05-09. Rules and Regulations - Official Standards for Enforcement of the Virginia Apples: Grading, Packing, and Marking Law.** This regulation provides official descriptions of the requirements to be used in determining the quality and grade of apples and also specifies packing and marking requirements.

Statutory Authority: § 3.1-615 of the Code of Virginia.

Written comments may be submitted until September 3, 1988, to Raymond D. Vaughan, Secretary, 1100 Bank Street, Room 210, Richmond, Virginia 23219.

**Contact:** Donald B. Ayers, Chief, Department of Agriculture and Consumer Services, 1100 Bank St., Room 701, Richmond, Va. 23219, telephone (804) 786-3549

#### VIRGINIA AGRICULTURAL COUNCIL

**August 29, 1988 - 9 a.m. - Open Meeting**  
Holiday Inn-Airport, 5203 Williamsburg Road, Sandston,

### Virginia

The annual meeting of the council to (i) hear any new project proposals which are properly supported by the Board of Directors of a commodity group; and (ii) discuss any other business that may come before the members of the council.

**Contact:** Henry H. Budd, Assistant Secretary, Washington Bldg., 1100 Bank St., Room 203, Richmond, Va. 23219, telephone (804) 786-2373

#### DEPARTMENT OF AIR POLLUTION CONTROL

**September 7, 1988 - 10 a.m. - Public Hearing**  
State Air Pollution Control Board, Southwest Virginia Regional Office, 121 Russell Road, Abingdon, Virginia

**September 7, 1988 - 10 a.m. - Public Hearing**  
State Air Pollution Control Board, Valley of Virginia Regional Office, 5338 Peters Creek Road, Suite D, Roanoke, Virginia

**September 7, 1988 - 10 a.m. - Public Hearing**  
State Air Pollution Control Board, Central Virginia Regional Office, 7701-03 Timberlake Road, Lynchburg, Virginia

**September 7, 1988 - 10 a.m. - Public Hearing**  
Richmond Public Library, 101 East Franklin Street, Conference Room A, Richmond, Virginia

**September 7, 1988 - 10 a.m. - Public Hearing**  
State Air Pollution Control Board, Hampton Roads Regional Office, Old Greenbrier Village, Suite A, 2010 Old Greenbrier Road, Chesapeake, Virginia

**September 7, 1988 - 10 a.m. - Public Hearing**  
State Air Pollution Control Board, National Capitol Regional Office, Springfield Towers, Suite 502, 6320 Augusta Drive, Springfield, Virginia

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of Air Pollution Control intends to amend regulations entitled: **VR 120-01. Regulations for the Control and Abatement of Air Pollution.** The proposed amendments to the regulations will provide the latest edition of referenced documents and incorporate newly promulgated federal NSPS and NESHAPS.

Statutory Authority: § 10.1-1308 of the Code of Virginia.



# Calendar of Events

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Written comments may be submitted until September 7, 1988, to Director of Program Development, Department of Air Pollution Control, P.O. Box 10089, Richmond, Virginia 23240.

**Contact:** Nancy Saylor, Policy Analyst, Department of Air Pollution Control, Division of Program Development, P.O. Box 10089, Richmond, Va. 23240, telephone (804) 786-1249

## ALCOHOLIC BEVERAGE CONTROL BOARD

**August 9, 1988 - 9:30 a.m. - Open Meeting**

**August 23, 1988 - 9:30 a.m. - Open Meeting**

2901 Hermitage Road, Richmond, Virginia. ☒

A meeting to receive and discuss reports and activities from staff members. Other matters not yet determined.

**Contact:** Robert N. Swinson, Secretary to the Board, 2901 Hermitage Rd., P. O. Box 27491, Richmond, Va. 23261, telephone (804) 367-0616 or SCATS 367-0616

## DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL

**September 20, 1988 - 10 a.m. - Public Hearing**

2901 Hermitage Road, 1st Floor Hearing Room, Richmond, Virginia

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of Alcoholic Beverage Control intends to amend regulations concerning the possession, sale, distribution and consumption of alcoholic beverages. The proposed amendments will affect the following seven categories:

Procedural Rules for the Conduct of Hearings Before the Commission and its Hearing Officers and the Adoption or Amendment of Regulations (VR 125-01-1);

Advertising (VR 125-01-2);

Tied-House (VR 125-01-3);

Requirements for Product Approval (VR 125-01-4);

Retail Operations (VR 125-01-5);

Manufacturers and Wholesalers Operations (VR 125-01-6);

Other Provisions (VR 125-01-7).

### Summary:

New regulations pertaining to beer and beverage excise taxes, solicitation of mixed beverage licensees by representatives of manufacturers, etc., of distilled spirits, and the prohibition of certain Sunday deliveries by

wholesalers are proposed. In addition numerous regulations are being amended some of which relate to: (i) offers in compromise, (ii) advertising sales or reduced prices on alcoholic beverages, (iii) advertisement and sponsorship of cultural events and intercollegiate events, (iv) outdoor alcoholic beverage advertising promoting responsible drinking, (v) advertising of beer in student publications, (vi) placement of wine refund coupons on rebate bulletin boards, (vii) renumbering the tied-house regulations, (viii) solicitation of mixed beverage licensees and disqualifying factors, (ix) wine containers, (x) peddling of wine coolers and (xi) participation of wine wholesalers with specialty shop licensees in wine tastings involving the public.

**Title of Regulation:** VR 125-01-1. Procedural Rules for the Conduct of Hearings Before the Commission and its Hearing Officers and Adoption or Amendment of Regulations.

§ 1.16. Offers in compromise.

**Subject of proposal:** Amend regulation to provide that acceptance of an offer in compromise is an admission of guilt by the licensee

**Basis:** This amendment is proposed under the authority contained in §§ 4-7(1), 4-11(a), 4-98.10, 4-98.14 and 4-103 of the Code of Virginia.

**Purpose:** To clarify that the board's acceptance of an offer in compromise is an admission of guilt by the licensee, unless otherwise specified by the board.

**Issue:** Should an offer in compromise be considered an admission of guilt upon its acceptance by the board?

**Substance:** Amendment specifies that the acceptance of an offer in compromise constitutes an admission of guilt and results in a waiver of the right to a formal hearing or an appeal.

\* \* \* \* \*

**Title of Regulation:** VR 125-01-2. Advertising.

§ 1. Advertising generally; cooperative advertising; federal laws; beverages and cider; exceptions; restrictions.

**Subject of proposal:** Advertising sales or reduced prices on alcoholic beverages.

**Basis:** This amendment is proposed under the authority contained on §§ 4-7(1), 4-11(a), 4-69, 4-98.10(w), 4-98.14 and 4-103(b) and (c) of the Code of Virginia.

**Purpose:** To clarify that sales or reduced prices on alcoholic beverages may be advertised in the print media and on the radio only if advertised with nonalcoholic merchandise.

**Issues:** This amendment is of a "housekeeping" nature to

# Calendar of Events

help clarify our regulation.

**Substance:** Advertisements offering special prices on alcoholic beverages can only be made in the print media, radio or television if made in conjunction with advertisements of nonalcoholic merchandise. Also sets restrictions on the size of such advertisements.

§ 2. Advertising; interior; retail licensees; show windows.

**Subject of proposal:** Amend regulation to include sponsorship of a cultural event; may make reference to any brand or manufacturer of alcoholic beverages when used in connection with the sponsorship of a cultural event.

**Basis:** This amendment is proposed under the authority contained in §§ 4-7(l), 4-11(a), 4-60(i), 4-69, 4-69.2, 4-98.10(w), 4-98.14 and 4-103(b) and (c) of the Code of Virginia.

**Purpose:** To make this regulation comply with § 10 of VR 125-01-2.

**Substance:** References to brand names and manufacturers of alcoholic beverages may be made in connection with sponsorship of professional, semi-professional or amateur athletic and sporting events and events of a charitable or cultural nature in accordance with § 10 of VR 125-01-2.

§ 3. Advertising; exterior; signs; trucks; uniforms.

**Subject and proposal:** To allow manufacturers and wholesalers, including wineries and farm wineries to promote responsible drinking through outdoor alcoholic beverage advertising. Also limit the dimensions of the directional signs to 64 square feet rather than eight feet in height or width.

**Basis:** These amendments are proposed under the authority contained in §§ 4-7(l), 4-11(a), 4-69, 4-98.10(w) and 4-98.14 of the Code of Virginia.

**Purpose:** To promote responsible drinking and allow more flexibility with sign dimensions.

**Issues:** Should manufacturers and wholesalers use billboards which display their corporate name and logo to promote responsible drinking? Should the dimensions of directional signs be limited to 64 square feet.

**Substance:** On billboards promoting "responsible drinking" manufacturers and wholesalers may make reference to their names or corporate logos, but not their brands or beverages. The dimension limitations on directional signs are changed from eight feet in height or width to 64 square feet.

§ 4. Advertising; newspaper, magazines, radio, television, trade publications, etc.

**Subject of proposal:** To prohibit advertising of beer in student publications unless in reference to a dining establishment. To allow the word "bar" to appear in the print or electronic media.

**Basis:** These amendments are proposed under the authority contained in §§ 4-7(l), 4-11(a), 4-69, 4-79(a), 4-98.10(w) and 4-98.14 of the Code of Virginia.

**Purpose:** To prohibit beer advertising in college student publications unless in reference to a dining establishment. To delete the word "bar" as a prohibited term.

**Issues:** Should beer advertisements be treated like wine and mixed beverage advertisements which are required to make reference to a dining establishment when published in college publications? Should the word "bar" be deleted in order to clarify agency interpretation of this regulation?

**Substance:** In paragraph 3 of subsection B add the word "bar" before wine and mixed beverages. In paragraph 2 of subsection A delete the word "Bar."

§ 5. Advertising; newspapers and magazines; programs; distilled spirits.

**Subject of proposal:** Amend regulation by clarifying that distilled spirits advertising may appear in printed programs relating to conservation and environmental programs, professional, semi-professional, or amateur athletic and sporting events and events of a charitable or cultural nature. Permit distilled spirits to be advertised in connection with the sponsorship of intercollegiate events.

**Basis:** These amendments are proposed under the authority contained in §§ 4-7(l), 4-11(a) and 4-69 of the Code of Virginia.

**Purpose:** 1. To add the word "printed" to programs to clarify that distilled spirits advertising may appear in conversation and environmental programs and programs for professional, semi-professional, or amateur sports and athletic events as well as events of a charitable or cultural nature.

2. To permit distillers to advertise spirits in college publications when sponsoring intercollegiate events.

**Issues:** 1. Should the word "printed" be added to programs?

2. Should distilled spirits be advertised in connection with the sponsorship of intercollegiate events?

**Substance:** Allow distilled spirits advertising in printed programs relating to semi-professional and amateur athletic events, conservation and environmental programs and programs for events of a charitable or cultural nature. Allow distilled spirits to be advertised in connection with the sponsorship of intercollegiate events.

# Calendar of Events

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## § 6. Advertising; novelties and specialties.

**Subject of proposal:** Amend regulation to include sponsorship of a cultural event.

**Basis:** This amendment is proposed under the authority contained in §§ 4-7(l), 4-11(a), 4-69, 4-98.10(w) and 4-98.14 of the Code of Virginia.

**Purpose:** To make this regulation comply with § 10 of VR 125-01-2.

**Issue:** Should the regulation be amended to include sponsorship of a cultural event?

**Substance:** Amend paragraph 2 of subsection A to include cultural events.

## § 9. Advertising; coupons.

**Subject of proposal:** To allow wine refund coupons to be placed on rebate bulletin boards designated by the retailer for coupons in retail establishments.

**Basis:** This amendment is proposed under the authority contained in §§ 4-7(l), 4-11(a), 4-69, 4-98.10(w), 4-98.14 and 4-103(b) and (c) of the Code of Virginia.

**Purpose:** In most retail store operations there is an area designated in the front of the store where coupons are made available to consumers. This amendment would allow for the placement of wine refund coupons in those areas.

**Issues:** Should refund coupons be permitted on rebate boards?

**Substance:** Amend paragraph 1 of subsection B to permit placing coupon pads on rebate bulletin boards designated for coupons by retailers at the retail premises.

## § 10. Advertising; sponsorship of public events; restrictions and conditions.

**Subject of proposal:** To allow sponsorship of intercollegiate events by distilleries, wineries and breweries when these functions are attended by alumni and the general public. Clarify current policy allowing manufacturers to advertise on programs, tickets and schedules incidental to collegiate events.

**Basis:** This amendment is proposed under the authority contained in §§ 4-7(l), 4-11(a) and 4-69 of the Code of Virginia.

**Purpose:** To provide financial support for intercollegiate events attended by alumni and the general public. Allow advertising in connection with this sponsorship.

**Issues:** Will distillery, winery or brewery sponsorship of intercollegiate events attended by the general public

encourage underage college students to drink? Will lack of sponsorship by distilleries, wineries or breweries for such events cause any financial hardship?

**Substance:** To allow alcoholic beverage advertising in connection with intercollegiate events open to alumni and the general public. Advertising in connection with this sponsorship includes advertising in programs, tickets and schedules for the event.

\* \* \* \* \*

**Title of Regulation:** VR 125-01-3. Tied-House.

Amending §§ 1 through 10.

**Subject of proposal:** To transfer § 1 (Sunday deliveries of alcoholic beverages by wholesalers are prohibited except to banquet licensees and ships sailing for a port of call outside the Commonwealth) to VR 125-01-6 (Manufacturers and Wholesalers Operations) § 9, therefore requiring the renumbering of the remaining Tied-House sections.

**Basis:** This amendment is proposed under the authority contained in §§ 4-7(l), 4-11(a), 4-44, 4-98.14, 4-98.16 and 4-103(b) of the Code of Virginia.

**Purpose:** To delete from the Tied-House regulation Sunday deliveries by wholesalers.

**Issue:** Should Sunday deliveries by wholesalers be placed under Tied-House or Manufacturers and Wholesalers Operations?

**Substance:** To place Sunday deliveries by wholesalers under Manufacturers and Wholesalers Operations.

## § 8. Solicitation of mixed beverage licensees generally; disqualifying factors.

**Subject of proposal:** Wine, beer and beverage solicitor salesmen need not be accompanied by an employee of a wholesale licensee when calling upon mixed beverage licensees.

**Basis:** This amendment is proposed under the authority contained in §§ 4-98.14 and 4-98.16 of the Code of Virginia.

**Purpose:** Not to make it any more restrictive for wine, beer and beverage solicitor salesmen to call upon mixed beverage licensees than is proposed for distilled spirits permittees.

**Issue:** To determine the limitations on the solicitation of mixed beverage licensees by wine, beer and beverage solicitor salesmen.

**Substance:** Wine, beer and beverage solicitor salesmen who represent wholesalers or importers and who are licensed in the Commonwealth, do not have to obtain permits to solicit mixed beverage licensees. Requires permits for

# Calendar of Events

solicitor salesmen who do not represent licensees of the Commonwealth. Such representatives will also be allowed to provide educational programs regarding wine or beverages to mixed beverage licensees.

§ 9. Inducements to retailers; tapping equipment; bottle or can openers; banquet licensee; cut case cards; clip-ons and table tents.

Subject of proposal: Eliminate cut case card dimensions; eliminate the requirement that cut case cards be supported by or affixed to, and be an integral part of, the case display; permit the use of pole toppers for display purposes only and allow wholesalers to mark or affix retail prices on pole toppers; and to clarify that table tents may contain a listing of four wines and four beers.

Basis: These amendments are proposed under the authority contained in §§ 4-7(l), 4-11(a), 4-69.2, 4-79(f) and (h) and 4-98.14 of the Code of Virginia.

Purpose: Paper point-of-sale is a needed vehicle for explaining wine and beer products to the public. Through these changes, Virginia will be in a position to provide information that is presently being provided in numerous other states. To permit the use of pole toppers for display purposes only and to allow wholesalers to mark or affix retail prices on pole toppers. To clarify that table tents may list a total of four wine and four beers.

Issues: Should there be any limitations on the dimensions of cut case cards? Should retail licensed establishments be permitted to display cut case cards in any area of the stores? Should pole toppers be permitted if an integral part of the case display? Clarify the board's interpretation that a table tent may contain a total of four wines and four beers.

Substance: Delete language in subsection F pertaining to the limitations on dimensions for cut case cards. Eliminate requirement that the display must be an integral part of the case. Amend subsection G to clarify that four wines and four beers may be listed on one table tent. Add a subsection I to permit the use of pole toppers if they are an integral part of the display.

\* \* \* \* \*

Title of Regulation: VR 125-01-4. Requirements for Product Approval.

§ 3. Wine containers; sizes and types; on- and off-premises limitations; cooler dispensers; novel containers; carafes and decanters.

Subject of proposal: To permit wine to be sold in containers smaller than 6.3 ounces (187 ml.)

Basis: This amendment is proposed under the authority contained in §§ 4-7(h) and (l), 4-11(a) and 4-98.10 of the Code of Virginia.

Purpose: Not to preclude wines whose metric size do not conform to A.B.C. regulations.

Issue: Should foreign wines be precluded from sale in the Commonwealth because of their size?

Substance: Reduce size of original containers from 6.3 (187 ml.) to 1.7 ounces (50 ml.).

\* \* \* \* \*

Title of Regulation: VR 125-01-5. Retail Operations.

§ 2. Determination of legal age of purchaser.

Subject of proposal: To clarify that identification issued by a state university or college is not acceptable evidence of legal age.

Basis: This amendment is proposed under the authority contained in §§ 4-7(l), 4-11(a), 4-62, 4-98.14 and 4-103(b) of the Code of Virginia.

Purpose: To comply with the board's interpretation of this section.

Issue: Should state university and college identification cards be acceptable evidence of legal age because they are a state government agency, when private and out-of-state university and college identification cards are not acceptable evidence of age?

Substance: Subsection B amended to exclude student university and college identification cards as a valid form of identification.

\* \* \* \* \*

Title of Regulation: VR 125-01-6. Manufacturers and Wholesalers Operations.

§ 2. Wines; purchase orders generally; wholesale wine distributors.

Subject of proposal: To permit the peddling of wine coolers.

Basis: This amendment is proposed under the authority contained in §§ 4-7(a), (b) and (l), 4-11(a), 4-22.1 and 4-84(b) of the Code of Virginia.

Purpose: To allow wine wholesalers to sell wine coolers directly from their trucks rather than requiring the retail licensee to preorder wine coolers.

Issue: Should wholesalers be allowed to peddle wine coolers?

Substance: Wine coolers may be peddled to retail licensees.

# Calendar of Events

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## § 7. Beer and beverage excise taxes.

Subject of proposal: Adopt a new regulation for imposing and collecting excise taxes on beer and beverages in compliance with § 4-127 through 4-145 of the Code of Virginia.

Basis: This amendment is proposed under the authority contained in §§ 4-7(l), 4-11(a) and 4-127 through 4-145 of the Code of Virginia.

Purpose: To comply with §§ 4-127 through 4-145 of the Code of Virginia authorizing the collection of beer and beverage excise taxes by the A.B.C. Board.

Issue: The adoption of this new regulation is necessitated by §§ 4-127 through 4-145 of the Code of Virginia.

Substance: An indemnifying bond is required of beer, manufacturers, bottlers and wholesalers unless waived by the board. The direct shipment of beer and beverages from outside the Commonwealth to military installations within the Commonwealth for resale is prohibited. The filing of the monthly report and payment of taxes which fall due on a Saturday, Sunday or legal holiday may be made without penalty or interest on the next succeeding business day. The rate of interest on omitted taxes and refunds shall be computed in the same manner as specified in § 58.1-15 of the Code of Virginia.

## § 8. Solicitation of mixed beverage licensees by representatives of manufacturers, etc., of distilled spirits.

Subject of proposal: Prescribes how representatives of manufacturers of distilled spirits may obtain permits to solicit mixed beverage sales, what records must be kept, permitted and prohibited activities and under what circumstances the board may refuse, suspend or revoke a permit.

Basis: This amendment is imposed under the authority contained in §§ 4-7(l), 4-11(a), 4-98.14 and 4-98.16 of the Code of Virginia.

Purpose: To comply with § 4-98.16 C and D of the Code of Virginia authorizing the solicitation of mixed beverage licensees by distillery representatives.

Issues: What limitations should there be for the solicitation of mixed beverage licensees by distilled spirits representatives. Section 4-98.16 C and D of the Code of Virginia require the adoption of regulations governing solicitation by representatives of manufacturers of distilled spirits.

Substance: To prescribe by regulation what is and is not permitted by representatives of manufacturers of distilled spirits when contacting mixed beverage licensees.

## § 9. Sunday deliveries by wholesalers prohibited; exceptions.

Subject of proposal: Wholesalers may make Sunday deliveries of beer, wine and beverages to banquet licensees.

Basis: To permit the Sunday delivery of wine to banquet licensees.

Purpose: Prohibit deliveries of alcoholic beverages on Sundays except under limited circumstances.

Issues: Should wholesalers who are permitted to make Sunday deliveries of draft beer and beverages to banquet licensees also be allowed to deliver wine?

Substance: To place Sunday deliveries by wholesalers under manufacturers' and wholesalers' operations and to permit the Sunday delivery of wine to banquet licensees.

\* \* \* \* \*

## Title of Regulation: VR 125-01-7. Other Provisions.

## § 10. Gifts of alcoholic beverages or beverages generally; exceptions; taxes and records.

Subject of proposal: To allow wine wholesalers to participate with specialty shop licensees in wine tastings involving the public.

Basis: This amendment is proposed under the authority contained in §§ 4-7(l), 4-11(a) and 4-103(b) of the Code of Virginia.

Purpose: Most wine wholesalers are in a position to provide information to the public with regard to various wines. One avenue for providing this information is through wine tasting conducted by a retail licensee. This new regulation would allow for greater participation by wholesalers in this process and thus allow for better public understanding of the various brands of wine on the market.

Issue: Should wine wholesalers be allowed to participate with specialty shop licensees in wine tastings involving the public?

Substance: Amend to allow wine wholesalers to participate in wine tastings sponsored by a wine specialty shop.

Interested persons will be afforded an opportunity to submit data, views and arguments orally or in writing with respect to the proposals. Tentative drafts will be available for public inspection at the Office of the Secretary to the Board, with copies obtainable at such address or by request addressed to such office at P. O. Box 27491, Richmond, Virginia 23261.

Statutory Authority: § 4-11 of the Code of Virginia.

Written comments may be submitted until 10 a.m., September 20, 1988.

# Calendar of Events

**Contact:** Robert N. Swinson, Secretary, Department of Alcoholic Beverage Control, P. O. Box 27491, 2901 Hermitage Rd., Richmond, Va. 23261, telephone (804) 367-0616 or SCATS 367-0616

## STATE BOARD OF ARCHITECTS, PROFESSIONAL ENGINEERS, LAND SURVEYORS AND CERTIFIED LANDSCAPE ARCHITECTS

### Virginia State Board of Land Surveyors

† **August 5, 1988 - 9 a.m.** - Open Meeting  
Travelers Building, 3600 West Broad Street, Conference Room 1, Richmond, Virginia. ☒

A meeting to (i) approve minutes of the May 19, 1988, meeting; (ii) review applications; and (iii) review and discuss enforcement files and general correspondence.

### Virginia State Board of Professional Engineers

† **August 30, 1988 - 9 a.m.** - Open Meeting  
Travelers Building, 3600 West Broad Street, Conference Room 1, Richmond, Virginia. ☒

A meeting to (i) approve minutes of the May 5, 1988, meeting; (ii) review applications; and (iii) review and discuss enforcement files and general correspondence.

**Contact:** Bonnie S. Salzman, Assistant Director for APELSCLA, Department of Commerce, 3600 W. Broad St., Richmond, Va. 23230, telephone (804) 367-8514, toll-free 1-800-552-3016 or SCATS 367-8514

## LOCAL EMERGENCY PLANNING COMMITTEE - CITY OF BRISTOL

**August 4, 1988 - 9 a.m.** - Open Meeting  
Bristol Fire Department Main Station, 211 Lee Street, Bristol, Virginia

This will be the first official meeting of this LEPC, as per SARA/Title III requirements.

Plans will include review of Bristol Emergency Plan upgrade, including Interstate 81 involvement.

The public is invited to attend.

**Contact:** Charles W. Denton, Fire Chief, Bristol Fire Department, 211 Lee St., Bristol, Va. 24201, telephone (703) 669-7155

## CHARLES CITY COUNTY EMERGENCY PLANNING COMMITTEE

**August 25, 1988 - 7 p.m.** - Open Meeting  
Charles City Neighborhood Facility Building, Multi-Purpose

Room, Charles City, Virginia. ☒ (Interpreter for deaf provided if requested)

Review draft local plan.

**Contact:** Fred A. Darden, County Administrator, P. O. Box 128, Charles City, Va. 23030, telephone (804) 829-2401

## CHARLOTTESVILLE/ALBEMARLE LOCAL EMERGENCY PLANNING COMMITTEE

† **August 4, 1988 - 4 p.m.** - Open Meeting  
Albemarle County Office Building, Charlottesville, Virginia. ☒ (Interpreter for deaf provided if requested)

A regular business meeting to pursue goals of SARA, Title III, Section 301.

**Contact:** Michael Carroll, Chairman, P. O. Box 911, Charlottesville, Va. 22902, telephone (804) 971-3477 or toll-free 1-800-332-0911/TDD ☐

## CITY OF CHESAPEAKE - LOCAL EMERGENCY PLANNING COMMITTEE

† **August 1, 1988 - 1:30 p.m.** - Open Meeting  
Public Safety Building, 304 Albemarle Drive, Room 124, Chesapeake, Virginia. ☒ (Interpreter for deaf provided if requested)

A meeting to plan for community response to hazardous materials incidents in the City of Chesapeake.

**Contact:** Michael L. Bolac, LEPC Chairman, Fire Chief, 304 Albemarle Dr., Chesapeake, Va. 23320, telephone (804) 547-6497

## LOCAL EMERGENCY PLANNING COMMITTEE OF CHESTERFIELD COUNTY

**August 4, 1988 - 5:30 p.m.** - Open Meeting  
Chesterfield County Administration Building, 10001 Ironbridge Road, Room 502, Chesterfield, Virginia. ☒

A meeting to meet requirements of Superfund Amendment and Reauthorization Act of 1986.

**Contact:** Lynda G. Furr, Assistant Emergency Services Coordinator, Chesterfield Fire Department, P. O. Box 40, Chesterfield, Va. 23832, telephone (804) 748-1236

## CHILD DAY-CARE COUNCIL

† **August 11, 1988 - 8:30 a.m.** - Open Meeting  
Koger Executive Center, West End, 8007 Discovery Drive, Blair Building, Conference Rooms A & B, Richmond,

# Calendar of Events

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Virginia. ☒ (Interpreter for deaf provided if requested)

The Child Day-Care Council will meet to discuss issues, concerns, and programs that impact licensed child care centers.

**Contact:** Arlene Kasper, Program Development Supervisor, Division of Licensing Programs, Department of Social Services, 8007 Discovery Dr., Richmond, Va. 23229-8699, telephone (804) 662-9025 or SCATS 662-9025

## CONSORTIUM ON CHILD MENTAL HEALTH

**August 3, 1988 - 9 a.m. – Open Meeting**  
Eighth Street Office Building, 805 East Broad Street, 11th Floor Conference Room, Richmond, Virginia. ☒

A regular business meeting open to the public followed by an executive session, for purposes of confidentiality, to review applications for funding of services to individuals.

**Contact:** Wenda Singer, Planner, Virginia Department for Children, 805 E. Broad St., Richmond, Va. 23219, telephone (804) 786-2208 or SCATS 786-2208

## INTERDEPARTMENTAL LICENSURE AND CERTIFICATION OF CHILDREN'S RESIDENTIAL FACILITIES

### Coordinating Committee

**August 12, 1988 - 8:30 a.m. – Open Meeting**  
**September 9, 1988 - 8:30 a.m. – Open Meeting**  
Department of Social Services, 1603 Santa Rosa Road, Tyler Building, Suite 221, Richmond, Virginia. ☒

A regularly scheduled monthly meeting to discuss administrative and policy areas related to the Interdepartmental Licensure and Certification of Residential Facilities for Children.

**Contact:** John J. Allen, Jr., Coordinator, Office of the Coordinator, Interdepartmental Licensure and Certification, 8007 Discovery Dr., Richmond, Va. 23229-8699, telephone (804) 662-9025 or SCATS 662-9025

## DEPARTMENT OF CONSERVATION AND HISTORIC RESOURCES

### Falls of the James Advisory Committee

**August 19, 1988 - noon – Open Meeting**  
Richmond City Hall, 3rd Floor Conference Room, Richmond, Virginia

A regular meeting to discuss general business and issues affecting the portion of the James River that

runs through the City of Richmond.

**Contact:** Richard G. Gibbons, Department of Conservation and Historic Resources, Division of Parks and Recreation, 1201 Washington Bldg., Richmond, Va. 23219, telephone (804) 786-4132

## STATE BOARD OF CORRECTIONS

**August 17, 1988 - 10 a.m. – Open Meeting**  
Board of Corrections, 6900 Atmore Drive, Board Room #3053A, 3rd Floor, Richmond, Virginia

A regular monthly meeting to consider such matters as may be presented to the Board of Corrections.

**Contact:** Vivian Toler, Secretary to the Board, 6900 Atmore Dr., Richmond, Va. 23225, telephone (804) 674-3235

## VIRGINIA BOARD OF DENTISTRY

**September 15, 1988 - 9 a.m. – Public Hearing**  
Roanoke Memorial Hospitals, Rehabilitation Center Auditorium, Belleview at Jefferson Streets, Roanoke, Virginia

Notice is hereby given in accordance § 9-6.14:7.1 of the Code of Virginia that the Virginia Board of Dentistry intends to amend regulations entitled: **VR 225-01-1. Virginia Board of Dentistry Regulations**. The proposed regulations establish requirements for administration of general anesthesia and conscious sedation; for the use of hand-over-mouth management techniques; and for the issuance of full-time faculty licenses. Also proposes fee adjustments and provisions for reexamination in radiation safety.

Statutory Authority: § 54-175.3 of the Code of Virginia.

Written comments may be submitted until September 15, 1988.

**Contact:** N. Taylor Feldman, Executive Director, Board of Dentistry, 1601 Rolling Hills Dr., Richmond, Va. 23229, telephone (804) 662-9906 or SCATS 662-9906

## STATE BOARD OF EDUCATION

† **August 16, 1988 - 9 a.m. – Open Meeting**  
† **August 17, 1988 - 9 a.m. – Open Meeting**  
James Monroe Building, 101 North 14th Street, Conference Rooms D & E, Richmond, Virginia. ☒ (Interpreter for deaf provided if requested)

The Board of Education will hold its regularly scheduled meeting on August 16-17, 1988. Business will be conducted according to items listed on the agenda. The agenda is available upon request. The public is

# Calendar of Events

reminded that the Board of Vocational Education may convene, if required.

† **September 26, 1988 - 9 a.m.** - Open Meeting  
† **September 27, 1988 - 9 a.m.** - Open Meeting  
Wise County School Board Office, Wise, Virginia.  
(Interpreter for deaf provided if requested)

The Board of Education will hold its regularly scheduled meeting on September 26-27, 1988. Business will be conducted according to items listed on the agenda. The agenda is available upon request. The public is reminded that the Board of Vocational Education may convene, if required.

† **October 27, 1988 - 9 a.m.** - Open Meeting  
† **October 28, 1988 - 9 a.m.** - Open Meeting  
James Monroe Building, 101 North 14th Street, Conference Rooms D & E, Richmond, Virginia. ☐

The Board of Education will hold its regularly scheduled meeting on October 27-28, 1988. Business will be conducted according to items listed on the agenda. The agenda is available upon request. The public is reminded that the Board of Vocational Education may convene, if required.

**Contact:** Margaret Roberts, James Monroe Bldg., 101 N. 14th St., 25th Fl., Richmond, Va. 23219, telephone (804) 225-2540

## DEPARTMENT OF EDUCATION (STATE BOARD OF)

NOTE: CHANGE OF PUBLIC HEARING DATE

**August 16, 1988 - 10:30 a.m.** - Public Hearing  
James Monroe Building, Conference Room C, 101 North 14th Street, Richmond, Virginia

The July 28, 1988, public hearing has been rescheduled for August 16, 1988.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of Education intends to amend regulations entitled: **VR 270-01-0020. Classification of Expenditures.** The proposed amendments prescribe the major classification of expenditures that are used by local school boards when the division superintendent, with the approval of the school board, prepares the estimate of moneys needed for public schools.

Statutory Authority: §§ 22.1-92 and 22.1-115 of the Code of Virginia.

Written comments may be submitted until July 22, 1988.

**Contact:** Robert L. Aylor, Director, Account and Finance, Department of Education, P.O. Box 6Q, Richmond, Va. 23216-2060, telephone (804) 225-2040, SCATS 225-2040

## LOCAL EMERGENCY PLANNING COMMITTEE OF FAIRFAX COUNTY - TOWN OF VIENNA - CITY OF FAIRFAX - TOWN OF HERNDON

**August 11, 1988 - 10 a.m.** - Open Meeting  
**September 8, 1988 - 10 a.m.** - Open Meeting  
Wood Municipal Center, Old Lee Highway, Fairfax, Virginia

The committee is meeting in accordance to SARA Title III in order to carry out the provisions required within.

**Contact:** Melanie Pearson, Community Information Coordinator, 4031 University Dr., Suite 400, Fairfax, Va. 22030, telephone (703) 246-2331

## FLOYD COUNTY EMERGENCY PLANNING COMMITTEE

† **August 3, 1988 - 7 p.m.** - Open Meeting  
Floyd County Courthouse, Circuit Courtroom, Floyd, Virginia. ☐

Review updated section of Emergency Operations Plan:

1. Direction and Control;
2. Radiological Protection;
3. Essential Resources and Supplies;
4. Hazard Mitigations;
5. Dam Safety.

**Contact:** Alan W. Thompson, Chairman, Route 4, Box 146, Floyd, Va. 24091, telephone (703) 745-3522

## VIRGINIA BOARD OF FUNERAL DIRECTORS AND EMBALMERS

† **August 9, 1988 - 9 a.m.** - Open Meeting  
Koger Building, Franklin Farms Drive, Suite 124, Richmond, Virginia

A. general board meeting to include certifying candidates for the August examination.

† **August 15, 1988 - 10 a.m.** - Open Meeting  
Department of Health Regulatory Boards, 1601 Rolling Hills Drive, Koger Center - West, Surry Building, Richmond, Virginia

An informal fact finding conference.

NOTE: CHANGE OF MEETING TIME  
**August 30, 1988 - 10 a.m.** - Open Meeting  
**August 31, 1988 - 10 a.m.** - Open Meeting  
Department of Health Regulatory Boards, 1601 Rolling Hills Drive, Surry Building, Koger Center - West, Richmond, Virginia. ☐



# Calendar of Events

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Tuesday, August 30, 1988 - A meeting to administer the Virginia Board of Funeral Directors and Embalmers examination, and to hold a general board meeting. Proposed regulations may be discussed.

Wednesday, August 31, 1988 - A continuation of the board meeting to include a formal administrative hearing.

Contact: Mark L. Forberg, Executive Secretary, 1601 Rolling Hills Dr., Richmond, Va. 23229-5005, telephone (804) 662-9907

## DEPARTMENT OF GENERAL SERVICES

### Art and Architectural Review Board

August 5, 1988 - 10 a.m. - Open Meeting  
† September 9, 1988 - 10 a.m. - Open Meeting  
Main Conference Room, Virginia Museum of Fine Arts, Richmond, Virginia.

The board will advise the Director of the Department of General Services and the Governor on architecture of state facilities to be constructed and works of art to be accepted or acquired by the Commonwealth.

Contact: M. Stanley Krause, AIA, AICP, Architect, Rancorn, Wildman & Krause, Architects, P. O. Box 1817, Newport News, Va. 23601, telephone (804) 867-8030

### Division of Consolidated Laboratory Services

† September 9, 1988 - 9:30 a.m. - Open Meeting  
James Monroe Building, 101 North 14th Street, Conference Room D, Richmond, Virginia. ☒

The Advisory Board will discuss issues, concerns and programs that impact the Division of Consolidated Laboratory Services and its user agencies.

Contact: Dr. A. W. Tiedemann, Jr., Director, Division of Consolidated Laboratory Services, 1 N. 14th St., Richmond, Va. 23219, telephone (804) 786-7905 or SCATS 786-7905

## GLOUCESTER LOCAL EMERGENCY PLANNING COMMITTEE

August 24, 1988 - 6:30 p.m. - Open Meeting  
Old Courthouse, Court Green, Gloucester, Virginia. ☒

The LEPC will meet to address and review a working draft of the County Hazardous Materials Response Plan.

Contact: Georgette N. Hurley, Assistant County Administrator, P. O. Box 329, Gloucester, Va. 23061, telephone (804) 693-4042

## HARRISONBURG/ROCKINGHAM LOCAL EMERGENCY PLANNING COMMITTEE

August 1, 1988 - 3 p.m. - Open Meeting  
Maryland Avenue Fire Station, Harrisonburg, Virginia

A meeting to review status of action plan for developing the community emergency plan.

Contact: J. M. Russell, Jr., Chairperson, H/R LEPC and Manager, Environmental Engineering, Merck & Co., Inc., P. O. Box 7, Elkton, Va. 22827-0007, telephone (703) 298-4110

## DEPARTMENT OF HEALTH (STATE BOARD OF)

### Bureau of Radiological Health

August 10, 1988 - 10 a.m. - Public Hearing  
State Capitol, Capitol Square, House Room 4, Richmond, Virginia. ☒

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of Health intends to adopt regulations entitled: **VR 355-20-2, Virginia Radiation Protection Regulations: Fee Schedule.** The purpose of the proposed regulation is to establish a fee schedule for the registration of X-ray machines and for inspections of X-ray machines by Department of Health personnel.

Statutory Authority: § 32.1-229.1 of the Code of Virginia.

Written comments may be submitted no later than 5 p.m., August 10, 1988.

Contact: Leslie P. Foldesi, Radiation Safety Specialist, Radiological Health, Room 915, 109 Governor St., Richmond, Va. 23219, telephone (804) 786-5932 or toll-free 1-800-468-0138

## COUNCIL ON HEALTH REGULATORY BOARDS

### Compliance and Discipline Committee

August 11, 1988 - 10 a.m. - Open Meeting  
General Assembly Building, Capitol Square, House Room C, Richmond, Virginia. ☒

Informational Hearing on Enforcement of Statutes and Regulations Governing Licensed Health Professionals.

As a part of its evaluation of the health professional regulatory enforcement system, the Council on Health Regulatory Boards solicits the written or oral comments of all interested parties on the performance of the system relative to (i) the protection of the public, and (ii) the fair and equitable treatment of health professionals.

# Calendar of Events

Individuals wishing to speak at the hearing are encouraged to reserve time for the presentations. Written comments will be accepted through August 31, 1988. All inquiries and any written comments should be directed to Richard D. Morrison.

## Regulatory Evaluation and Research Committee

**August 10, 1988 - 5 p.m. - Open Meeting**  
State Capitol, Capitol Square, House Room 2, Richmond, Virginia. ☒

### Informational Hearing on Proposal for State Certification of Occupational Therapists.

The Council on Health Regulatory boards is evaluating a proposal for the statutory certification of occupational therapists. The comments of all interested parties are solicited. Comments may be made at the informational hearing or in writing. Written comments must be received by 5 p.m., August 31, 1988. All inquiries and any written comments should be directed to Richard D. Morrison.

## Scope and Standards of Practice Committee

**August 10, 1988 - 10 a.m. - Open Meeting**  
State Capitol, Capitol Square, House Room 2, Richmond, Virginia. ☒

### Informational Hearing: Senate Joint Resolution (SJR 16).

SJR 16 requests the Council on Health Regulatory Boards to review the practicality and desirability of authorizing nonphysician professionals to practice acupuncture, and if this practice is found to be appropriate, the means of regulation that should be required.

Currently, in Virginia the practice of acupuncture is reserved to licensed physicians (M.D.s), osteopaths (D.O.s) and podiatrists (D.P.M.s) who have completed 100 hours of postgraduate study and 100 hours of clinical experience under the supervision of a licensed physician who is also an acupuncturist. A total of 38 individuals are currently licensed to practice acupuncture in Virginia. Oral or written comments are solicited from all interested parties. Individuals wishing to speak at this hearing are encouraged to reserve time for the presentations. Written comments will be accepted through August 31, 1988. All inquiries and any written comments should be directed to Richard D. Morrison.

Contact: Richard D. Morrison, Policy Analyst, Department of Health Regulatory Boards, 1601 Rolling Hills Dr., Richmond, Va. 23229, telephone (804) 662-9904 or SCATS 662-9904

## DEPARTMENT OF HEALTH REGULATORY BOARDS

**August 12, 1988 - 10 a.m. - Open Meeting**  
State Capitol, Capitol Square, House Room 2, Richmond, Virginia. ☒

### Informational Hearing on House Joint Resolution (HJR) 88.

HJR 88 requests the Department of Health Regulatory Boards to study the extent of use and abuse of anabolic steroids among minors and to determine the prevalence of a black market for such drugs in Virginia. Other objectives of the study include: (i) determination of ways in which youths and their parents may be made aware of the dangers of such drugs; (ii) determination of the extent, if any, to which coaches are aware of and condone such drug use and misuse; and (iii) recommendation of ways in which the use of anabolic steroids may be regulated. Anabolic steroids are currently classified by law as Schedule VI drugs, the least restrictive category of prescription drugs. Legislation enacted by the 1988 General Assembly prohibits the sale or distribution of any anabolic steroid, without prescription, to a minor, with violation punishable as a Class 1 misdemeanor. Oral or written comments are solicited from all interested parties. Individuals wishing to speak at this hearing are encouraged to reserve time for their presentations. Written comments will be accepted through August 31, 1988. All inquiries and any written comments should be directed to Richard D. Morrison.

## STATE COUNCIL OF HIGHER EDUCATION FOR VIRGINIA

† **August 17, 1988 - 9 a.m. - Open Meeting**  
James Monroe Building, 101 North 14th Street, 1st Floor, Richmond, Virginia. ☒

A joint meeting with the Department of Education. The agenda is available on request.

Contact: Marla Richardson, 101 N. 14th St., 9th Fl., Richmond, Va. 23219, telephone (804) 225-2638

## HOPEWELL INDUSTRIAL SAFETY COUNCIL

**August 2, 1988 - 9 a.m. - Open Meeting**  
**September 6, 1988 - 9 a.m. - Open Meeting**  
Hopewell Community Center, Second and City Point Road, Hopewell, Virginia. ☒ (Interpreter for deaf provided if requested)

Local Emergency Preparedness Committee meeting on emergency preparedness as required by SARA Title III.

Contact: Robert Brown, Emergency Service Coordinator,

# Calendar of Events

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City of Hopewell, 300 N. Main St., Hopewell, Va. 23860, telephone (804) 541-2298

## VIRGINIA HOUSING DEVELOPMENT AUTHORITY

† August 16, 1988 - 10 a.m. — Open Meeting  
13 South 13th Street, Richmond, Virginia. ☒

A regular monthly meeting of the Board of Commissioners to (i) review and, if appropriate, approve the minutes from the prior monthly meeting; (ii) consider for approval and ratification mortgage loan commitments under its various programs; (iii) review the authority's operations for the prior month; and (iv) consider such other matters and take such other actions as they may deem appropriate. The planned agenda of the meeting will be available at the offices of the authority one week prior to the date of the meeting.

Contact: J. Judson McKellar, Jr., General Counsel, Virginia Housing Development Authority, 13 S. 13th St., Richmond, Va. 23219, telephone (804) 782-1986

## STATE LAND EVALUATION ADVISORY COUNCIL

August 30, 1988 - 10 a.m. — Open Meeting  
Department of Taxation, 2220 West Broad Street, Richmond, Virginia. ☒

September 20, 1988 - 10 a.m. — Open Meeting  
Department of Taxation, 2220 West Broad Street, Richmond, Virginia. ☒

A meeting to set suggested ranges of values for agricultural, horticultural, forest and open-space land use under the use-value assessment program.

Contact: Otho C. W. Fraher, Director, Property Tax Division, Department of Taxation, P. O. Box 6-L, Richmond, Va. 23282, telephone (804) 367-8020

## LOCAL EMERGENCY PLANNING COMMITTEE - SCOTT COUNTY

August 9, 1988 - 2:30 p.m. — Open Meeting  
County Office Building, Gate City, Virginia. ☒

Update of progress of draft of Scott County's emergency response plan for Superfund Amendments and Reauthorization Act (SARA).

Contact: Barbara Edwards, Public Information Officer, 112 Water St., Suite 1, Gate City, Va. 24251, telephone (703) 386-6521

## STATE LOTTERY DEPARTMENT (BOARD OF)

† September 19, 1988 - 2 p.m. — Public Hearing  
General Assembly Building, Capitol Square, House Room D, Richmond, Virginia. ☒

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Lottery Department intends to adopt regulations entitled: **VR 447-01-1. Guidelines for Public Participation in Regulation Development and Promulgation.** This proposed regulation sets out procedures for involving interested parties and the public in the development of the department's regulations.

### STATEMENT

Basis: Section 58.1-4007 of the Code of Virginia.

Purpose: Sets out procedures for involving interested parties and the public in the development of the department's regulations.

Impact: These are the original regulations of the department. It is not possible to estimate the overall impact at this time. In the future, impact statements will be submitted with each amendment.

Statutory Authority: § 58.1-4007 of the Code of Virginia.

Written comments may be submitted until September 29, 1988.

Contact: Barbara L. Robertson, Lottery Staff Officer, 2201 W. Broad St., Richmond, Va. 23220, telephone (804) 367-9130 or SCATS 367-9130

\* \* \* \* \*

† September 19, 1988 - 2 p.m. — Public Hearing  
General Assembly Building, Capitol Square, House Room D, Richmond, Virginia. ☒

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Lottery Department intends to adopt regulations entitled: **VR 447-02-1. The State Lottery Regulations.** This proposed regulation sets out general operational parameters for the department and board.

### STATEMENT

Basis: Section 58.1-4007 of the Code of Virginia.

Purpose: Sets out general operational parameters for the department and board.

Impact: These are the original regulations of the department. It is not possible to estimate the overall impact at this time. In the future, impact statements will be submitted with each amendment.

Statutory Authority: § 58.1-4007 of the Code of Virginia.

Written comments may be submitted until September 29, 1988.

Contact: Barbara L. Robertson, Lottery Staff Officer, 2201 W. Broad St., Richmond, Va. 23220, telephone (804) 367-9130 or SCATS 367-9130

## STATE LOTTERY BOARD

† August 24, 1988 - 1 p.m. - Open Meeting  
Lottery Department, 2201 West Broad Street, Conference Room, Richmond, Virginia. ☐

A regularly scheduled planning and review session of the board. No action will be taken.

† August 25, 1988 - 9 a.m. - Open Meeting  
General Assembly Building, Capitol Square, House Room D, Richmond, Virginia. ☐

A regularly scheduled monthly meeting of the board. Business will be conducted according to items listed on the agenda which have not yet been determined.

Contact: Barbara L. Robertson, Lottery Staff Officer, State Lottery Department, 2201 W. Broad St., Richmond, Va. 23220, telephone (804) 367-9130 or SCATS 367-9130

## MARINE RESOURCES COMMISSION

† August 2, 1988 - 9:30 a.m. - Open Meeting  
Newport News City Council Chambers, 2400 Washington Avenue, Newport News, Virginia. ☐

The Virginia Marine Resources Commission will meet on the first Tuesday of each month at 9:30 a.m., in Newport News City Council Chambers, located at 2400 Washington Avenue, Newport News, Virginia. It hears and decides cases on fishing licensing, oyster ground leasing, environmental permits in wetlands, bottomlands, coastal and sand dunes and beaches. It hears and decides appeals made on local wetlands board decisions.

Fishery management and conservation measures are discussed by the commission. The commission is empowered to exercise general regulatory power within 15 days, and is empowered to take specialized marine life harvesting and conservation measures within five days.

Contact: Sandra S. Schmidt, Secretary to the Commission, 2401 West Ave., P. O. Box 756, Newport News, Va. 23607-0756, telephone (804) 247-2208

## LOCAL EMERGENCY PLANNING COMMITTEE FOR THE CITY OF MARTINSVILLE AND HENRY COUNTY

August 11, 1988 - 9:30 a.m. - Open Meeting  
Martinsville Municipal Building, Martinsville, Virginia. ☐

September 8, 1988 - 9:30 a.m. - Open Meeting  
Henry County Administration Building, Collinsville, Virginia. ☐

An open meeting to discuss general business relating to SARA Title III and development of the emergency response plan.

Contact: Benny Summerlin, Public Safety Director, Henry County Administration Building, P. O. Box 7, Collinsville, Va. 24078, telephone (703) 638-5311, ext. 256

## DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

† September 30, 1988 - Written comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of Medical Assistance Services intends to adopt regulations entitled: VR 460-04-8.2. Home and Community Based Ventilator Services. This regulation regulates provision of services to ventilator dependent individuals up to age of 21 years.

## STATEMENT

Basis and authority: Section 32.1-325 of the Code of Virginia grants to the Board of Medical Assistance Services the authority to administer and amend the Plan for Medical Assistance. The 1988 General Assembly approved item 389 G. in the Appropriations Act to wit "The Department ...shall develop and submit to the Health Care Financing Administration, for approval, a Section 2176 Model Home and Community Based Care Waiver to provide coverage for in-home care for ventilator-dependent children as an alternative to institutional care." The waiver has been submitted for federal approval under the authority of the Social Security Act § 1915 (c).

Purpose: The purpose of this proposed regulation is to regulate the provision of services to certain ventilator-dependent individuals up to the age of 21 who would otherwise remain in hospitals.

Summary and analysis: This proposed regulation will not become a part of the State Plan for Medical Assistance since it is not federally required to be in the Plan.

The Department's (DMAS) objective in this proposed regulation is to provide for medically appropriate and cost-effective coverage of services necessary to return ventilator-dependent individuals to their communities from hospitals. To attain this goal, the 1988 General Assembly

# Calendar of Events

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directed DMAS to submit a waiver request to the Health Care Financing Administration (HCFA) for approval for federal financial participation for these home and community based care services.

The services specifically covered under this special waiver are private duty nursing, respite care, and medical equipment and supplies not otherwise available under services already covered in the State Plan for Medical Assistance. For an individual to receive these services, an evaluation of the required medical needs and home environment must be conducted by the Health Care Coordinator. An individual's receipt of these waived services must be preauthorized by the Department of Medical Assistance Services.

The Health Care Coordinator will be an employee of a hospital which has a contract with DMAS to provide health care coordination and in which the ventilator dependent individual is institutionalized. This coordinator may be either a registered nurse or a social worker.

Waiver services will be offered at any one time to no more than 200 ventilator-dependent individuals who would be Medicaid eligible if institutionalized. It is anticipated that with the availability of Title XIX coverage under the authority of this waiver, ventilator-dependent individuals requiring intensive skilled nursing services and dependent on technology not generally available outside an institutional setting will return home to a medically-stable environment with a reduced risk of reinstitutionalization and at reduced costs. Entitlement for community-based services will be limited to those individuals for whom the cost of Medicaid-reimbursed hospital care would exceed the cost of Medicaid-reimbursed home and community-based services.

DMAS staff have been working closely with medical and support personnel in hospitals as well as with other groups involved in the provision of community-based services to assure the smooth implementation of this service.

**Impact:** Section 1915(c) of the Social Security Act allows states to offer Home and Community Based Services to individuals who would otherwise be institutionalized as long as the state can prove that such waived services will be less costly to Medicaid than the costs to Medicaid if the individual were institutionalized.

The Commonwealth of Virginia has submitted to the Health Care Financing Administration estimates of the costs to Medicaid for individuals who would receive Home and Community Based Services through a Section 1915 Waiver and the costs to Medicaid for hospitalization of these individuals in the absence of a Waiver. The department derived these utilization and costs estimates: from data submitted by three hospitals currently serving ventilator dependent children; data obtained from the Medicaid Management Information System; consultation with physicians and other providers serving ventilator dependent children; and analysis of department studies of

ventilator dependent children's needs.

In the absence of a Home and Community Based Waiver for Ventilator Dependent Individuals up to the age of 21 years, the Commonwealth estimates that during the next three years the annual number of ventilator dependent individuals who will receive hospital services would be 23, 34, and 45 respectively. The estimated costs to Medicaid for hospitalization of these individuals over three years is \$22,048,226. During that same period, the expected utilization in an approved Home and Community Based Waiver for ventilator dependent individuals up to the age of 21 years is projected to be 10, 20, and 30 respectively. With an approved Waiver, the estimated cost to Medicaid for these individuals plus those individuals who would continue to be served in hospitals is \$15,577,834. Thus, the department expects the approval of the Waiver to result in a direct service cost savings to the Commonwealth of \$6,470,392 over the first three years of the Waiver's existence.

**Forms:** DMAS intends to develop new forms to administer this service. The following forms require development for these regulations: Medical/Nursing/Functional Assessment; Plan of Care (for) Ventilator Dependent Children; Referral Sheet; Pre-discharge Home Evaluation; Pre-discharge Family Assessment.

**Evaluation:** Since this service will be covered by a waiver, the Department of Health and Human Services requires annual reports from DMAS on expenditures. DMAS will monitor, on an ongoing basis, the implementation of these regulations. Modifications will be developed as appropriate and dictated by programmatic need.

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

Written comments may be submitted until September 30, 1988, to Charlotte Carnes, Manager, Community Based Care, 600 East Broad, Suite 1300, Richmond, Virginia

**Contact:** Victoria P. Simmons, Regulatory Coordinator, 600 E. Broad St., Suite 1300, Richmond, Va. 23219, telephone (804) 786-7933

## VIRGINIA STATE BOARD OF MEDICINE

**August 12, 1988 - 10 a.m. – Open Meeting**  
Sentara-Norfolk General Hospital, 600 Gresham Drive,  
Jenkins Hall, Board Room, Norfolk, Virginia. ☒

A formal hearing.

The Virginia Board of Medicine will inquire into allegations that a practitioner may have violated laws and regulations governing the practice of medicine in Virginia.

**Contact:** Eugenia K. Dorson, Board Administrator, 1601 Rolling Hills Dr., Surry Bldg., 2nd Floor, Richmond. Va.

23229-5005, telephone (804) 662-9925

463-6206

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

† August 24, 1988 - 9:30 a.m. - Open Meeting  
Region Ten Community Services Board, 413 East Market  
Street, Charlottesville, Virginia. ☒

A regular monthly meeting. The agenda will be  
published on August 10 and may be obtained by  
calling Jane Helfrich.

Contact: Jane Helfrich, State Board Staff, P. O. Box 1797,  
Richmond, Va. 23214, telephone (804) 786-3921

## DEPARTMENT OF MENTAL HEALTH, MENTAL RETARDATION AND SUBSTANCE ABUSE SERVICES

August 10, 1988 - 8:30 a.m. - Open Meeting  
Holiday Inn, 6531 West Broad Street, Richmond, Virginia.  
☒ (Interpreter for deaf provided if requested)

A meeting of Virginia's Early Intervention Council for  
Part H, P.L. 99-457. The council is to advise and assist  
the Department of Mental Health, Mental Retardation  
and Substance Abuse Services as lead agency to  
administer Part H, in the development and  
implementation of a statewide, interagency,  
multidisciplinary system of early intervention services  
of infants and toddlers with disabilities.

Contact: Michael Fehl, Ed.D., Department of Mental  
Health, Mental Retardation and Substance Abuse Services,  
P. O. Box 1797, Richmond, Va. 23214, telephone (804)  
786-3710

## VIRGINIA MILITARY INSTITUTE

### Board of Visitors

August 6, 1988 - 8:30 a.m. - Open Meeting  
The Homestead, Hot Springs, Virginia. ☒

Summer meeting of the VMI Board of Visitors. A  
regular meeting to (i) elect president; (ii) consider  
committee reports; and (iii) adopt long-range academic  
plan.

October 8, 1988 - 8 a.m. - Open Meeting  
The Virginia Military Institute, Smith Hall, Board Room,  
Lexington, Virginia. ☒

Regular fall meeting of the VMI Board of Visitors to  
consider committee reports.

Contact: Colonel Edwin L. Dooley, Jr., Secretary, Virginia  
Military Institute, Lexington, Va. 24450, telephone (703)

## MILK COMMISSION

† August 13, 1988 - 10 a.m. - Open Meeting  
Martha Washington Inn, Abingdon, Virginia

A routine monthly meeting.

Contact: C. H. Coleman, Administrator, Ninth Street Office  
Bldg., Room 1015, Richmond, Va. 23219, telephone (804)  
786-2013

## DEPARTMENT OF MINES, MINERALS AND ENERGY

† September 1, 1988 - 10 a.m. - Open Meeting  
Mountain Empire Community College, Auditorium,  
Dalton-Cantrell Building, Big Stone Gap, Virginia

The Department of Mines, Minerals and Energy  
intends to initiate the promulgation of regulations to  
outline a program to certify diesel-engine mechanics  
in underground coal mines. This meeting is to offer  
the public an opportunity to comment on this action.

Contact: Bill Edwards, Policy Analyst, Department of  
Mines, Minerals and Energy, 2201 W. Broad St., Richmond,  
Va. 23220, telephone (804) 367-6898

## COUNTY OF MONTGOMERY/TOWN OF BLACKSBURG LOCAL EMERGENCY PLANNING COMMITTEE

August 9, 1988 - 3 p.m. - Open Meeting  
Montgomery County Courthouse, 3rd Floor, Board of  
Supervisors Room, Christiansburg, Virginia. ☒

Development of a Hazardous Materials Emergency  
Response Plan for Montgomery County and the Town  
of Blacksburg.

Contact: Steve Via, New River Valley Planning District  
Commission, P. O. Box 3726, Radford, Va. 24143, telephone  
(703) 639-9313 or SCATS 676-4012

## VIRGINIA STATE BOARD OF NURSING

August 2, 1988 - 8:30 a.m. - Open Meeting  
Koger Building, 8001 Franklin Farms Drive, Suite 124,  
Richmond, Virginia. ☒ (Interpreter for deaf provided if  
requested)

August 16, 1988 - 10 a.m. - Open Meeting  
The Arlington Hospital, 1701 North George Mason Drive,  
Hazel Conference Center, Administrative Conference Room  
B, Arlington, Virginia. ☒ (Interpreter for deaf provided if  
requested)

# Calendar of Events

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**August 23, 1988 - 1 p.m. - Open Meeting**  
Department of Health Regulatory Boards, 1601 Rolling Hills Drive, Conference Room 2, Richmond, Virginia. ☒ (Interpreter for deaf provided if requested)

Formal hearings will be held to inquire into allegations that certain laws and regulations governing the practice of nursing in Virginia may have been violated.

\* \* \* \* \*

**September 26, 1988 - 1:30 p.m. - Public Hearing**  
General Assembly Building, Capitol Square, House Room C, Richmond, Virginia. ☒

Notice is hereby given in accordance § 9-6.14:7.1 of the Code of Virginia that the Virginia State Board of Nursing intends to amend regulations entitled: VR 495-01-1. Board of Nursing Regulations. The purpose of these proposed amended and new regulations is to enable the Board of Nursing to more effectively discharge its duties as required by § 54-367.11 of the Code of Virginia in the protection of the health, safety and welfare of the Citizens of the Commonwealth. More specifically, the changes in Part II, Nursing Education Programs, will clarify the standards for attaining and maintaining the approval of nursing education programs and facilitate the evaluation of such programs by visitors representing the board. Changes proposed in Part III, Licensure and Practice, are for clarity, to insure proper mailing addresses of licensees for mailing notices and to establish who may supervise or direct the practice of licensed practical nurses as required by § 54-367.2 of the Code of Virginia as amended by the 1988 session of the General Assembly.

Statutory Authority: § 54-367.11 of the Code of Virginia.

Written comments may be submitted until September 26, 1988.

**Contact:** Corinne F. Dorsey, R.N., Executive Director, Board of Nursing, 1601 Rolling Hills Dr., Richmond, Va. 23229, telephone (804) 662-9909 or SCATS 662-9909

## Informal Conference Committee

**August 9, 1988 - 8:30 a.m. - Open Meeting**  
Department of Health Regulatory Boards, 1601 Rolling Hills Drive, Conference Room 2, Richmond, Virginia. ☒ (Interpreter for deaf provided if requested)

A meeting to inquire into allegations that certain licensees may have violated laws and regulations governing the practice of nursing in Virginia.

**Contact:** Corinne F. Dorsey, R.N., Executive Director, 1601 Rolling Hills Dr., Richmond, Va. 23229, telephone (804) 662-9909 or toll-free 1-800-533-1560

## NURSING HOME LICENSURE REGULATION REVIEW ADVISORY COMMITTEE

† **August 11, 1988 - 10 a.m. - Open Meeting**  
Virginia Health Care Association, 2112 West Laburnum Avenue, Suite 206, Richmond, Virginia. ☒

A meeting to review and discuss revisions to the Rules and Regulations for the Licensure of Nursing Homes in Virginia, October 15, 1980, as amended.

**Contact:** R. W. Harding, Assistant Director, Long Term Care Services, Division of Licensure and Certification, Department of Health, James Madison Bldg., Room 1013, 109 Governor St., Richmond, Va. 23219, telephone (804) 225-3733 or SCATS 225-3733

## VIRGINIA OIL AND GAS CONSERVATION BOARD

† **August 10, 1988 - 9:30 a.m. - Open Meeting**  
Board of Supervisor's Room, Scott County, Lower Level, Public Library, Gate City, Virginia. ☒

The purpose of the hearing is to hear arguments and evidence presented upon the application of Penn Virginia Resource Corporation for establishment of drilling units and final spacing for well work applications in the Early Grove Gas Field of Scott and Washington Counties.

† **August 11, 1988 - 9:30 a.m. - Open Meeting**  
Old Dominion Power Building, 105 East Morgan Avenue, Conference Room, Pennington Gap, Virginia. ☒

The purpose of the hearing is to hear arguments and evidence presented upon the application of Penn Virginia Resource Corporation for establishment of drilling units and final spacing for well work applications in the Stones River Field in Lee County, Virginia.

**Contact:** Division of Gas and Oil, P. O. Box 1416, 230 Beverly Drive, Abingdon, Va. 24210, telephone (703) 628-8115

## VIRGINIA BOARD OF PHARMACY

† **August 9, 1988 - 12:30 p.m. - Open Meeting**  
† **August 10, 1988 - 9 a.m. - Open Meeting**  
General Assembly Building, Capitol Square, Fourth Floor West Conference Room, Richmond, Virginia. ☒

A meeting to consider routine board business; hearings; and discussion of promulgation of regulations dealing with an examination on drug laws for applicants for licensure by endorsement; licensure and other requirements for practitioners of the healing arts who engage in the selling or dispensing of drugs and increases in licensure fees.

**Contact:** Jack B. Carson, Executive Director, Virginia Board of Pharmacy, 1601 Rolling Hills Dr., Richmond, Va. 23229, telephone (804) 662-9911

## PRINCE WILLIAM COUNTY, MANASSAS CITY, AND MANASSAS PARK CITY LOCAL EMERGENCY PLANNING COMMITTEE

**August 12, 1988 - 2 p.m. - Open Meeting**  
1 County Complex Court, Prince William, Virginia. ☐

Local Emergency Planning Committee to discharge the provisions of SARA Title III.

**Contact:** Thomas J. Hajduk, Information Coordinator, 1 County Complex Court, Prince William, Va. 22192-9201, telephone (703) 335-6800

## VIRGINIA BOARD OF PSYCHOLOGY

**† August 18, 1988 - 8:15 a.m. - Open Meeting**  
Department of Health Regulatory Boards, 1601 Rolling Hills Drive, Richmond, Virginia. ☐

A meeting to (i) conduct general board business; (ii) review applications; and (iii) respond to correspondence.

**Contact:** Stephanie A. Sivert, Executive Director, 1601 Rolling Hills Dr., Richmond, Va. 23229, telephone (804) 662-9913

## VIRGINIA BOARD OF PROFESSIONAL COUNSELORS

**† August 4, 1988 - 9 a.m. - Open Meeting**  
**† August 5, 1988 - 9 a.m. - Open Meeting**  
Ramada Inn Ocean Front, 615 Atlantic Avenue, Virginia Beach, Virginia

A meeting to (i) conduct general board business; (ii) address board correspondence; and (iii) conduct regulatory review.

**Contact:** Joyce D. Williams, Administrative Assistant, 1601 Rolling Hills Dr., Richmond, Va. 23229, telephone (804) 662-9912 or SCATS 662-9912

## VIRGINIA PUBLIC SCHOOL AUTHORITY

**† August 10, 1988 - 10 a.m. - Open Meeting**  
James Monroe Building, 101 North 14th Street, Treasury Conference Room, 3rd Floor, Richmond, Virginia. ☐

The Board of Commissioners will meet to consider local applications for inclusion in the Virginia Public School Financing Program and election of board officers.

**Contact:** Patricia C. Watt, Director Debt Management, or Pam Currey, Debt Manager, James Monroe Bldg., 101 N. 14th St., 3rd Fl., Richmond, Va. 23219, telephone (804) 225-4931 or SCATS 225-2142

## VIRGINIA REAL ESTATE BOARD

**† August 9, 1988 - 5 p.m. - Open Meeting**  
Travelers Building, 3600 West Broad Street, Richmond, Virginia. ☐

A specially called meeting of the Virginia Real Estate Board for the purpose of discussing an enforcement file as a result of a formal hearing being held.

**† August 16, 1988 - 9 a.m. - Open Meeting**  
**† August 17, 1988 - 9 a.m. - Open Meeting**  
Travelers Building, 3600 West Broad Street, 5th Floor, Richmond, Virginia. ☐

A regular business meeting of the board. The agenda will consist of (i) investigative cases (files) to be considered, (ii) files to be reconsidered, and (iii) matters relating to Fair Housing, Property Registration and Licensing issues (e.g., reinstatement, eligibility requests).

**† September 19, 1988 - 9 a.m. - Open Meeting**  
Travelers Building, 3600 West Broad Street, 5th Floor, Richmond, Virginia. ☐

A work session for regulatory review of licensing regulations.

**Contact:** Joan L. White, Assistant Director, Virginia Real Estate Board, 3600 W. Broad St., Richmond, Va. 23230, telephone (804) 367-8552, toll-free 1-800-552-3016 or SCATS 367-8552

## RICHLANDS LOCAL EMERGENCY PLANNING COMMITTEE

**† August 3, 1988 - 7 p.m. - Open Meeting**  
**† August 10, 1988 - 7 p.m. - Open Meeting**  
**† August 17, 1988 - 7 p.m. - Open Meeting**  
**† August 24, 1988 - 7 p.m. - Open Meeting**  
**† August 31, 1988 - 7 p.m. - Open Meeting**  
Richlands Town Hall Chamber Room, 217 Railroad Avenue, Richlands, Virginia

A regular planning session in accordance with SARA Act of 1986, Title III open to public comment.

**Contact:** David M. Curry, Hazardous Materials Coordinator, 217 Railroad Ave., Richlands, Va. 24641, telephone (703) 964-2566



# Calendar of Events

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## RICHMOND EMERGENCY PLANNING COMMITTEE

† August 11, 1988 - 1 p.m. - Open Meeting  
East End Social Services Center, 25th and M Streets,  
Richmond, Virginia. ☐

A meeting for the review of required facility reporting  
and review of planning guidelines.

Contact: Thomas E. Price, Community Emergency  
Coordinator, Richmond Bureau of Fire, 501 N. 9th St.,  
Room 134, Richmond, Va., telephone (804) 780-4120

## STATE SEWAGE HANDLING AND DISPOSAL APPEALS REVIEW BOARD

August 3, 1988 - 10 a.m. - Open Meeting  
General Assembly Building, Capitol Square, Senate Room  
A, Richmond, Virginia. ☐

A meeting to hear and render a decision on all  
appeals of denials of on-site sewage disposal system  
permit.

Contact: Deborah E. Randolph, 109 Governor St., Room  
500, Richmond, Va. 23219, telephone (804) 786-3559

## DEPARTMENT OF SOCIAL SERVICES (BOARD OF)

August 12, 1988 - 10 a.m. - Public Hearing  
Blair Building, 8007 Discovery Drive, Richmond, Virginia.  
☐

Notice is hereby given in accordance with § 9-6.14:7.1  
of the Code of Virginia that the Department of Social  
Services intends to adopt regulations entitled: **VR  
615-42-1. Foster Care - Guiding Principles.** The  
Guiding Principles provide a philosophical base for the  
provision of foster care services.

Statutory Authority: §§ 63.1-25 and 63.1-55.8 of the Code of  
Virginia.

Written comments may be submitted until August 19, 1988.

Contact: Pamela Fitzgerald, Child Welfare Supervisor,  
Department of Social Services, 8007 Discovery Dr.,  
Richmond, Va. 23229-8699, telephone (804) 662-9081 or  
SCATS 662-9081

\* \* \* \* \*

August 12, 1988 - 10 a.m. - Public Hearing  
Blair Building, 8007 Discovery Drive, Richmond, Virginia.  
☐

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

**615-42-3. Foster Care - Assessing the Client's Service  
Needs.** This regulation concerns foster care. Assessing  
the Client's Service Needs requires that all children in  
foster care are assessed for and receive appropriate  
services in a timely manner.

Statutory Authority: §§ 16.1-281, 16.1-283 and 63.1-25 of the  
Code of Virginia.

Written comments may be submitted until August 19, 1988.

Contact: Pamela Fitzgerald, Child Welfare Supervisor,  
Department of Social Services, 8007 Discovery Dr.,  
Richmond, Va. 23229-8699, telephone (804) 662-9081 or  
SCATS 662-9081

\* \* \* \* \*

August 12, 1988 - 10 a.m. - Public Hearing  
Blair Building, 8007 Discovery Drive, Richmond, Virginia.  
☐

Notice is hereby given in accordance with § 9-6.14:7.1  
of the Code of Virginia that the Department of Social  
Services intends to adopt regulations entitled: **VR  
615-43-1. Agency Placement Adoptions - Guiding  
Principles.** These Guiding Principles will provide a  
philosophical base for the provision of adoption  
services.

Statutory Authority: § 63.1-25 of the Code of Virginia.

Written comments may be submitted until August 19, 1988.

Contact: Brenda Kerr, Child Welfare Supervisor,  
Department of Social Services, 8007 Discovery Dr.,  
Richmond, Va. 23229-8699, telephone (804) 662-9081 or  
SCATS 662-9081

\* \* \* \* \*

August 12, 1988 - 10 a.m. - Public Hearing  
Blair Building, 8007 Discovery Drive, Richmond, Virginia.  
☐

Notice is hereby given in accordance with § 9-6.14:7.1  
of the Code of Virginia that the Department of Social  
Services intends to adopt regulations entitled: **VR  
615-43-2. Agency Placement Adoptions -  
Preplacement Services.** These proposed regulations  
require reassessment of the child's situation after 12  
months in foster care and a written plan for adoptive  
placement when the goal is adoption.

Statutory Authority: §§ 16.1-283 and 63.1-25 of the Code of  
Virginia.

Written comments may be submitted until August 19, 1988.

Contact: Brenda Kerr, Child Welfare Supervisor,  
Department of Social Services, 8007 Discovery Dr.,

# Calendar of Events

Richmond, Va. 23229-8699, telephone (804) 662-9081 or SCATS 662-9081

\* \* \* \* \*

**August 12, 1988 - 10 a.m. - Public Hearing**  
Blair Building, 8007 Discovery Drive, Richmond, Virginia.

☐

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of Social Services intends to adopt regulations entitled: **VR 615-43-6. Agency Placement Adoptions - AREVA.** These regulations will require children to be registered with AREVA within 30 days of termination of parental rights and eliminates deferments from the photo-listing, except when a local placement is pending.

Statutory Authority: § 63.1-25 of the Code of Virginia.

Written comments may be submitted until August 19, 1988.

**Contact:** Brenda Kerr, Child Welfare Supervisor, Department of Social Services, 8007 Discovery Dr., Richmond, Va. 23229-8699, telephone (804) 662-9081 or SCATS 662-9081

\* \* \* \* \*

**August 12, 1988 - 10 a.m. - Public Hearing**  
Blair Building, 8007 Discovery Drive, Richmond, Virginia.

☐

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of Social Services intends to adopt regulations entitled: **VR 615-43-8. Agency Placement Adoptions - Subsidy.** These regulations mandate the provision of adoption assistance agreements for all children determined eligible for subsidy. They also mandate the amount to be paid for maintenance payments.

Statutory Authority: §§ 63.1-25 and 63.1-238.5 of the Code of Virginia.

Written comments may be submitted until August 19, 1988.

**Contact:** Brenda Kerr, Child Welfare Supervisor, Department of Social Services, 8007 Discovery Dr., Richmond, Va. 23229-8699, telephone (804) 662-9081 or SCATS 662-9081

\* \* \* \* \*

**August 12, 1988 - 10 a.m. - Public Hearing**  
Blair Building, 8007 Discovery Drive, Richmond, Virginia.

☐

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of Social

Services intends to adopt regulations entitled: **VR 615-43-9. Agency Placement Adoptions - Appeals.** These proposed regulations will provide the right of appeal to adoptive applicants and adoptive parents.

Statutory Authority: §§ 63.1-25 and 63.1-238.5 of the Code of Virginia.

Written comments may be submitted until August 19, 1988.

**Contact:** Brenda Kerr, Child Welfare Supervisor, Department of Social Services, 8007 Discovery Dr., Richmond, Va. 23229-8699, telephone (804) 662-9081 or SCATS 662-9081

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**September 2, 1988 -** Written comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of Social Services intends to amend regulations entitled: **VR 615-01-10. Aid to Dependent Children (ADC) Program - Disregard of Job Training Partnership Act (JTPA) Title IV, Part A, Income.** An amendment to disregard children's earnings income derived through participation in JTPA, Title IV, Part A, indefinitely.

Statutory Authority: § 63.1-25 of the Code of Virginia.

Written comments may be submitted until September 2, 1988, to I. Guy Lusk, Director, Division of Benefit Programs, 8007 Discovery Drive, Richmond, Virginia 23229-8699.

**Contact:** Carol Holmes, Program Specialist, Department of Social Services, 8007 Discovery Dr., Richmond, Va. 23229-8699, telephone (804) 662-9046 or SCATS 662-9046

\* \* \* \* \*

† **September 29, 1988 -** Written comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of Social Services intends to adopt regulations entitled: **VR 615-01-24. Relocation Assistance - General Relief Program.** This regulation establishes a new short-term General Relief Component and identifies the specific criteria that must be met for eligibility for the component.

## STATEMENT

**Subject:** These regulations expand the short-term/emergency components that local departments of social services can elect to provide from the General Relief Program.

# Calendar of Events

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**Substance:** The regulations for the new relocation assistance component specify the eligibility requirements, the covered items, the maximum payments, and the eligible assistance units.

**Issues:** Whether the Department of Social Services should add a relocation assistance component to the General Relief Program and what criteria should be used to determine eligibility.

**Basis:** These regulations are issued under authority granted to the Department of Social Services by § 63.1-25 of the Code of Virginia.

**Purpose:** This regulation provides a means of assisting eligible households to relocate when a job is available outside the area of residence.

Statutory Authority: § 63.1-25 of the Code of Virginia.

Written comments may be submitted until September 29, 1988, to I. Guy Lusk, Director, Division of Benefit Programs, Department of Social Services, 8007 Discovery Drive, Richmond, Virginia 23229-8699.

**Contact:** Carolyn Sturgill, Program Specialist, 8007 Discovery Dr., Richmond, Va. 23229-8699, telephone (804) 662-9046

## VIRGINIA BOARD OF SOCIAL WORK

† August 11, 1988 - 1 p.m. - Open Meeting  
Department of Health Regulatory Boards, 1601 Rolling Hills Drive, Richmond, Virginia. ☒

A meeting to conduct a formal hearing before the board.

**Contact:** Stephanie A. Sivert, Executive Director, Board of Social Work, 1601 Rolling Hills Dr., Richmond, Va., telephone (804) 662-9914

† August 12, 1988 - 9 a.m. - Open Meeting  
Department of Health Regulatory Boards, 1601 Rolling Hills Drive, Richmond, Virginia. ☒

A meeting to (i) conduct general board business; (ii) review applications; (iii) respond to correspondence; and (iv) discuss regulations.

**Contact:** Beverly Putnam, Administrative Assistant, 1601 Rolling Hills Dr., Richmond, Va., telephone (804) 664-9914

## COMMONWEALTH TRANSPORTATION BOARD

August 18, 1988 - 10 a.m. - Open Meeting  
Department of Transportation, 1401 East Broad Street, Board Room, 3rd Floor, Richmond, Virginia. ☒ (Interpreter for deaf provided if requested)

Monthly meeting of the Commonwealth Transportation Board to vote on proposals presented regarding bids, permits, additions and deletions to the highway system, and any other matters requiring board approval.

**Contact:** Albert W. Coates, Jr., Assistant Commissioner, Department of Transportation, 1401 E. Broad St., Richmond, Va. 23219, telephone (804) 786-9950

## VIRGINIA RESOURCES AUTHORITY

† August 9, 1988 - 10 a.m. - Open Meeting  
The Mutual Building, 909 East Main Street, 12th Floor Conference Room, Richmond, Virginia

The board will meet to (i) approve minutes of the meeting of July 11, 1988; (ii) review the authority's operations for the prior months; and (iii) consider other matters and take other actions as they may deem appropriate. The planned agenda of the meeting will be available at the office of the authority one week prior to the date of the meeting.

**Contact:** Shockley D. Gardner, Jr., P. O. Box 1300, Richmond, Va. 23210, telephone (804) 644-3100

## VIRGINIA COUNCIL ON VOCATIONAL EDUCATION

August 2, 1988 - 1 p.m. - Open Meeting  
August 3, 1988 - 8:30 a.m. - Open Meeting  
Richmond Marriott, 500 East Broad Street, Richmond, Virginia

August 2, 1988 - Members will participate in the vocational education conference.

August 3, 1988 - Business session: Update on the Virginia Vocational-Technical Education Foundation; reports from the Executive Committee, the Virginia Department of Education, the Virginia Community College System, and the Governor's Job Training Coordinating Council.

**Contact:** George S. Orr, Jr., Executive Director, P. O. Box U, Blacksburg, Va. 24063-1035, telephone (703) 961-6945

## VIRGINIA VOLUNTARY FORMULARY BOARD

† September 30, 1988 - 10 a.m. - Public Hearing  
James Madison Building, 109 Governor Street, Main Floor Conference Room, Richmond, Virginia. ☒

The Virginia Voluntary Formulary Board will hold a public hearing on this date. The purpose of this hearing is to consider the proposed adoption and issuance of a revised Virginia Voluntary Formulary. The proposed revision to the Formulary adds and deletes drugs and drug products to the Formulary that

# Calendar of Events

became effective on November 1, 1987, and a supplement to the Formulary that becomes effective on August 15, 1988.

Copies of the proposed revisions to the Formulary are available for inspection at the Virginia Department of Health, Bureau of Pharmacy Services, James Madison Building, 109 Governor Street, Richmond, Virginia. Written comments sent to the above address and received prior to 5 p.m., September 30, will be made a part of the hearing record and considered by the board.

**Contact:** James K. Thomson, Director, Bureau of Pharmacy Services, Department of Health, 109 Governor St., Richmond, Va. 23219, telephone (804) 786-4326

## VIRGINIA WASTE MANAGEMENT BOARD

**August 9, 1988 - 10 a.m. - Open Meeting**  
General Assembly Building, Capitol Square, House Room D, Richmond, Virginia. ☐

A general business meeting to consider report of the Nominating Committee and adoption of Board Policy Document. PLEASE NOTE this meeting will immediately follow the 10 a.m. public hearing on Amendment 9 to the Virginia Hazardous Waste Management Regulations.

**Contact:** Cheryl Cashman, Legislative Liaison, James Monroe Bldg., 101 N. 14th St., 11th Fl., Richmond, Va. 23219, telephone (804) 225-2667

## DEPARTMENT OF WASTE MANAGEMENT (BOARD OF)

**August 9, 1988 - 10 a.m. - Public Hearing**  
General Assembly Building, Capitol Square, House Room D, Richmond, Virginia. ☐

Notice is hereby given in accordance § 9-6.14:7.1 of the Code of Virginia that the Department of Waste Management intends to amend regulations entitled: **VR 672-10-1. Virginia Hazardous Waste Management Regulations.** The proposed amendment incorporates changes to the regulations required to maintain the department's authorization to implement Virginia Hazardous Waste Management Program.

Statutory Authority: § 10.1-1402 of the Code of Virginia.

Written comments may be submitted until September 30, 1988.

**Contact:** W. Gulevich, Director, Division of Technical Services, Department of Waste Management, 101 N. 14th St., Richmond, Va. 23219, telephone (804) 225-2975, SCATS 225-2975 or toll-free 1-800-552-2075

\* \* \* \* \*

**September 16, 1988 - 10 a.m. - Public Hearing**  
General Assembly Building, Capitol Square, Senate Room B, Richmond, Virginia. ☐

**September 19, 1988 - 7 p.m. - Public Hearing**  
Virginia Polytechnic Institute and State University, Donaldson Brown Center, Blacksburg, Virginia

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of Waste Management intends to repeal existing regulations and adopt new regulations entitled: **VR 672-20-10. Solid Waste Management Regulations.** The regulations provide for siting, permitting, design, construction, and operation of solid waste management facilities. They identify solid wastes that are included.

Statutory Authority: § 10.1-1402 of the Code of Virginia.

Written comments may be submitted until September 26, 1988.

**Contact:** William F. Gilley, Director, Department of Waste Management, James Monroe Bldg., 101 N. 14th St., 11th Fl., Richmond, Va. 23219, telephone (804) 225-2667

## STATE WATER CONTROL BOARD

**August 24, 1988 - 2 p.m. - Public Hearing**  
Virginia War Memorial Auditorium, 621 South Belvidere Street, Richmond, Virginia

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Water Control Board intends to repeal existing regulations and promulgate new regulations entitled: **VR 680-16-16. Richmond-Crater Interim Water Quality Management.** The purpose is to replace all previously approved water quality plans for major municipal and industrial discharges to the Upper James and Appomattox Estuaries, in Planning District 15 (Richmond Regional) and 19 (Crater).

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

Written comments may be submitted until 4 p.m., September 6, 1988, to Doneva Dalton, Hearing Reporter, State Water Control Board, P. O. Box 11143, Richmond, Virginia 23230.

**Contact:** Thomas D. Modena, Supervisor, Water Resources Development, State Water Control Board, 2201 W. Broad St., Richmond, Va. 23220, telephone (804) 367-1006 or SCATS 367-1006

# Calendar of Events

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## COUNCIL ON THE STATUS OF WOMEN

**August 3, 1988 - 8 p.m. - Open Meeting**  
Ramada Renaissance Hotel, 555 East Canal Street,  
Richmond, Virginia

Meetings of the Standing Committees of the Virginia  
Council on the Status of Women.

**August 4, 1988 - 9 a.m. - Open Meeting**  
Ramada Renaissance Hotel, 555 East Canal Street,  
Richmond, Virginia

A regular meeting of the Council on the Status of  
Women to conduct general business and to receive  
reports from the Council Standing Committees.

**Contact:** Bonnie H. Robinson, Executive Director, 8007  
Discovery Dr., Richmond, Va. 23229-8699, telephone (804)  
662-9200 or SCATS 662-9200

## VIRGINIA WORLD TRADE COUNCIL

† **August 9, 1988 - 10 a.m. - Open Meeting**  
Ninth Street Office Building, 9th and Grace Streets, Room  
409, Richmond, Virginia. ☐

Initial meeting of the council.

**Contact:** William B. Rowland, Acting Deputy Director,  
Virginia Department of World Trade, 6000 World Trade  
Center, Norfolk, Va. 23510, telephone (804) 683-2849

## LEGISLATIVE MEETINGS

### JOINT SUBCOMMITTEE STUDYING ACQUIRED IMMUNODEFICIENCY SYNDROME (AIDS)

† **August 4, 1988 - 10 a.m. - Open Meeting**  
General Assembly Building, Capitol Square, House Room  
D, Richmond, Virginia. ☐

This subcommittee will have organizational meeting,  
setting out agenda for interim. HJR 31

**Contact:** Norma Szakal, Staff Attorney, or Brenda Edwards,  
Research Associate, Division of Legislative Services, P. O.  
Box 3-AG, Richmond, Va. 23208, telephone (804) 786-3591.

### JOINT COMMITTEE MEETING OF HOUSE APPROPRIATIONS, HOUSE FINANCE AND SENATE FINANCE

† **August 26, 1988 - 9:30 a.m. - Open Meeting**  
General Assembly Building, Capitol Square, House Room

D, Richmond, Virginia. ☐

Agenda to include a summary of fiscal year end  
revenue collections.

**Contact:** Donna C. Johnson, House Appropriations  
Committee, General Assembly Bldg., 9th Fl., Richmond, Va.  
23219, telephone (804) 786-1837

## SENATE AND HOUSE SUBCOMMITTEE ON BLOCK GRANTS

† **August 8, 1988 - 10 a.m. - Public Hearing**  
General Assembly Building, Capitol Square, House Room  
D, Richmond, Virginia. ☐

This hearing will cover the Federal Block Grant areas  
of Preventive Health and Health Services; Alcohol,  
Drug Abuse and Mental Health; and Community  
Services.

**Contact:** Persons wishing to speak contact: Marcia A.  
Melton, Division of Legislative Services, P. O. Box 3-AG,  
Richmond, Va. 23208, telephone (804) 786-3591. For  
additional information contact: Thomas C. Gilman, Chief  
Committee Clerk, Senate of Virginia, P. O. Box 396,  
Richmond, Va. 23203, telephone (804) 786-4638

## JOINT SUBCOMMITTEE STUDYING CHILDREN IN NEED OF SERVICES (CHINS)

† **August 10, 1988 - 9 a.m. - Open Meeting**  
Circle-In-The Square, Roanoke, Virginia

Second meeting of this study committee. Meeting will  
focus on presentation by Southwest Coalition for Youth  
Services. HJR 143

**Contact:** Jeffrey A. Finch, House of Delegates, P. O. Box  
406, Richmond, Va. 23203, telephone (804) 786-2227

## VIRGINIA CODE COMMISSION

† **September 2, 1988 - 9:30 a.m. - Open Meeting**  
General Assembly Building, Capitol Square, 6th Floor  
Conference Room, Richmond, Virginia. ☐

The commission will continue with the revision of  
Title 46.1 of the Code of Virginia.

† **October 6, 1988 - 9:30 a.m. - Open Meeting**  
† **October 7, 1988 - 9:30 a.m. - Open Meeting**  
(These meetings are tentative and the location is to be  
announced), Virginia Beach, Virginia

The commission will continue with the revision of  
Title 46.1 of the Code of Virginia.

**Contact:** Joan W. Smith, Registrar of Regulations, Virginia Code Commission, P. O. Box 3-AG, Richmond, Va. 23208, telephone (804) 786-3591

## **JOINT SUBCOMMITTEE STUDYING DIRECT ADOPTION PLACEMENT AND UNAUTHORIZED PLACEMENT ACTIVITY**

**August 4, 1988 - 10 a.m. - Open Meeting**  
General Assembly Building, Capitol Square, House Room C, Richmond, Virginia. ☐

This is the first meeting of the interim for the subcommittee. HJR 86

**Contact:** Susan Ward, Staff Attorney, Division of Legislative Services, P. O. Box 3-AG, Richmond, Va. 23208, telephone (804) 786-3591

## **JOINT SUBCOMMITTEE STUDYING THE FLOOD CONTROL POLICIES OF THE COMMONWEALTH**

† **August 8, 1988 - 10 a.m. - Open Meeting**  
Roanoke County Administration Center, 3738 Brambleton Avenue SW, Roanoke, Virginia

This subcommittee will meet for organizational purposes and to receive testimony on the federal and state roles on flood control management and mitigation.

**Contact:** Martin G. Farber, Research Associate, or John T. Heard, Staff Attorney, Division of Legislative Services, P. O. Box 3-AG, Richmond, Va. 23208, telephone (804) 786-3591

## **JOINT SUBCOMMITTEE STUDYING HEALTH CARE FOR ALL VIRGINIANS**

† **August 3, 1988 - 2 p.m. - Open Meeting**  
General Assembly Building, Senate Room B, Richmond, Virginia. ☐

A regular meeting. SJR 99/HJR 78

**Contact:** Thomas C. Gilman, Chief Committee Clerk, Senate of Virginia, P. O. Box 396, Richmond, Va. 23203, telephone (804) 786-4638 or Richard E. Hickman, Jr., Senate Finance Office, General Assembly Bldg., Richmond, Va. 23219, telephone (804) 786-4400

## **JOINT SUBCOMMITTEE STUDYING HEALTH EFFECTS OF USING DIESEL ENGINES IN UNDERGROUND COAL MINES**

**August 1, 1988 - 10 a.m. - Open Meeting**  
General Assembly Building, Capitol Square, House Room C,

Richmond, Virginia. ☐

A regular meeting. HJR 110

**Contact:** Martin G. Farber, Research Associate, Division of Legislative Services, P. O. Box 3-AG, Richmond, Va. 23208, telephone (804) 786-3591

## **JOINT SUBCOMMITTEE STUDYING THE FREEDOM OF INFORMATION ACT**

**August 3, 1988 - 10 a.m. - Open Meeting**  
General Assembly Building, Capitol Square, 6th Floor Conference Room, Richmond, Virginia. ☐

The subcommittee will meet to hear comments from various invited speakers expressing concerns and problems regarding the Freedom of Information Act in access to state and local government meetings and records. HJR 100

**Contact:** Angela Bowser, Staff Attorney, Division of Legislative Services, P. O. Box 3-AG, Richmond, Va. 23208, telephone (804) 786-3591

## **JOINT SUBCOMMITTEE STUDYING THE DEVELOPMENT OF A STATE PROGRAM TO FUND CONSTRUCTION OF PUBLIC SCHOOL FACILITIES**

**August 1, 1988 - 1 p.m. - Open Meeting**  
General Assembly Building, Capitol Square, House Room D, Richmond, Virginia. ☐

This is the first meeting of the interim for this study committee. HJR 108

**Contact:** John A. Garka, Staff Economist, Division of Legislative Services, P. O. Box 3-AG, Richmond, Va. 23208, telephone (804) 786-3591

## **SPECIAL JOINT SUBCOMMITTEE STUDYING THE TAXATION OF DAILY RENTAL EQUIPMENT**

**August 15, 1988 - 10 a.m. - Open Meeting**  
General Assembly Building, Capitol Square, House Room C, Richmond, Virginia. ☐

This subcommittee will meet to review draft legislation. HB 687

**Contact:** Reggie McNally, Staff Attorney, Division of Legislative Services, P. O. Box 3-AG, Richmond, Va. 23208, telephone (804) 786-3591

# Calendar of Events

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## JOINT SUBCOMMITTEE STUDYING TIDAL SHORELINE EROSION

**August 1, 1988 - 1 p.m. - Open Meeting**  
General Assembly Building, Capitol Square, House  
Appropriations Room, Richmond, Virginia. ☒

This is the first meeting of the interim for this  
continued study. HJR 109

**Contact:** John T. Heard, Staff Attorney, or Martin G.  
Farber, Research Associate, P. O. Box 3-AG, Richmond,  
Va. 23208, telephone (804) 786-3591

## JOINT SUBCOMMITTEE STUDYING THE TRAINING AND CERTIFICATION OF EMERGENCY MEDICAL SERVICES

† **August 10, 1988 - 2 p.m. - Open Meeting**  
General Assembly Building, Capitol Square, Senate Room  
B, Richmond, Virginia. ☒

A regular meeting. SJR 86/HJR 134

**Contact:** Thomas C. Gilman, Chief Committee Clerk, Senate  
of Virginia, P. O. Box 396, Richmond, Va. 23203, telephone  
(804) 786-4638 or Norma Szakal, Staff Attorney, Division of  
Legislative Services, P. O. Box 3-AG, Richmond, Va. 23208,  
telephone (804) 786-3591

## STATE WATER COMMISSION

† **August 17, 1988 - 9 a.m. - Open Meeting**  
Holiday Inn, Interstate 85 and Route 58 East, South Hill,  
Virginia

Business meeting to discuss the state and federal role  
in interbasin transfer of water resources.

**Contact:** Martin Farber, Research Associate, or John  
Heard, Staff Attorney, Division of Legislative Services, P.  
O. Box 3-AG, Richmond, Va. 23208, telephone (804)  
786-3591

## CHRONOLOGICAL LIST

### OPEN MEETINGS

**August 1**  
† Chesapeake, City of, Local Emergency Planning  
Committee  
Harrisonburg/Rockingham Local Emergency Planning  
Committee  
Health Effects of Using Diesel Engines in  
Underground Coal Mines, Joint Subcommittee Studying  
State Program to Fund Construction of Public School

Facilities, Joint Subcommittee Studying the  
Development of a  
Tidal Shoreline Erosion, Joint Subcommittee Studying

**August 2**  
Hopewell Industrial Safety Council  
† Marine Resources Commission  
Nursing, Virginia State Board of  
Vocational Education, Virginia Council on

**August 3**  
Child Mental Health, Consortium on  
† Floyd County Emergency Planning Committee  
Freedom of Information Act, Joint Subcommittee  
Studying the  
† Health Care for All Virginians, Joint Subcommittee  
Studying  
† Richlands Local Emergency Planning Committee  
Sewage Handling and Disposal Appeals Review Board,  
State  
Vocational Education, Virginia Council on  
Women, Council on the Status of

**August 4**  
† Acquired Immunodeficiency Syndrome (AIDS), Joint  
Subcommittee Studying  
Bristol, Local Emergency Planning Committee, City of  
† Charlottesville/Albemarle Local Emergency Planning  
Committee  
Chesterfield County, Local Emergency Planning  
Committee of  
Direct Adoption Placement and Unauthorized  
Placement Activity, Joint Subcommittee Studying  
† Professional Counselors, Virginia Board of  
Women, Council on the Status of

**August 5**  
† Architects, Professional Engineers, Land Surveyors  
and Certified Landscape Architects, State Board of  
- Virginia State Board of Land Surveyors  
General Services, Department of  
- Art and Architectural Review Board  
† Professional Counselors, Virginia Board of

**August 6**  
Military Institute, Virginia  
- Board of Visitors

**August 8**  
† Flood Control Policies of the Commonwealth, Joint  
Subcommittee Studying the

**August 9**  
Alcoholic Beverage Control Board  
† Funeral Directors and Embalmers, Virginia Board of  
Local Emergency Planning Committee - Scott County  
Montgomery/Town of Blacksburg Local Emergency  
Planning Committee, County of  
Nursing, Virginia State Board of  
- Informal Conference Committee  
† Pharmacy, Virginia Board of

# Calendar of Events

† Real Estate Board, Virginia  
† Virginia Resources Authority  
Waste Management Board, Virginia  
† World Trade Council, Virginia

## August 10

† Children in Need of Services, Joint Subcommittee Studying  
Health Regulatory Boards, Council on  
- Regulatory Evaluation and Research Committee  
- Scope and Standards of Practice Committee  
Mental Health, Mental Retardation and Substance Abuse Services, Department of  
† Oil and Gas Conservation Board, Virginia  
† Pharmacy, Virginia Board of  
† Public School Authority, Virginia  
† Richlands Local Emergency Planning Committee  
† Training and Certification of Emergency Medical Services, Joint Subcommittee Studying the

## August 11

† Child Day-Care Council  
Fairfax County, Town of Vienna, City of Fairfax, Town of Herndon, Local Emergency Planning Committee of Health Regulatory Boards, Council on  
- Compliance and Discipline Committee  
Martinsville and Henry County, Local Emergency Planning Committee for the City of  
† Nursing Home Licensure Regulation Review Advisory Committee  
† Oil and Gas Conservation Board, Virginia  
† Richmond Emergency Planning Committee  
† Social Work, Virginia Board of

## August 12

Children's Residential Facilities, Interdepartmental Licensure and Certification of  
- Coordinating Committee  
Health Regulatory Boards, Department of Medicine, Virginia State Board of  
Prince William County, Manassas City, and Manassas Park City Local Emergency Planning Committee  
† Social Work, Virginia Board of

## August 13

† Milk Commission

## August 15

† Funeral Directors and Embalmers, Virginia Board of Taxation of Daily Rental Equipment, Special Joint Subcommittee Studying the

## August 16

† Education, State Board of  
† Housing Development Authority, Virginia  
Nursing, Virginia State Board of  
† Real Estate Board, Virginia

## August 17

Corrections, State Board of  
† Education, State Board of

† Higher Education for Virginia, State Council of  
† Real Estate Board, Virginia  
† Richlands Local Emergency Planning Committee  
† Water Commission, State

## August 18

† Psychology, Virginia Board of  
Transportation Board, Commonwealth

## August 19

Conservation and Historic Resources, Department of  
- Falls of the James Advisory Committee

## August 23

Alcoholic Beverage Control Board  
Nursing, Virginia State Board of

## August 24

Gloucester Local Emergency Planning Committee  
† Lottery Board, State  
† Mental Health, Mental Retardation and Substance Abuse Services Board, State  
† Richlands Local Emergency Planning Committee

## August 25

Charles City County Emergency Planning Committee  
† Lottery Board, State

## August 26

† Appropriations, House Finance and Senate Finance, Joint Committee Meeting of House

## August 29

Agricultural Council, Virginia

## August 30

† Architects, Professional Engineers, Land Surveyors and Certified Landscape Architects, State Board of  
- Virginia State Board of Professional Engineers  
Funeral Directors and Embalmers, Virginia Board of Land Evaluation Advisory Council, State

## August 31

Funeral Directors and Embalmers, Virginia Board of  
† Richlands Local Emergency Planning Committee

## September 1

† Mines, Minerals and Energy, Department of

## September 2

† Code Commission, Virginia

## September 6

Hopewell Industrial Safety Council

## September 8

Fairfax County, Town of Vienna, City of Fairfax, Town of Herndon, Local Emergency Planning Committee of Martinsville and Henry County, Local Emergency Planning Committee for the City of



# Calendar of Events

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## September 9

Children's Residential Facilities, Interdepartmental  
Licensure and Certification of  
- Coordinating Committee  
† General Services, Department of  
- Art and Architectural Review Board  
- Division of Consolidated Laboratory Services

## September 19

† Real Estate Board, Virginia

## September 20

Land Evaluation Advisory Council, State

## September 26

† Education, State Board of

## September 27

† Education, State Board of

## October 6

† Code Commission, Virginia (Tentative)

## October 7

† Code Commission, Virginia (Tentative)  
† Education, State Board of

## October 8

Military Institute, Virginia  
- Board of Visitors

## October 27

† Education, State Board of

## October 28

† Education, State Board of

## PUBLIC HEARINGS

## August 8

† Block Grants, Senate and House Subcommittee on

## August 9

Waste Management, Department of

## August 10

Health, Department of

## August 12

Social Services, Department of

## August 16

Education, Department of

## August 24

Water Control Board, State

## September 7

Air Pollution Control, Department of

## September 15

Dentistry, Virginia Board of

## September 16

Waste Management, Department of

## September 19

† Lottery Department, State  
Waste Management, Department of

## September 20

Alcoholic Beverage Control, Department of

## September 26

Nursing, Virginia State Board of

## September 30

† Medical Assistance Services, Department of  
† Voluntary Formulary Board, Virginia

## October 4

Agriculture and Consumer Services, Department of