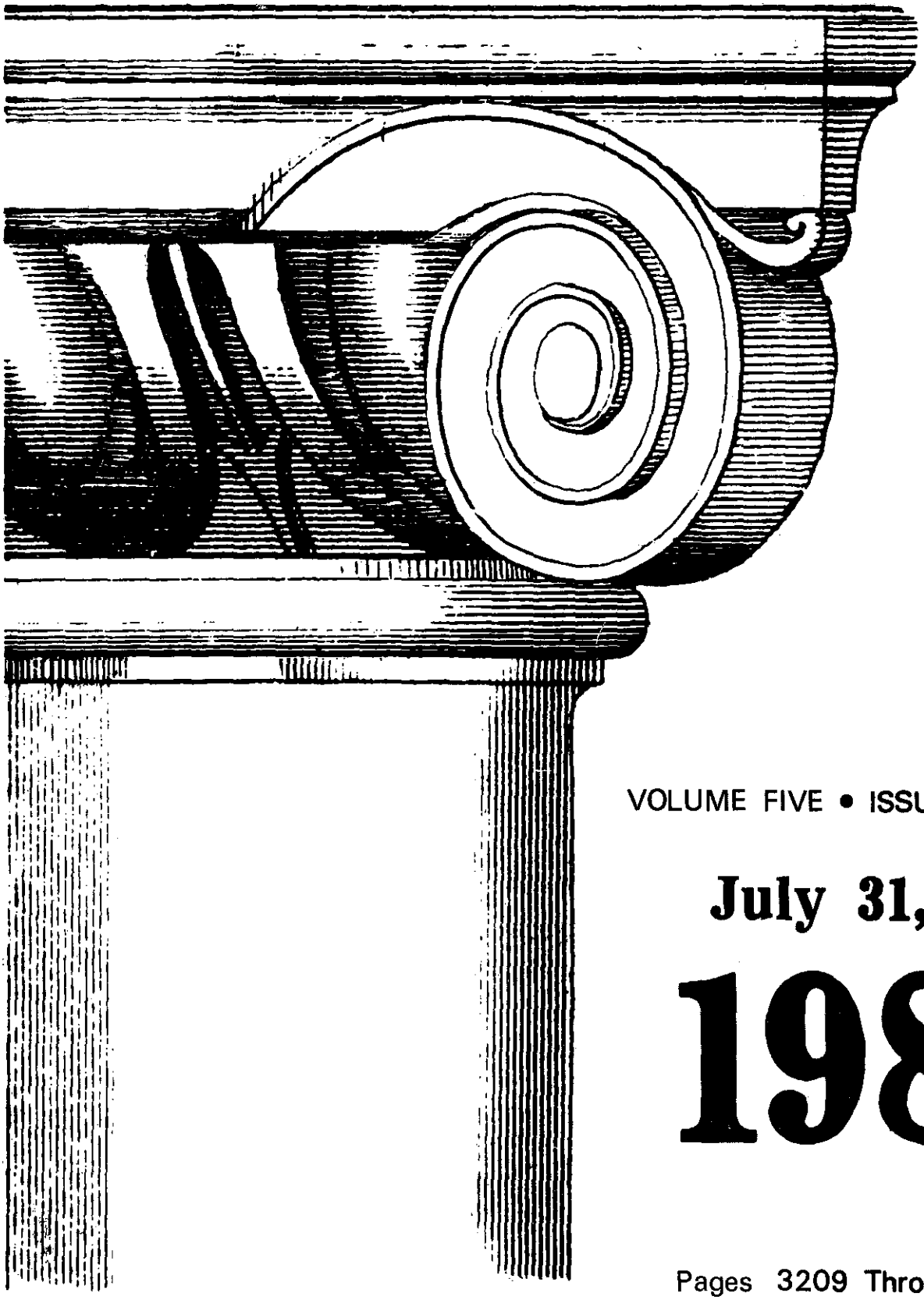
THE VIRGINIA REGISTER

OF REGULATIONS



VOLUME FIVE • ISSUE TWENTY-TWO

July 31, 1989

1989

Pages 3209 Through 3380

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 periodically 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.

CITATION TO THE VIRGINIA REGISTER

The Virginia Register is cited by volume, issue, page number, and date. **1:3 VA.R. 75-77 November 12, 1984** refers to Volume 1, Issue 3, pages 75 through 77 of the Virginia Register issued on November 12, 1984.

"The Virginia Register of Regulations" (USPS-001831) is published bi-weekly, except four times in January, April, July and October for $85 per year by the Virginia Code Commission, General Assembly Building, Capitol Square, Richmond, Virginia 23219. Telephone (804) 786-3591. Second-Class Postage Rates Paid at Richmond, Virginia. **POSTMASTER:** Send address changes to the Virginia Register of Regulations, P.O. Box 3-AG, Richmond, Virginia 23208-1108.

The Virginia Register of Regulations is published pursuant to Article 7 of Chapter 1.1:1 (§ 9-6.14:2 et seq.) of the Code of Virginia. Individual copies are available for $4 each from the Registrar of Regulations.

VIRGINIA REGISTER OF REGULATIONS

PUBLICATION DEADLINES AND SCHEDULES

July 1989 through September 1990

MATERIAL SUBMITTED BY Noon Wednesday	PUBLICATION DATE
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	

Volume 6 - 1989-90

Sept. 20	Oct. 9
Oct. 4	Oct. 23
Oct. 18	Nov. 6
Nov. 1	Nov. 20
Nov. 15	Dec. 4
Nov. 29	Dec. 18
Dec. 13	Jan. 1 1990
Index 1 - Volume 6	

Dec. 27	Jan. 15
Jan. 10	Jan. 29
Jan. 24	Feb. 12
Feb. 7	Feb. 26
Feb. 21	Mar. 12
Mar. 7	Mar. 26
Index 2 - Volume 6	

Mar. 21	Apr. 9
Apr. 4	Apr. 23
Apr. 18	May 7
May 2	May 21
May 16	June 4
May 30	June 18
Index 3 - Volume 6	

June 13	July 2
June 27	July 16
July 11	July 30
July 25	Aug. 13
Aug. 8	Aug. 27
Aug. 22	Sept. 10
Sept. 5	Sept. 24
Final Index - Volume 6	

TABLE OF CONTENTS

PROPOSED REGULATIONS

CRIMINAL JUSTICE SERVICES BOARD

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

FINAL REGULATIONS

DEPARTMENT OF AIR POLLUTION CONTROL (STATE BOARD OF)

CHESAPEAKE BAY LOCAL ASSISTANCE BOARD

DEPARTMENT FOR THE DEAF AND HARD-OF-HEARING

DEPARTMENT OF LABOR AND INDUSTRY

MARINE RESOURCES COMMISSION

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES (BOARD OF)

STATE WATER CONTROL BOARD

EMERGENCY REGULATIONS

DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES (BOARD OF)

DEPARTMENT OF HEALTH (STATE BOARD OF)

COUNCIL ON HUMAN RIGHTS

DEPARTMENT OF SOCIAL SERVICES

STATE CORPORATION COMMISSION

ORDERS

Table of Contents

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.

CRIMINAL JUSTICE SERVICES BOARD

Title of Regulation: **VR 240-03-01. Rules Relating to Compulsory Minimum Training for Private Security Services Business Personnel.**

Statutory Authority: § 9-182 of the Code of Virginia.

Public Hearing Date: October 4, 1989 - 9:30 a.m.
(See Calendar of Events section for additional information.)

Summary:

The proposed amendments to the subject rules are submitted in accordance with § 9-6.14:7.1 of the Code of Virginia.

These amendments are being proposed pursuant to the regulation issuing authority granted to the Criminal Justice Services Board by § 9-182 of the Code of Virginia.

The proposed amendments include an increase of hours of minimum training required for private investigators and guards. Additionally, the proposed amendments require armed private security services business personnel to complete the Virginia Modified Double Action Course as opposed to the existing Modified Private Security Firearms Course. This charge increases the number of rounds fired for qualification from 25 to 60 rounds.

In addition, the rules also provide operational procedures and administrative guidelines for approved schools conducting training for private security services business personnel. Proposed amendments govern applications for renewal of approval, submission of training schedules, and qualifications of instructors.

VR 240-03-01. Rules Relating to Compulsory Minimum Training for Private Security Services Business Personnel.

PART I.
GENERAL.

Pursuant to the provisions of § 9-182 of the Code of Virginia, the Criminal Justice Services Board hereby promulgates the following rules for compulsory minimum training standards for private security services business personnel.

§ 1.1. Definitions.

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

"Approved training school" means a training school which provides instruction of at least the minimum training standards mandated and approved by the department for the specific purpose of training private security services business personnel.

"Board" means the Criminal Justice Services Board.

"Class" means a minimum of 50 minutes of instruction on a particular subject.

"Department" means the Department of Criminal Justice Services.

"Director" means the chief administrative officer of the department.

"Private security services business" means any person engaged in the business of providing, or who undertakes to provide, armored car personnel, guards, private detectives/private investigators, couriers or guard dog handlers, to another person under contract, expressed or implied.

"Private security services business personnel" means any employee of a private security services business who is employed as an unarmed guard, armed guard/courier, armored car personnel, guard dog handler or private detective/private investigator.

"School director" means the chief administrative officer of an approved training school.

"Session" means a group of classes comprising the total hours of mandated training in a category (unarmed guards, armed guards/couriers, armored car personnel, guard dog handlers, private detectives/private investigators). Sessions are approved on the basis of schedules submitted by approved training schools in accordance with rules established herein.

PART II.
COMPULSORY MINIMUM TRAINING STANDARDS FOR PRIVATE SECURITY SERVICES BUSINESS PERSONNEL.

~~§ 2.1. Compulsory minimum training standards unarmed guards.~~

~~A. Pursuant to the provisions of § 9-182 of the Code of Virginia, the board establishes the following as compulsory minimum training standards for unarmed guards:~~

§ 2.1. Guards:

Core Subjects	Hours
1. Administration and security orientation	~~3~~ *2*
2. Legal authority	4 *6*
3. Emergency and defensive procedures	~~5~~ *8*
4. Written Examination (refer to ~~§§ 4.10 through 4.10,A,2~~ *§ 4.0 K*)	
Total Hours (excluding written examination)	~~12~~ *16*

~~§ 2.2. Compulsory minimum training standards armed guards/couriers.~~

~~A. Pursuant to the provisions of § 9-182 of the Code of Virginia, the board establishes the following compulsory minimum training standards for armed guards/couriers:~~

~~Core Subjects~~	~~Hours~~
~~1. Administration and security orientation~~	~~3~~
~~2. Legal authority~~	~~4~~
~~3. Emergency and defensive procedures~~	~~5~~
~~4. Core subjects written examination. (refer to §§ 4.10 through 4.10,A,2)~~	
~~5. Firearms~~	~~6~~
~~a. Classroom - 6 hours (Refer to § 5.1,A.)~~	
~~b. Shotgun classroom (if applicable)~~	~~1~~
~~(refer to § 5.1,B,1)~~	
~~c. Firearms written examination. (refer to §§ 4.10,A; 4.10,A,3; and 4.10,A,4).~~	
~~d. Range - No minimum hours required. Each person who carriers or has immediate access to a firearm in the performance of duty shall satisfactorily complete the prescribed firearms course with the type and caliber and/or type and gauge of firearm that is immediately accessible or carried in the performance of duty. (refer to §§ 5.1,A. and 5.1,B.)~~	
~~Total (excluding written examinations, shotgun classroom and all firearms range training)~~	~~18 hours~~

~~§ 2.3. Compulsory minimum training standards armored car personnel.~~

~~A. Pursuant to the provisions of § 9-182 of the Code of Virginia, the board establishes the following as compulsory minimum training standards for armored car personnel:~~

~~Hours~~	
~~1. Firearms~~	~~6~~
~~a. Classroom~~	~~6 hours (refer to § 5.1,A.)~~
~~b. Shotgun classroom (if applicable)~~	~~1 (refer to § 5.1,B,1).~~
~~c. Firearms written examination. (refer to §§ 4.10,A; 4.10,A,3; and 4.10,A,4)~~	
~~d. Range - No minimum hours required. Each person who carries or has immediate access to a firearm in the performance of duty shall satisfactorily complete the prescribed firearms course with the type and caliber and/or type and gauge of firearm that is immediately accessible or carried in the performance of duty. (refer to §§ 5.1,A and 5.1,B)~~	
~~Total (Excluding written examination, shotgun classroom and all firearms range training)~~	~~6~~

~~§ 2.4.~~ *§ 2.2.* ~~Compulsory minimum training standards guard dog handlers:~~ *Guard Dog Handlers:*

~~A. Pursuant to the provisions of § 9-182 of the Code of Virginia, the board establishes the following as compulsory minimum training standards for guard dog handlers:~~

Core Subjects	Hours
~~1. Administration and security orientation~~	~~3~~
~~2. Legal authority~~	~~4~~
~~3. Emergency and defensive procedures~~	~~5~~
~~4. Core subjects written examination. (refer to §§ 4.10 through 4.10,A,2)~~	
1. Guard Training (See § 2.1)	*16*
~~5.~~ *2.* Basic obedience retraining	6
~~6.~~ *3.* Canine ~~attack~~ *patrol* techniques	6
~~7.~~ *4.* Written examination. (refer to ~~§§ 4.10 and 4.10,A,1,2~~ *§ 4.0(K))*	
Total Hours	*28*
~~8. Firearms~~	~~6~~

~~a. Classroom .....6 hours~~ - (refer to § 5.1, A.)

~~b. Shotgun classroom (if applicable) .....1 (refer to § 5.1,B,1)~~

~~c. Firearms written examination. (refer to §§ 4.10,A; 4.10,A,3; and 4.10,A,4)~~

~~d. Range - No minimum hours required. Each person who carries or has immediate access to a firearm in the performance of duty shall satisfactorily complete the prescribed firearms course with the type and caliber and/or type and gauge of firearm that is immediately accessible or carried in the performance of duty. (refer to §§ 5.1,A and 5.1,B.)~~

~~Total (excluding written examinations, shotgun classroom and all firearms range training) 30 hours.~~

~~§ 2.5.~~ *§ 2.3.* ~~Compulsory minimum training standards~~ Private Detectives/Private Investigators:

~~A. Pursuant to the provisions of § 9-182 of the Code of Virginia, the board establishes the following as compulsory minimum training standards for private detectives/private investigators.~~

1. Private detectives/private investigators orientation 4 *8*
2. General investigative techniques ..... ~~11~~ *20*
3. ~~Interview and interrogation~~ *Interviewing* techniques 4 *8*
4. Criminal law and procedure *& rules of evidence* ..... ~~6~~ *8*
5. Civil law and procedure *& rules of evidence* . ~~8~~ *10*
6. ~~Civil and criminal rules of evidence~~ [Repealed] ... 4
7. Collecting and reporting information 4 *6*
8. Written comprehensive examination. 1
9. ~~Firearms (if carried in the performance of duty) 6~~

~~a. Classroom .....6 (refer to § 5.1,A)~~

~~b. Shotgun classroom (if applicable) - 1 hour. (refer to § 5.1,B,1)~~

~~c. Firearms written examination. (refer to §§ 4.10,A; 4.10,A,3; and 4.10,A,4)~~

~~d. Range - No minimun hours required. Each person who carries or has immediate access to a firearm in the performance of duty shall satisfactorily complete the prescribed firearms course with the type and caliber and/or type and gauge of firearm that is immediately accessible or carried in the performance of duty. (refer to §§ 5.1,A and 5.1,B)~~

Total Hours ~~(Excluding shotgun classroom and all firearms range training) 48~~ *61*

§ 2.4. Firearms/training (required for all armored car personnel and other armed private security services business personnel).

1. Classroom - 8 hours (Refer to § 5.1 A.)

2. Shotgun Classroom (if applicable) - 1 hour (refer to § 5.1 B.)

3. Firearms Written Examination (refer to § 4.1 K)

4. Range - No minimum hours required. Each person who carries or has immediate access to a firearm in the performance of duty shall satisfactorily complete the prescribed firearms course with the type and caliber or type and gauge of weapon that is immediately accessible or carried in the performance of duty. (Refer to §§ 5.1 A. and 5.1 B.)

Total Hours (excluding written examinations, shotgun classroom and all firearms range training. 8

PART III.
APPLICABILITY.

§ 3.1. Applicability.

~~§ 3.1.~~ *A.* Every person employed by a private security services business as a guard, courier, armored car personnel, guard dog handler, private detective/private investigator as defined by § ~~54-729.27~~ *54.1-1900* of the Code of Virginia who has not met the compulsory minimum training standards prior to the effective date of these regulations, must meet the compulsory minimum training standards herein established unless provided otherwise in accordance with §§ ~~3.2~~ ~~or~~ ~~3.3~~ *3.1 B or 3.1 C* .

~~§ 3.2.~~ *B.* Persons who meet the statutory requirements as set forth in § 9-182 of the Code of Virginia, may apply for an exemption from the mandatory training. The director may issue such exemption or partial exemption on the basis of individual qualifications as supported by required documentation. The director shall not issue more than a partial exemption to those persons who have remained out of law-enforcement employment in excess of 24 months. Those applying for and receiving exemptions must also comply with ~~the~~ *all firearms requirements, where applicable, and all* regulations promulgated by the Department of Commerce.

1. Persons receiving exemptions for the categories of armed guard and guard dog handler must attend the

two-hour class entitled legal authority.

2. Persons receiving exemption for the category of private detective/private investigator must attend the ten-hour class entitled Civil Law and Procedures and Rules of Evidence.

§ ~~3.3.~~ *C.* The director may authorize credit for training received at a department approved school which meets or exceeds the compulsory minimum training standards required for private security services business personnel provided that such training has been successfully completed within 12 months of the date of application.

PART IV.
APPROVED TRAINING SCHOOLS OPERATIONS.

§ 4.1. Approved Training Schools Operations.

A. Private security services business personnel training schools must be approved annually by the department prior to the first scheduled session. Approval is requested by making application to the director on forms provided by the department. The director, in accordance with § 9-6.14:11 of the Administrative Process Act, may approve those schools which on the basis of curricula, instructors and facilities provide training that meets the compulsory minimum training standards. *Renewal applications* ~~*must*~~ *shall* be submitted by no later than February 1st of each calendar year. A disapproval may be appealed to the board in accordance with § 9-6.14:11 of the Administrative Process Act.

§ ~~4.2.~~ *B.* Approved training schools desiring to conduct firearms training classes only must request approval in accordance with § ~~4.3~~ *4.1 C.*

§ ~~4.3.~~ *C.* Approved training schools must submit a proposed training schedule *on a form provided by or approved by* ~~to~~ the department postmarked no less than 10 days prior to the beginning of each session. The training schedule must include the date, time, subject location and the name of the instructor for each class to be conducted during the training session. Any changes in an approved session ~~must~~ *shall* be reported to the department immediately, followed by written notification postmarked the next working day. Approved training sessions will be conducted as scheduled.

§ ~~4.4.~~ *D.* Instruction shall be provided in no less than 50-minute classes.

§ ~~4.5.~~ *E.* Approved training may not exceed eight hours per day.

§ ~~4.6.~~ *F.* Instructor qualifications.

~~A.~~ *1.* Instructors teaching in an approved training school must be approved by the department. Instructor qualifications shall be based upon previous work experience, instructional experience, training, and education. As a minimum, instructors should meet the following requirements:

~~1.~~ *a.* Have a minimum of ~~two~~ *three* years supervisory experience with a ~~contract security company,~~ *private security services business* or with any federal, U.S. military *police* , state, county or municipal law-enforcement agency, or

~~2.~~ *b.* Have a minimum of one year experience as an instructor or teacher at an accredited educational institution or agency in the subject matter for which approval is requested or in a related field.

c. Must have completed an instructor development program which meets or exceeds standards established by the department.

d. Firearms instructors must have completed a firearms instructors school, specifically designed for law-enforcement or private security personnel.

§ ~~4.7.~~ *G.* Approved training schools will be subject to inspection and review by the director ~~and/~~ or his staff. Out-of-state approved training schools which require inspection may be required to pay for actual expenses of inspection.

H. Compliance agents are responsible for ensuring that unarmed guards comply with compulsory minimum training standards herein established for unarmed guards and training records of such personnel may be subject to inspection and review by the director ~~*and/*~~ *or his staff.*

§ ~~4.8.~~ *I.* Mandated training conducted without prior approval from the department is null and void.

§ ~~4.9.~~ *J.* The department may suspend or revoke the approval status of an approved training school upon written notification to the school's director. Such notification shall contain the reasons for revocation or suspension. The school's director may appeal the revocation or suspension by requesting a hearing before the board *or its designee* . The request shall be in writing and must be received at the department within 15 days of the date of the revocation or suspension notification.

§ ~~4.10.~~ *K.* Written examinations: ~~grading.~~

A written comprehensive examination is required at the conclusion of training of the core subjects. When additional training in excess of the core subjects is necessary to meet the requirements set forth for armed guards/couriers, armored car personnel, or guard dog handlers, an additional examination will be administered specifically for that portion of training. Schools conducting training for private detectives/private investigators are required to administer a comprehensive examination at the conclusion of training.

~~A.~~ *1.* All written examinations shall include at least

three questions for each class of instruction in a particular area of mandatory training.

~~1.~~ *a.* Each core subject shall be separately tested and graded. Individuals must attain a minimum score of 70% in each core subject. Any individual who fails to attain a minimum score of 70% in each core subject will be required to repeat the training in the core subject(s) in which the individual is deficient and attain a minimum score of 70% on the retest in order to satisfactorily complete this section of the training.

~~2.~~ *b.* Mandated training in excess of the core subjects shall be tested and graded. A minimum score of 70% must be attained on the examination(s) covering those mandated subjects in excess of the core subjects. If an individual does not achieve a minimum score of 70% on the examination, the individual will be required to retake such training and must attain a minimum score of 70% on the retest in order to satisfactorily complete this section of the training.

~~3.~~ *c.* Firearms classroom training shall be separately tested and graded. Individuals must achieve a minimum score of 70% on the firearms classroom training examination. Any individual who fails to achieve a minimum score of 70% will be required to retake such training and must attain a minimum score of 70% on the retest in order to satisfactorily complete this section of the training.

~~4.~~ *d.* Failure to achieve a minimum score of 70% on the firearms *classroom* written examination will exclude the individual from the firearms range training.

~~5.~~ *e.* Firearms range training will be graded on a satisfactory/unsatisfactory basis. All armed private security services business personnel must achieve a score of at least 70% ~~(88 points out of a possible 125 points on the course prescribed in § 5.1,A.)~~ .

PART V.
FIREARMS TRAINING

§ 5.1. Firearms *Course Requirements* .

Private security services business personnel who carry or have a firearm available for immediate use in the performance of duty will be required to meet the provisions of § 5.1 A ~~and/~~ or § 5.1 B *,or both* .

A. Handgun.

1. Classroom training - classroom training will emphasize but not be limited to:

a. The proper care of the weapon,

b. Civil liability of use of firearms,

c. Criminal liability of use of firearms,

d. Deadly force,

e. Justifiable deadly force,

f. Range safety.

2. Range firing - (no minimum hours required) - The purpose of this course is to provide practical firearms training to individuals desiring to become armed private security services business personnel.

a. Prior to the date of range training it will be the responsibility of the school director to ensure that all students are informed of the proper attire and equipment to be worn for the firing range portion of the training.

b. Course - ~~Modified private security double action.~~ *Virginia Modified Double Action Course*

c. Ammunition - ~~25~~ *60* - rounds - *factory loaded* Wadcutter or duty ammunition may be used for practice ~~and/~~ or range qualifications *,or both* .

d. Target - Silhouette (full-size *B21-B21x or* B-27) - Alternate targets may be utilized with prior approval by the director.

3. Course: Modified private security firearms course.

~~Stage~~	~~Distance~~	~~Position~~	~~Number of Rounds~~	~~Time~~
~~a.~~	~~3 yds.~~	~~Point Shoulder~~	~~5~~	~~15 seconds~~
~~b.~~	~~7 yds.~~	~~Point Shoulder~~	~~10~~	~~42 seconds~~
~~c.~~	~~15 yds.~~	~~Point Shoulder~~	~~10~~	~~45 seconds~~

Virginia Modified Double Action Handgun

a. Virginia Modified Double Action Course for all handguns carried in the performance of duty.
Target - Silhouette (B21, B21x, B27) 60 rounds
Double action only
Minimum qualifying score - 70% or 42 rounds within Silhouette

Phase 1 - 7 years, point shoulder position, 24 rounds
Load 6 rounds, fire 1 round on whistle (2 seconds), repeat
Load 6 rounds, fire 2 rounds on whistle (3 seconds), repeat
Load 6 rounds, fire 12 rounds on whistle (30 seconds), repeat

Phase 2 -15 yards, point shoulder position, 18 rounds
Load 6 rounds, fire 1 round on whistle (2 seconds), repeat
Load 6 rounds, fire 2 rounds on whistle (3 seconds), repeat
Load 6 rounds, fire 6 rounds on whistle (12 seconds)

Phase 3 - 25 yards, 90 seconds, 18 rounds
Load 6 rounds, on whistle:
fire 6 rounds, kneeling, strong hand; reload
fire 6 rounds, standing behind barricade, weak hand;
reload, fire 6 rounds, standing behind barricade, strong hand (kneeling position may be fired using barricade)

~~4. Scoring: Point value indicated on training key located on the B-27 target. An individual must score at least 70% (88 points out of a possible total of 125 points) to satisfactorily complete the course.~~

~~5.~~ *4.* An approved firearms instructor must be on the range during all phases of firearms range training. There shall be one firearms instructor or assistant per four shooters on the line.

B. Shotgun training.

1. Classroom training - classroom instruction will emphasized but not be limited to:

a. Safe and proper use and handling of shotgun,

b. Nomenclature,

2. Range firing (no minimum hours required) - The purpose of this course is to provide practical shotgun training to those individuals who carry or have immediate access to a shotgun in the performance of their duty.

3. Ammunition - 5 rounds - Ammunition must be of same type as carried in the performance of duty.

4. Course: Modified shotgun range

Distance	Position	No. Rounds	Target
25 Yds.	Standing/ Shoulder	5	Silhouette

5. An approved firearms instructor must be on the range during all phases of firearms range training. There shall be one firearms instructor or assistant per four shooters on the line.

§ ~~5.2.~~ *C.* Firearms retraining.

1. All armed private security services business personnel must satisfactorily complete firearms classroom and range training as prescribed in subsections A and B of § 5.1, if applicable, within every other calendar year as set forth below. *Approved schools providing firearms retraining must meet the requirements of § 4.1.*

~~A. All persons who were registered as armed private security services business personnel during the period of March 17, 1977, through December 31, 1984, shall comply with this provision by December 31, 1986, and thereafter by December 31 of every other calendar year.~~

~~B. All persons who were registered as armed private security services business personnel during the period of January 1, 1985, through December 31, 1985, shall comply with this provision by December 31, 1987, and thereafter by December 31 of every other calendar year.~~

~~C.~~ *2.* All persons who are registered as armed private security services business personnel ~~on or after the effective date of this regulation~~ *and who have complied with the basic firearms training requirement* shall comply with this provision by December 31 of the second calendar year after receipt of armed registration and thereafter by December 31 of every other calendar year.

PART VI.
ATTENDANCE AND ADMINISTRATIVE REQUIREMENTS.

§ 6.1. Attendance and Administrative Requirements.

§ ~~6.1.~~ *A.* The compulsory minimum training standards shall be attained by attending and satisfactorily completing an approved training school.

§ ~~6.2.~~ *B.* Private security services business personnel enrolled in an approved training school are required to attend all prescribed mandatory training classes.

§ ~~6.3.~~ *C.* Tardiness and absenteeism will not be permitted. Individuals violating these provisions will be required to make up any training missed.

§ ~~6.4.~~ *D.* Each training school director will be required to maintain a current file of attendance records, examination scores, and firearms familiarization scores, on each individual for three years from the date of the training session in which the individual attendee was enrolled.

§ ~~6.5.~~ *E.* Any changes in an approved school ~~curriculum~~ *schedule* , instructors, *dates, times and location* ~~and training schedules,~~ shall be reported to the department ~~in advance of any such change~~ *immediately* .

§ ~~6.6.~~ *F.* The school director of each approved training school shall submit a certification of completion of training form which must be postmarked within seven days of the conclusion date of an approved training session, for each student who has satisfactorily completed *all classes*

comprising an approved training session *with the exception of unarmed guards training sessions* . The certification form will be prepared in triplicate; the originial is to be submitted to the Department of Commerce, one copy provided to the student and one copy to be retained on file with the approved training school for three years. The training certification forms will be provided by the Department of Commerce. *Certification of satisfactory completion of unarmed guard training sessions shall be reported to the department on forms provided by or approved by the department. Such certification of satisfactory completion of unarmed guard training shall be submitted to the department within seven days of the ending date of each approved training session. A copy of the training certification shall be maintained by the approved training school for a minimum of three years.*

§ ~~6.7.~~ *G.* The resumes and objectives as approved by the department ~~must~~ *shall* be adhered to and all subject matter ~~must~~ *shall* be presented in its entirety.

§ ~~6.8.~~ *H.* Failure to comply with rules and regulations.

All individuals attending an approved training school shall comply with the rules promulgated by the board and any other rules within the authority of the school director. The school director shall be responsible for enforcement of all rules established to govern the conduct of attendees. If the school director considers the violation of the rules detrimental to the welfare of the school, the school director may expel the individual from the school. Notification of such action shall immediately be reported to the employing agency and the director.

PART VII.
~~CERTIFICATION~~ *EFFECTIVE DATE*

§ 7.1. ~~Certification~~ Effective date.

These rules shall be effective ~~January 1, 1986~~ *January 1, 1990,* and until amended or rescinded.

[REPRINTED]

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Title of Regulation: **State Plan for Medical Assistance Relating to Amount, Duration and Scope of Services. VR 460-03-3.1100; VR 460-05-2000.0000; VR 460-05-2000.1000. New Drug Review Program.**

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

Public Hearing Date: N/A - Written comment may be submitted until September 15, 1989
(See Calendar of Events section
for additional information)

Summary:

These proposed regulations provide for the establishment and operation of the Medicaid New Drug Review Committee. The 1989 General Assembly required the Department to develop a plan to review new drugs which can result in their not being covered by Medicaid. Once the Committee determines a new drug is not to be covered, a physician wishing to prescribe the drug must request prior authorization before Medicaid reimbursement will be available.

VR 460-03-3.1100. New Drug Review Program.

General.

The provision of the following services cannot be reimbursed except when they are ordered or prescribed, and directed or performed within the scope of the license of a practitioner of the healing arts: laboratory and x-ray services, family planning services, and home ealth services. Physical therapy services will be reimbursed only when prescribed by a physician.

§ 1. Inpatient hospital services other than those provided in an institution for mental diseases.

A. Medicaid inpatient hospital admissions (lengths-of-stay) are limited to the 75th percentile of PAS (Professional Activity Study of the Commission on Professional and Hospital Activities) diagnostic/procedure limits. For admissions under 15 days that exceed the 75th percentile, the hospital must attach medical justification records to the billing invoice to be considered for additional coverage when medically justified. For all admissions that exceed 14 days up to a maximum of 21 days, the hospital must attach medical justification records to the billing invoice. (See the exception to subsection F of this section.)

B. Medicaid does not pay the medicare (Title XVIII) coinsurance for hospital care after 21 days regardless of the length-of-stay covered by the other insurance. (See exception to subsection F of this section.)

C. Reimbursement for induced abortions is provided in only those cases in which there would be a substantial endangerment to health or life of the mother if the fetus were carried to term.

D. Reimbursement for covered hospital days is limited to one day prior to surgery, unless medically justified. Hospital claims with an admission date more than one day prior to the first surgical date will pend for review by medical staff to determine appropriate medical justification. The hospital must write on or attach the justification to the billing invoice for consideration of reimbursement for additional preoperative days. Medically justified situations are those where appropriate medical care cannot be obtained except in an acute hospital setting thereby warranting hospital admission. Medically unjustified days in such admissions will be denied.

E. Reimbursement will not be provided for weekend

(Friday/Saturday) admissions, unless medically justified. Hospital claims with admission dates on Friday or Saturday will be pended for review by medical staff to determine appropriate medical justification for these days. The hospital must write on or attach the justification to the billing invoice for consideration of reimbursement coverage for these days. Medically justified situations are those where appropriate medical care cannot be obtained except in an acute hospital setting thereby warranting hospital admission. Medically unjustified days in such admission will be denied.

F. Coverage of inpatient hospitalization will be limited to a total of 21 days for all admissions within a fixed period, which would begin with the first day inpatient hospital services are furnished to an eligible recipient and end 60 days from the day of the first admission. There may be multiple admissions during this 60-day period; however, when total days exceed 21, all subsequent claims will be reviewed. Claims which exceed 21 days within 60 days with a different diagnosis and medical justification will be paid. Any claim which has the same or similar diagnosis will be denied.

EXCEPTION: SPECIAL PROVISIONS FOR ELIGIBLE INDIVIDUALS UNDER 21 YEARS OF AGE: Consistent with 42 CFR 441.57, payment of medical assistance services shall be made on behalf of individuals under 21 years of age, who are Medicaid eligible, for medically necessary stays in acute care facilities in excess of 21 days per admission when such services are rendered for the purpose of diagnosis and treatment of health conditions identified through a physical examination. Medical documentation justifying admission and the continued length of stay must be attached to or written on the invoice for review by medical staff to determine medical necessity. Medically unjustified days in such admissions will be denied.

G. Reimbursement will not be provided for inpatient hospitalization for any selected elective surgical procedures that require a second surgical opinion unless a properly executed second surgical opinion form has been obtained from the physician and submitted with the hospital invoice for payment, or is a justified emergency or exemption. The requirements for second surgical opinion do not apply to recipients in the retroactive eligibility period.

H. Reimbursement will not be provided for inpatient hospitalization for those surgical and diagnostic procedures listed on the mandatory outpatient surgery list unless the inpatient stay is medically justified or meets one of the exceptions. The requirements for mandatory outpatient surgery do not apply to recipients in the retroactive eligibility period.

I. For the purposes of organ transplantation, all similarly situated individuals will be treated alike. Coverage of transplant services for all eligible persons is limited to transplants for kidneys and corneas. Kidney transplants require preauthorization. Cornea transplants do not require preauthorization. The patient must be considered acceptable for coverage and treatment. The treating facility and transplant staff must be recognized as being capable of providing high quality care in the performance of the requested transplant. The amount of reimbursement for covered kidney transplant services is negotiable with the providers on an individual case basis. Reimbursement for covered cornea transplants is at the allowed Medicaid rate. Standards for coverage of organ transplant services are in Attachment 3.1 E.

§ 2. Outpatient hospital and rural health clinic services.

2a. Outpatient hospital services.

1. Outpatient hospital services means preventive, diagnostic, therapeutic, rehabilitative, or palliative services that:

a. Are furnished to outpatients;

b. Except in the case of nurse-midwife services, as specified in § 440.165, are furnished by or under the direction of a physician or dentist; and

c. Are furnished by an institution that:

(1) Is licensed or formally approved as a hospital by an officially designated authority for state standard-setting; and

(2) Except in the case of medical supervision of nurse-midwife services, as specified in § 440.165, meets the requirements for participation in Medicare.

2. Reimbursement for induced abortions is provided in only those cases in which there would be substantial endangerment of health or life to the mother if the fetus were carried to term.

3. Reimbursement will not be provided for outpatient hospital services for any selected elective surgical procedures that require a second surgical opinion unless a properly executed second surgical opinion form has been obtained from the physician and submitted with the invoice for payment, or is a justified emergency or exemption.

2b. Rural health clinic services and other ambulatory services furnished by a rural health clinic.

No limitations on this service.

§ 3. Other laboratory and x-ray services.

Service must be ordered or prescribed and directed or performed within the scope of a license of the practitioner of the healing arts.

§ 4. Skilled nursing facility services, EPSDT and family

planning.

4a. Skilled nursing facility services (other than services in an institution for mental diseases) for individuals 21 years of age or older.

Service must be ordered or prescribed and directed or performed within the scope of a license of the practitioner of the healing arts.

4b. Early and periodic screening and diagnosis of individuals under 21 years of age, and treatment of conditions found.

1. Consistent with 42 CFR 441.57, payment of medical assistance services shall be made on behalf of individuals under 21 years of age, who are Medicaid eligible, for medically necessary stays in acute care facilities, and the accompanying attendant physician care, in excess of 21 days per admission when such services are rendered for the purpose of diagnosis and treatment of health conditions identified through a physical examination.

2. Routine physicals and immunizations (except as provided through EPSDT) are not covered except that well-child examinations in a private physician's office are covered for foster children of the local social services departments on specific referral from those departments.

3. Eyeglasses are provided only as a result of Early and Periodic Screening, Diagnosis and Treatment (EPSDT) and require prior authorization by the Program.

4c. Family planning services and supplies for individuals of child-bearing age.

Service must be ordered or prescribed and directed or performed within the scope of the license of a practitioner of the healing arts.

§ 5. Physician's services whether furnished in the office, the patient's home, a hospital, a skilled nursing facility or elsewhere.

A. Elective surgery as defined by the Program is surgery that is not medically necessary to restore or materially improve a body function.

B. Cosmetic surgical procedures are not covered unless performed for physiological reasons and require Program prior approval.

C. Routine physicals and immunizations are not covered except when the services are provided under the Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) Program and when a well-child examination is performed in a private physician's office for a foster child of the local social services department on specific referral from those departments.

D. Psychiatric services are limited to an initial availability of 26 sessions, with one possible extension (subject to the approval of the Psychiatric Review Board) of 26 sessions during the first year of treatment. The availability is further restricted to no more than 26 sessions each succeeding year when approved by the Psychiatric Review Board. Psychiatric services are further restricted to no more than three sessions in any given seven-day period. These limitations also apply to psychotherapy sessions by clinical psychologists licensed by the State Board of Medicine.

E. Any procedure considered experimental is not covered.

F. Reimbursement for induced abortions is provided in only those cases in which there would be a substantial endangerment of health or life to the mother if the fetus were carried to term.

G. Physician visits to inpatient hospital patients are limited to a maximum of 21 days per admission within 60 days for the same or similar diagnoses and is further restricted to medically necessary inpatient hospital days as determined by the Program.

EXCEPTION: SPECIAL PROVISIONS FOR ELIGIBLE INDIVIDUALS UNDER 21 YEARS OF AGE: Consistent with 42 CFR 441.57, payment of medical assistance services shall be made on behalf of individuals under 21 years of age, who are Medicaid eligible, for medically necessary stays in acute care facilities in excess of 21 days per admission when such services are rendered for the purpose of diagnosis and treatment of health conditions identified through a physical examination. Payments for physician visits for inpatient days determined to be medically unjustified will be adjusted.

H. Psychological testing and psychotherapy by clinical psychologists licensed by the State Board of Medicine are covered.

I. Reimbursement will not be provided for physician services for those selected elective surgical procedures requiring a second surgical opinion unless a properly executed second surgical opinion form has been submitted with the invoice for payment, or is a justified emergency or exemption. The requirements for second surgical opinion do not apply to recipients in a retroactive eligibility period.

J. Reimbursement will not be provided for physician services performed in the inpatient setting for those surgical or diagnostic procedures listed on the mandatory outpatient surgery list unless the service is medically justified or meets one of the exceptions. The requirements of mandatory outpatient surgery do not apply to recipients in a retroactive eligibility period.

K. For the purposes of organ transplantation, all similarly situated individuals will be treated alike. Coverage of transplant services for all eligible persons is limited to transplants for kidneys and corneas. Kidney transplants require preauthorization. Cornea transplants do not require preauthorization. The patient must be considered acceptable for coverage and treatment. The treating facility and transplant staff must be recognized as being capable of providing high quality care in the performance of the requested transplant. The amount of reimbursement for covered kidney transplant services is negotiable with the providers on an individual case basis. Reimbursement for covered cornea transplants is at the allowed Medicaid rate. Standards for coverage of organ transplant services are in Attachment 3.1 E.

§ 6. Medical care by other licensed practitioners within the scope of their practice as defined by state law.

A. Podiatrists' services.

1. Covered podiatry services are defined as reasonable and necessary diagnostic, medical, or surgical treatment of disease, injury, or defects of the human foot. These services must be within the scope of the license of the podiatrists' profession and defined by state law.

2. The following services are not covered: preventive health care, including routine foot care; treatment of structural misalignment not requiring surgery; cutting or removal of corns, warts, or calluses; experimental procedures; acupuncture.

3. The Program may place appropriate limits on a service based on medical necessity or for utilization control, or both.

B. Optometric services.

1. Diagnostic examination and optometric treatment procedures and services (except for orthoptics) by ophthamologists, optometrists, and opticians, as allowed by the Code of Virginia and by regulations of the Boards of Medicine and Optometry, are covered for all recipients. Routine refractions are limited to once in 24 months except as may be authorized by the agency.

C. Chiropractors' services.

Not provided.

D. Other practitioners' services.

1. Clinical psychologists' services.

a. These limitations apply to psychotherapy sessions by clinical psychologists licensed by the State Board of Medicine. Psychiatric services are limited to an initial availability of 26 sessions, with one possible extension of 26 sessions during the first year of treatment. The availability is further restricted to no more than 26 sessions each succeeding year when approved by the Psychiatric Review Board. Psychiatric services are further restricted to no more than three sessions in any given seven-day period.

b. Psychological testing and psychotherapy by clinical psychologists licensed by the State Board of Medicine are covered.

§ 7. Home Health services.

A. Service must be ordered or prescribed and directed or performed within the scope of a license of a practitioner of the healing arts.

B. Intermittent or part-time nursing service provided by a home health agency or by a registered nurse when no home health agency exists in the area.

C. Home health aide services provided by a home health agency.

Home health aides must function under the supervision of a professional nurse.

D. Medical supplies, equipment, and appliances suitable for use in the home.

1. All medical supplies, equipment, and appliances are available to patients of the home health agency.

2. Medical supplies, equipment, and appliances for all others are limited to home renal dialysis equipment and supplies, and respiratory equipment and oxygen, and ostomy supplies, as preauthorized by the local health department.

E. Physical therapy, occupational therapy, or speech pathology and audiology services provided by a home health agency or medical rehabilitation facility.

Service covered only as part of a physician's plan of care.

§ 8. Private duty nursing services.

Not provided.

§ 9. Clinic services.

A. Reimbursement for induced abortions is provided in only those cases in which there would be a substantial endangerment of health or life to the mother if the fetus was carried to term.

B. Clinic services means preventive, diagnostic, therapeutic, rehabilitative, or palliative items or services that:

1. Are provided to outpatients;

2. Are provided by a facility that is not part of a hospital but is organized and operated to provide medical care to outpatients; and

3. Except in the case of nurse-midwife services, as specified in 42 CFR § 440.165, are furnished by or under the direction of a physician or dentist.

§ 10. Dental services.

A. Dental services are limited to recipients under 21 years of age in fulfillment of the treatment requirements under the Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) Program and defined as routine diagnostic, preventive, or restorative procedures necessary for oral health provided by or under the direct supervision of a dentist in accordance with the State Dental Practice Act.

B. Initial, periodic, and emergency examinations; required radiography necessary to develop a treatment plan; patient education; dental prophylaxis; fluoride treatments; routine amalgam and composite restorations; crown recementation; pulpotomies; emergency endodontics for temporary relief of pain; pulp capping; sedative fillings; therapeutic apical closure; topical palliative treatment for dental pain; removal of foreign body; simple extractions; root recovery; incision and drainage of abscess; surgical exposure of the tooth to aid eruption; sequestrectomy for osteomyelitis; and oral antral fistula closure are dental services covered without preauthorization by the state agency.

C. All covered dental services not referenced above require preauthorization by the state agency. *The following services are also covered through preauthorization: medically necessary full banded orthodontics, tooth guidance appliances, complete and partial dentures, surgical preparation (alveoloplasty) for prosthetics, single permanent crowns, and bridges.* The following services are not covered: full banded orthodontics; permanent crowns and all bridges; removable complete and partial dentures; routine bases under restorations; and inhalation analgesia.

D. The state agency may place appropriate limits on a service based on ~~dental~~ *medical* necessity, for utilization control, or both. Examples of service limitations are: examinations, prophylaxis, fluoride treatment (once/six months); space maintenance appliances; bitewing x-ray – two films (once/12 months); routine amalgam and composite restorations (once/three years); *dentures (once per 5 years)* and extractions, *orthodontics, tooth guidance appliances,* permanent crowns, and bridges, endodontics, patient education (once).

E. Limited oral surgery procedures, as defined and covered under Title XVIII (Medicare), are covered for all recipients, and also require preauthorization by the state agency.

§ 11. Physical therapy and related services.

11a. Physical therapy.

Services for individuals requiring physical therapy are provided only as an element of hospital inpatient or outpatient service, skilled nursing home service, home health service, or when otherwise included as an authorized service by a cost provider who provides rehabilitation services.

11b. Occupational therapy.

Services for individuals requiring occupational therapy are provided only as an element of hospital inpatient or outpatient service, skilled nursing home service, home health service, or when otherwise included as an authorized service by a cost provider who provides rehabilitation services.

11c. Services for individuals with speech, hearing, and language disorders (provided by or under the supervision of a speech pathologist or audiologist; see General section and subsections 11a and 11b of this section.)

These services are provided by or under the supervision of a speech pathologist or an audiologist only as an element of hospital inpatient or outpatient service, skilled nursing home service, home health service, or when otherwise included as an authorized service by a cost provider who provides rehabilitation services.

§ 12. Prescribed drugs, dentures, and prosthetic devices; and eyeglasses prescribed by a physician skilled in diseases of the eye or by an optometrist.

12a. Prescribed drugs.

1. Nonlegend drugs, except insulin, syringes, needles, diabetic test strips for clients under 21 years of age, and family planning supplies are not covered by Medicaid. This limitation does not apply to Medicaid recipients who are in skilled and intermediate care facilities.

2. Legend drugs, with the exception of anorexiant drugs prescribed for weight loss and transdermal drug delivery systems, are covered. Coverage of anorexiants for other than weight loss requires preauthorization.

3. The Program will not provide reimbursement for drugs determined by the Food and Drug Administration (FDA) to lack substantial evidence of effectiveness.

4. Notwithstanding the provisions of § 32.1-87 of the Code of Virginia, prescriptions for Medicaid recipients for specific multiple source drugs shall be filled with generic drug products listed in the Virginia Voluntary Formulary unless the physician or other practitioners so licensed and certified to prescribe drugs certifies in

his own handwriting "brand necessary" for the prescription to be dispensed as written.

12b. Dentures.

Provided only as a result of EPSDT and subject to medical necessity and preauthorization requirements specified under Dental Services.

12c. Prosthetic devices.

Not provided.

12d. Eyeglasses.

Eyeglasses shall be reimbursed for all recipients younger than 21 years of age according to medical necessity when provided by practitioners as licensed under the Code of Virginia.

§ 13. Other diagnostic, screening, preventive, and rehabilitative services, i.e., other than those provided elsewhere in this plan.

13a. Diagnostic services.

Not provided.

13b. Screening services.

Not provided.

13c. Preventive services.

Not provided.

13d. Rehabilitative services.

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.

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.

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.

4. 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 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 be carried out under the continuing direct supervision of a physician with special training or experience in the field of rehabilitation.

§ 14. Services for individuals age 65 or older in institutions for mental diseases.

14a. Inpatient hospital services.

Provided, no limitations.

14b. Skilled nursing facility services.

Provided, no limitations.

14c. Intermediate care facility.

Provided, no limitations.

§ 15. Intermediate care services and intermediate care services for institutions for mental disease and mental retardation.

15a. Intermediate care facility services (other than such services in an institution for mental diseases) for persons determined, in accordance with § 1902 (a)(31)(A) of the Act, to be in need of such care.

Provided, no limitations.

15b. Including such services in a public institution (or distinct part thereof) for the mentally retarded or persons with related conditions.

Provided, no limitations.

§ 16. Inpatient psychiatric facility services for individuals under 22 years of age.

Not provided.

§ 17. Nurse-midwife services.

Covered services for the nurse midwife are defined as those services allowed under the licensure requirements of the state statute and as specified in the Code of Federal Regulations, i.e., maternity cycle.

§ 18. Hospice care (in accordance with § 1905 (o) of the Act).

Not provided.

§ 19. Extended services to pregnant women.

19a. Pregnancy-related and postpartum services for 60 days after the pregnancy ends.

The same limitations on all covered services apply to this group as to all other recipient groups.

19b. Services for any other medical conditions that may complicate pregnancy.

The same limitations on all covered services apply to this group as to all other recipient groups.

§ 20. Any other medical care and any other type of remedial care recognized under state law, specified by the Secretary of Health and Human Services.

20a. Transportation.

Nonemergency transportation is administered by local health department jurisdictions in accordance with reimbursement procedures established by the Program.

20b. Services of Christian Science nurses.

Not provided.

20c. Care and services provided in Christian Science sanitoria.

Provided, no limitations.

20d. Skilled nursing facility services for patients under 21 years of age.

Provided, no limitations.

20e. Emergency hospital services.

Provided, no limitations.

20f. Personal care services in recipient's home, prescribed in accordance with a plan of treatment and provided by a qualified person under supervision of a registered nurse.

Not provided.

VR 460-05-2000.0000. New Drug Review Program.

PART I.
GENERAL.

Article 1.

§ 1.1. Definitions.

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

"Board" means the Board of Medical Assistance Services.

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

"Director" means the Director of Medical Assistance Services.

"Drug information service" means that professional information service which operates in accordance with the standards of the American Society of Hospital Pharmacists, and which, under specific contract with DMAS, provides unbiased, authoritative, objective, comprehensive, and evaluative packages of information on specific new drug products.

"Food and Drug Administration or FDA" means the United States Food and Drug Administration.

"Investigational New Drug Application or IND" means that application which is the sponsor's submission to the FDA indicating that clinical investigation will take place.

"Medicaid New Drug Review Committee or MNDRC" means that committee responsible for evaluating new drug products for the Department of Medical Assistance Services.

"New drug" Means FDA approved NDAs or ANDAs or selected treatment INDs for new chemical entities; new dosage forms of existing covered entities; and selected new strengths of existing products.

"New Drug Application or NDA and Abbreviated New Drug Application or ANDA" means application submitted to FDA.

"New strengths" means those strengths of an already approved and reimbursable drug product which are to be prescribed at a different dosing regimen than the strength already reimbursable by DMAS.

"Treatment Investigational New Drug or Treatment IND" means a drug still in the investigation process but made available for use by patients who are not in the clinical trails but have serious or life-threatening diseases for which satisfactory alternative drugs are not available.

1.2. Purpose of Medicaid New Drug Review Program.

The purpose of the Medicaid New Drug Review Program is to limit coverage of new drug products which have less expensive therapeutic alternatives unless, as mandated by the Generaly Assembly, a physician obtains prior approval for their use.

Article 2.
Committee Establishment.

§ 1.3. Establishment of committee to review new drugs.

The Director of DMAS shall establish a committee herein called the Medicaid New Drug Review Committee (MNDRC) for the purpose of reviewing new drug products to recommend coverage decisions to the Board.

Article 3.
Members and Duties.

§ 1.4. Committee Appointments.

A. The MNDRC shall have 12 voting members, 10 of whom are physicians and 2 of whom are pharmacists. The Director of DMAS shall appoint the physician members from candidates submitted by the Medical Society of Virginia, the Old Dominion Medical Society, and each of the medical schools in the Commonwealth. The physician candidates shall be physicians licensed in Virginia and broadly representative of various medical specialties. The Director shall appoint the pharmacist members from candidates submitted by the Department of Pharmacy at the Medical College of Virginia Hospitals, the Medical College of Virginia/Virginia Commonwealth University School of Pharmacy, the Virginia Pharmaceutical Association (VPhA), and the Virginia Society of Hospital Pharmacists (VSHP). The Director of DMAS shall invite submission of candidates from each of these groups.

B. The Director shall appoint a Technical Advisory Panel to advise the Board on any matters relating to the administration of the New Drug Review Program as may be appropriate from time to time. The panel shall consist of four members, one each from the following organizations: one member representing the Pharmaceutical Manufacturers Association, one member representing the Virginia Pharmaceutical Association, one member representing the Virginia Association of Chain Drug Stores, and one DMAS representative.

C. The MNDRC and Technical Advisory Panel members shall serve at the pleasure of the Director for terms established by him. Vacancies shall be filled in the same manner as the original appointment.

D. DMAS shall provide staff assistance to the MNDRC and its officers in the routine conduct of its business.

§ 1.5. Duties of the Committee.

A. The committee shall meet no less than quarterly and, in addition, upon call by the Board, the DMAS Director, or any two voting members. A quorum for action by the MNDEC shall be seven voting members.

B. The MNDRC shall elect from among its members a chairman, a vice-chairman, and a secretary. Officers may be elected to successive terms.

C. The secretary of the MNDRC shall keep a full record of the proceedings of the committee. The record shall be open to public inspection at all reasonable times.

D. The MNDRC shall establish such rules as are necessary to conduct its business.

E. The MNDRC shall evaluate a new drug based on, but not limited to, the following factors:

1. The medical/therapeutic benefit of the new drug product under consideration compared to currently available drug products.

2. The comparison of the cost of the new drug product to therapeutically equivalent drug products already reimbursable under Medicaid.

PART II.
NEW DRUG REVIEW PROCESS.

Article 1.
Applications for Consideration.

§ 2.1. Applications for Drug Review.

A. Any licensed physician or MNDRC member, or manufacturer or other supplier of a new drug, may petition the MNDRC through the application process to consider a new drug product. The form of application and information required shall be as specified by the Department. The MNDRC may require that all such information be verified by affidavit or oath.

B. DMAS, upon receipt of MNDRC applications, shall acknowledge the receipt and state whether the application and accompanying information are complete.

C. Applications for MNDRC's consideration shall be submitted to:

New Drug Review Committee
Attention: DMAS Pharmacist
Department of Medical Assistance Services
600 East Broad Street, Suite 1300
Richmond, Virginia 23219

D. Persons submitting applications for review of new drugs shall supply the required number of copies of documents indicated on the application form.

E. New drug applications and supplementary documents received less than 30 days prior to the next committee meeting shall become agenda items for the subsequent meeting.

Article 2.
Review Process.

§ 2.2. Review Procedure.

A. The MNDRC shall consider information submitted by a contracting drug information service or any other appropriate source in reaching its decision.

B. The MNDRC shall request the Director or his designee to contract with a drug information service to perform a thorough review and analysis of a new drug for which DMAS has received an application. DMAS shall, upon receipt of the contractor's evaluation, transmit it along with the application for coverage and any other supporting attachments to the committee members.

C. The MNDRC shall review an application which is complete within six months of date of receipt.

D. The Board shall determine coverage of a new drug based on the recommendation rendered by the MNDRC.

E. DMAS shall notify applicants and providers within 60 days of the Board's decision regarding coverage of new drugs.

F. DMAS shall notify an applicant within 10 working days of the Board's decision on coverage. If the coverage is denied, the applicant will be advised of its right to apply for reconsideration after six months.

§ 2.3. Exception Process.

A. Medicaid reimbursement shall not be available for new drugs which have not been approved for coverage by the Board except through a prior approval process developed by DMAS.

B. Physicians who prescribe non-covered new drugs must obtain prior approval for the new drug before reimbursement can be allowed.

§ 2.4. Reconsideration of Denied Coverage.

A. Applicants may not request reconsideration of a coverage denial prior to six months from the date of the denial.

B. Reconsideration of a denial decision shall only be based upon new or previously unavailable relevant and objective information not already considered by the committee.

C. Within six months of the date of receipt, the MNDRC shall review an application for re-consideration which is complete.

VR 460-05-2000.1000. New Drug Review Program.

New Drugs Not Covered by Medicaid.

At such time as the Board of Medical Assistance Services makes decisions about which new drugs will not be covered by the Medicaid Program, those new drugs will be listed alphabetically by their chemical names.

FINAL REGULATIONS

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.

DEPARTMENT OF AIR POLLUTION CONTROL (STATE BOARD OF)

Title of Regulation: **VR 120-99-01. Regulation for the Control of Motor Vehicle Emissions.**

Statutory Authority: § 46.1-326.6 (§ 46.2-1180 eff. 10/1/89) of the Code of Virginia.

Effective Date: October 1, 1989.

Summary:

The regulation concerns the inspection of motor vehicle emissions in the Northern Virginia area (Arlington County, Fairfax County, Prince William County, the City of Alexandria, the City of Fairfax, the City of Falls Church, the City of Manassas, and the City of Manassas Park) and subsequent repairs as necessary to meet air pollution control requirements, and includes the following:

A. Definitions (Part I).

This part contains the definitions necessary to support and clarify the remaining parts.

B. General provisions (Part II).

This part contains the general provisions necessary to support the remaining parts. Subjects covered include: applicability and authority of department, establishment of regulations and orders, hearings and proceedings, variances, appeals, right of entry, conditions on approvals, and procedural information and guidance.

C. Emission standards for motor vehicle air pollution (Part III).

This part contains emission standards for vehicle exhaust emissions (hydrocarbons, carbon monoxide and smoke) and emissions control systems.

D. Inspection station licensing and operation (Part IV).

This part contains the requirements and procedures for obtaining a license to become an emissions inspection station, to include fleet stations; the facility and equipment required for an inspection; the analyzer system operations and document usage; and mechanic/inspector number and security code usage.

E. Emissions mechanic/inspector testing and licensing (Part V).

This part contains the requirements and procedures for qualifying and licensing emissions mechanics and/or inspectors.

F. Inspection procedures (Part VI).

This part contains the requirements and procedures for conducting emissions inspections. Key steps in the procedure are as follows:

1. An agreement with the customer, oral or written, to perform an emissions inspection.

2. The inspection of emissions control systems.

3. The test of emissions levels using an analyzer system.

4. The inspection for visible smoke.

5. Document distribution.

6. Customer advisement.

7. Free retest, if necessary, within 15 days of original test.

Also covered are the requirements for low-emissions tune-up, emissions related repairs and engine changes.

G. Enforcement procedures (Part VII).

This part contains the procedures to enforce the regulation.

VR 120-99-01. Regulation for the Control of Motor Vehicle Emissions.

PART I.
DEFINITIONS.

§ 1.1. General.

A. For the purpose of this regulation and subsequent amendments or any orders issued by the board, the words or terms shall have the meanings given them in § 1.2.

B. Unless specifically defined in the Virginia Motor Vehicle Emissions Control Law or in this regulation, terms used shall have the meanings commonly ascribed to them by recognized authorities.

§ 1.2. Terms defined.

"Access code" means the security phrase or number which allows emissions inspectors, department personnel, and service technicians to perform specific assigned functions using the certified analyzer system, as determined by the department.

"Administrative Process Act" means Title 9, Chapter 1.1:1 of the Code of Virginia.

"Air intake systems" means those systems which allow for the induction of ambient air (to include preheated air) into the engine combustion chamber for the purpose of mixing with a fuel for combustion.

"Air pollution" means the presence in the outdoor atmosphere of one or more substances which are or may be harmful or injurious to human health, welfare or safety; to animal or plant life; or to property; or which unreasonably interfere with the enjoyment by the people of life or property.

"Air systems" means a system for providing supplementary air into a vehicle's exhaust system to promote further oxidation of hydrocarbons and carbon monoxide gases and to assist catalytic reaction.

"Basic engine systems" means those parts or assemblies which provide for the efficient conversion of a compressed air/fuel charge into useful power to include but not limited to valve train mechanisms, cylinder head to block integrity, piston-ring-cylinder sealing integrity and post-combustion emissions control device integrity.

"Board" means the State Air Pollution Control Board or its designated representative.

"Calibration" means the process of establishing or verifying the total response curve of an exhaust gas analyzer, using several different calibration gases having precisely known concentrations.

"Calibration gases" means gases of precisely known concentration which are used as references for establishing or verifying the calibration curve of an exhaust gas analyzer.

"Catalytic converter" means a post-combustion device which oxidizes hydrocarbon and carbon monoxide gases or reduces oxides of nitrogen, or both.

"Certificate of vehicle emissions inspection" means the official document issued by the department to emissions inspection stations and used by those stations to report the results of the vehicle emissions inspection. The results may indicate (i) approval, which means that a motor vehicle has satisfactorily complied with the applicable emission standards and passed the requisite emissions inspection; (ii) rejection, which means that a motor vehicle has not complied with the applicable emission standards and failed the requisite inspection; or (iii) waiver which means that compliance with the applicable emissions standards has been waived. Part B of the Certificate of Vehicle Emissions Inspection is the official document of the department and is to be used by vehicle owners as proof of the vehicle emissions inspection. If it indicates approval or waiver, Part B shall be submitted to the Department of Motor Vehicles for registration, both initial and renewals. [*The certificate of vehicle emissions inspection waiver shall be valid for two years. The sale or trade of the vehicle shall not affect the expiration date of the certificate.*]

"Certified analyzer system" or Analyzer system" means the complete system which samples and reads concentrations of hydrocarbon, carbon dioxide, and carbon monoxide gases and which is approved for use in the Vehicle Emission Control Program by the board in accordance with VR 120-99-02. The system includes the sample handling system, the exhaust gas analyzer, associated automation hardware and software, and the enclosure cabinet.

"Consent agreement" means an agreement that the owner [*or any other person*] will perform specific actions for the purpose of diminishing or abating the causes of air pollution or for the purpose of coming into compliance with these regulations, by mutual agreement of the owner [*or any other person*] and the board.

"Consent order" means a consent agreement issued as an order. Such orders may be issued without a hearing.

"Data medium" means the medium contained in the certified analyzer system and used to electronically record test data.

"Day" means a 24-hour period beginning at midnight.

"Department" means any employee or other representative of the Virginia Department of Air Pollution Control, as designated by the executive director.

"Division" means the Division of Mobile Source Operations of the Virginia Department of Air Pollution Control.

"Electrical," "electronic," or "electromechanical span" means the adjustment of an exhaust gas analyzer by using an electronic signal as the reference source rather than a calibration or span gas as the reference source.

"Emergency" means a situation that immediately and unreasonably affects, or has the potential to immediately and unreasonably affect, public health, safety or welfare; the health of animal or plant life; or property, whether used for recreational, commercial, industrial, agricultural or other reasonable use.

"Emission standard" means any provision of Part III which prescribes an emission limitation, or other emission control requirements for motor vehicle air pollution.

"Emissions control systems" means those parts, assemblies or systems originally installed by the manufacturer in or on a vehicle for the sole purpose of reducing emissions.

"Emissions inspection station" means any official inspection station authorized by the superintendent to make safety inspections pursuant to [~~Article 10 (§ 46.1-315 et. seq.) of Chapter 4 of Title 46.1~~ *Article 21 (§ 46.2-1157 et seq.) of Chapter 10 of Title 46.2*] of the Code of Virginia and which has applied for and obtained an emissions inspection station license from the board which authorizes the official inspection station to perform emissions standards inspections in accordance with the provisions of this regulation.

"Emissions inspector" or "inspector" means a person licensed by the department to perform inspections of vehicles required under the Virginia Motor Vehicle Emissions Control Law who is employed at a licensed emissions inspection station and is qualified in accordance with this regulation.

"Emissions mechanic" or "mechanic" means a person licensed by the department to perform vehicle repairs required under the Virginia Motor Vehicle Emissions Control Law who is employed at a licensed emissions inspection station and is qualified in accordance with this regulation.

"Executive director" means the executive director of the Department of Air Pollution Control or his designated representative.

"Exhaust gas analyzer" means an instrument which is capable of measuring the concentrations of certain air pollutants in the exhaust gas emanating from a motor vehicle.

"Federal Clean Air Act" means 42 USC 7401 et seq., 91 Stat 685.

"Fleet emissions inspection station" means a licensed emissions inspection station with 20 or more vehicles owned, leased, or consigned to the same entity that holds the station license. Fleet stations are authorized to perform emissions inspections, repairs and adjustments only on vehicles in their fleet.

"Fuel control systems" means those mechanical, electromechanical, galvanic or electronic parts or assemblies which regulate the air/fuel ratio in an engine for the purpose of providing a combustible charge.

"Fuel filler neck restrictor" means the orifice and obstruction in the vehicle gas tank filler neck that prevents the insertion of a "leaded gasoline" nozzle.

"Gas span" means the adjustment of an exhaust gas analyzer to correspond with known concentrations of span gases.

"Gas span check" means a procedure using known concentrations of span gases to verify the gas span adjustment of an analyzer.

"General Assembly" means both houses of the Commonwealth of Virginia legislature.

"Gross vehicle weight" means the maximum recommended combined weight of the motor vehicle and its load as prescribed by the manufacturer and expressed on a permanent identification label affixed to the motor vehicle.

"Idle mode" means a condition where the vehicle engine is warm and running at the rate specified by the manufacturer's curb idle, where the engine is not propelling the vehicle, and where the throttle is in the closed or idle stop position.

"Ignition systems" means those parts or assemblies which are designed to cause and time the ignition of a compressed air/fuel charge.

"Inspection area" means the area that is occupied by the certified analyzer system and the vehicle being inspected.

"Inspector access code" means the security phrase or number issued by the department to an emissions inspector that identifies the inspector.

"Locality" means a city, town, county or other public body created by or pursuant to state law.

"Low emissions tune-up" means the performance of the following procedures on a motor vehicle:

1. Inspection of the choke, and the cleaning, repair or replacement as required.

2. Adjustment of the idle speed and air-fuel mixture according to the manufacturer's specifications.

3. Adjustment of the ignition dwell or gap and ignition timing according to manufacturer's specifications.

4. Inspection of the positive crankcase ventilation valve and vacuum hoses and the repair and replacement of those parts as required.

5. Inspection of the spark plugs and spark plug wires and the repair and replacement of those parts as may be required.

6. Inspection of the air filter and fuel filter and the replacement of those parts as required.

7. Inspection of distributor and distributor cap and the replacement of those parts as required.

"Mechanic/inspector number" means the alpha or

numeric identifier issued by the department to every emissions mechanic/inspector at the time of licensing.

"Motor vehicle" means any vehicle which:

1. Is subject to registration in Virginia by the Department of Motor Vehicles;

2. Is designed for the transportation of persons or property;

3. Is more than one year but less than 21 years old, measured from the model year of such motor vehicle or, if the motor vehicle does not have a model year, measured from the year of manufacture;

4. Is powered by an internal combustion engine; and

5. Has a gross vehicle weight of 8,500 pounds or less.

The term "motor vehicle" does not include any:

1. Vehicle powered by a diesel engine;

2. Motorcycle;

3. Vehicle which, at the time of its manufacture, was not designed to meet the emissions standards set by the federal government; or

4. Motor vehicle which is either (i) of the same model year as the current calendar year or (ii) less than one year old, measured from the model year of such motor vehicle.

"Normal business hours" for emissions inspection stations, means Monday through Friday, 9 a.m. through 5 p.m., with the exception of national holidays, temporary closures noticed to the department and closures due to the inability to meet the requirements of this regulation.

"One hour" means any period of 60 consecutive minutes.

"One-hour period" means any period of 60 consecutive minutes commencing on the hour.

"Order" means any decision or directive of the board rendered for the purpose of diminishing or abating the causes of air pollution or enforcement of these regulations. Unless specified otherwise in these regulations, orders shall only be issued after the appropriate hearing.

"Original condition" means the condition as installed by the manufacturer but not necessarily to the original level of effectiveness.

"Owner" means any person, including bodies politic and corporate, associations, partnerships, personal representatives, trustees and committees, as well as individuals, who owns, leases, operates, controls or supervises an emissions inspection station.

"Person" as used in these regulations, shall have no connotation other than that customarily assigned to the term "person," but shall include bodies politic and corporate, associations, partnerships, personal representatives, trustees and committees, as well as individuals.

"Pollutant" means any substance the presence of which in the outdoor atmosphere is or may be harmful or injurious to human health, welfare or safety, to animal or plant life, or to property, or which unreasonably interferes with the enjoyment by the people of life or property.

"Retest" means a type of test selected when a request for an inspection is accompanied by a completed certificate of vehicle emissions inspection indicating a previous failure.

"Span gas" means gases of known concentration used as references to adjust or verify the accuracy of an exhaust gas analyzer that are approved by the board and are so labeled.

"Standard conditions" means a temperature of 68°F and a pressure of 29.92 inches of mercury.

"Standarized instruments" means laboratory instruments calibrated with precision gases traceable to the National Bureau of Standards and accepted by the board as the standards to be used for comparison purposes. All candidate instruments are compared in performance to the standardized instruments.

"State Implementation Plan" means the plan, including the most recent revision thereof, which has been approved or promulgated by the administrator, U.S. Environmental Protection Agency, under § 110 of the federal Clean Air Act, and which implements the requirements of § 110.

"Superintendent" means the Superintendent of the Department of State Police.

"Test" means an inspection of a vehicle performed by an emissions inspector employed by an emissions inspection station, using the procedures and provisions set forth in this regulation.

"Thermometer, certified" means a laboratory grade ambient temperature measuring device with a range of at least 20°F through 120°F, and an attested accuracy of at least +/-1°F with increments of 1°, with protective shielding and approved by the board.

"These regulations" means this regulation (VR 120-99-01) and the Regulation for Vehicle Emissions Control Program Analyzer Systems (VR 120-99-02).

"True concentration" means the concentration of the gases of interest as measured by a standardized instrument which has been calibrated with 1.0% precision gases traceable to the National Bureau of Standards.

"Variance" means the temporary exemption of an owner or other person from these regulations, or a temporary change in these regulations as they apply to an owner or other person.

"Virginia Air Pollution Control Law" means Title 10.1, Chapter 13 of the Code of Virginia.

"Virginia Motor Vehicle Emissions Control Law" means [~~Title 46.1, Chapter 4, Article 10.1~~ *Title 46.2, Chapter 10, Article 22*] of the Code of Virginia.

"Virginia Vehicle Emissions Control Program" means the program for the inspection and control of motor vehicle emissions established by Virginia Motor Vehicle Emissions Control Law.

"Zero gas" means a gas, usually air or nitrogen, which is used as a reference for establishing or verifying the zero point of an exhaust gas analyzer.

PART II.
GENERAL PROVISIONS.

§ 2.1. Applicability and authority of the department.

A. The provisions of these regulations, unless specified otherwise, shall apply to the owner of any motor vehicle registered in Arlington County, Fairfax County, Prince William County, the City of Alexandria, the City of Fairfax, the City of Falls Church, the City of Manassas, and the City of Manassas Park.

B. The provisions of these regulations, unless specified otherwise, shall only apply to those pollutants for which emission standards are set forth in Part III.

C. The provisions of these regulations, unless specified otherwise, shall apply to any owner or other person which conducts emissions inspections.

D. No provision of these regulations shall limit the power of the board to take such appropriate action as necessary to control and abate air pollution in emergency situations.

E. By the adoption of these regulations, the board confers upon the department the administrative and enforcement authority enumerated therein.

§ 2.2. Establishment of regulations and orders.

A. Regulations for the Control of Motor Vehicle Emissions are established to implement the provisions of the Virginia Motor Vehicle Emissions Control Law, the Virginia Air Pollution Control Law, and the Federal Clean Air Act.

B. Regulations for the Control of Motor Vehicle Emissions shall be adopted, amended or repealed in accordance with the provisions of §§ 46.1-326.4, 46.1-326.5 and 46.1-326.14 of the Motor Vehicle Emissions Control Law, § 10.1-1308 of the Virginia Air Pollution Control Law, Articles 1 and 2 of the Administrative Process Act and the Public Participation Guidelines in Appendix E of VR 120-01.

C. Regulations, amendments and repeals shall become effective as provided in § 9-6.14:9.3 of the Administrative Process Act, except in no case shall the effective date be less than 60 days after adoption by the board.

D. If necessary in an emergency situation, the board may adopt, amend or stay a regulation as an exclusion under § 9-6.14:6 of the Administrative Process Act, but such regulation shall remain effective no longer than one year unless readopted following the requirements of subsection B of this section.

E. Orders may be issued pursuant to § 10.1-1307 D of the Virginia Air Pollution Control Law.

§ 2.3. Hearings and proceedings.

A. Hearings and proceedings may take any of the following forms:

1. The public hearing and informational proceeding required before considering regulations or variances, in accordance with §§ 10.1-1308 and 10.1-1307 C of the Virginia Air Pollution Control Law. The procedure for a public hearing and informational proceeding shall conform to § 9-6.14:7.1 of the Administrative Process Act, except as modified by § 10.1-1307 C and F and § 10.1-1308 of the Virginia Air Pollution Conrol Law.

2. The informal proceeding used to make case decisions. The procedure for an informal proceeding shall conform to § 9-6.14:11 of the Administrative Process Act.

3. The formal hearing used for the enforcement or review of its orders and regulations in accordance with § 10.1-1307 D of the Virginia Air Pollution Control Law. The procedure for a formal hearing shall conform to § 9-6.14:12 of the Administrative Process Act, except as modified by § 10.1-1307 D and F of the Virginia Air Pollution Control Law.

B. Records of hearings may be kept in either of the following forms:

1. Oral statements or testimony at any public hearing or informational proceeding will be stenographically or electronically recorded, and may be transcribed to written form.

2. Oral statements or testimony at any informal proceeding will be stenographically or electronically recorded, and may be transcribed to written form.

3. Formal hearings will be recorded by a court

reporter, or electronically recorded for transcription to written form.

C. Availability of record of hearings.

1. A copy of the transcript of a public hearing or informational proceeding, if transcribed, will be provided within a reasonable time to any person upon receipt of a written request and payment of the cost; if not transcribed, the additional cost of preparation will be paid by the person making the request.

2. A copy of the transcript of an informal proceeding, if transcribed, will be provided within a reasonable time to any person upon receipt of a written request and payment of the cost; if not transcribed, the additional cost of preparation will be paid by the person making the request.

3. Any person desiring a copy of the transcript of a formal hearing recorded by a court reporter may purchase the copy directly from the court reporter; if not transcribed, the additional cost of preparation will be paid by the person making the request.

§ 2.4. Variances.

A. Pursuant to § 10.1-1307 C of the Virginia Air Pollution Control Law, the board at its descretion may grant variances to any provision of these regulations after a public hearing in accordance with subsection B of this section.

B. Notices of public hearings on applications for variances shall be advertised in at least one major newspaper of general circulation in the affected Air Quality Control Region at least 30 days prior to the date of the hearing. The notice shall include the subject, location, date, and time of the hearing.

§ 2.5. Appeals.

A. Any owner or other person aggrieved by any action of the board or department taken without a formal hearing, or by inaction of the board [or department, may demand a formal hearing in accordance with § 9-6.14:12 of the Administrative Process Act, provided a petition requesting such hearing is filed with the board. In cases involving actions of the board or department, such petition shall be filed within 30 days after notice of the action from which appeal is pursued is mailed to such owner or other person.

B. Any decision of the board resultant from a formal hearing shall constitute the final decision of the board.

C. Any owner or other person aggrieved by a final decision of the board may appeal such decision in accordance with § 10.1-1318 of the Virginia Air Pollution Control Law and § 9-6.14:16 of the Administrative Process Act. Any petition for appeal shall be filed within 30 days after the date of such final decision.

D. Nothing in this section shall prevent disposition of any case by consent.

E. Any petition for a formal hearing or for an appeal by itself shall not constitute a stay of decision or action.

§ 2.6. Right of entry.

Whenever it is necessary for the purposes of these regulations the department may at reasonable times enter any establishment or upon any property, public or private, for the purpose of obtaining information or conducting surveys or investigation as authorized by § 10.1-1315 of the Virginia Air Pollution Control Law.

§ 2.7. Conditions on approvals.

A. The board may impose conditions upon licenses and other approvals which may be necessary to carry out the policy of the Virginia Motor Vehicle Emissions Control Law and Virginia Air Pollution Control Law, and which are consistent with these regulations. Except as specified herein, nothing in these regulations shall be understood to limit the power of the board in this regard. If the owner or other person fails to adhere to such conditions, the board may proceed with enforcement action under § 7.1. Without limiting the generality of this section, this section shall apply to: approval of variances and issuance of emissions inspection station licenses.

B. An owner or person may consider any condition imposed by the board as a denial of the requested approval or license, which shall entitle the applicant to appeal the decision pursuant to § 2.5.

§ 2.8. Procedural information and guidance.

A. The department may develop detailed procedures which:

1. Require data and information in addition to and in amplification of the provisions of these regulations;

2. Are reasonably designed to determine compliance with applicable provisions of these regulations; and

3. Set forth the format by which all data and information shall be submitted.

B. In cases where these regulations specify that procedures or methods shall be approved by, acceptable to or determined by the department or other similar phrasing, the owner may request information and guidance concerning the proper procedures and methods and the department shall furnish in writing such information on a case-by-case basis.

§ 2.9. Export/import of motor vehicles.

A. Any person may remove the catalyst and restrictive filler inlet from used motor vehicles scheduled for shipment overseas provided that:

1. The export/import of the motor vehicle meets the provisions of subsection B of this section; and

2. The removal of the emission control devices does not take place prior to 10 days before the vehicle is turned into the port authorities and the reinstallation of the emission control devices takes place within 10 days after receipt of the vehicle by the owner from the port authorities.

B. To be exempted under the provisions of subsection A of this section, the motor vehicle must:

1. Be exported/imported under a U.S. Environmental Protection Agency (EPA) approved catalyst control program; or

2. Be exported/imported under a Department of Defense (DOD) privately owned vehicle import control program; or

3. If not under an EPA or DOD program, upon reimport to the United States must be entered through U.S. Customs under cash bond and formal entry procedures (19 CFR Part 12 - Special classes of merchandise) and must be modified to bring it into conformity with applicable federal motor vehicle emission standards (40 CFR Part 86 - Control of air pollution from new motor vehicle engines: Certification and test procedures).

PART III.
EMISSION STANDARDS FOR MOTOR VEHICLE AIR POLLUTION.

§ 3.1. Exhaust emission standards.

A. No motor vehicle shall discharge carbon monoxide (CO) and hydrocarbons (HC) in its exhaust emissions in excess of standards set forth in Table III-1 when measured with a certified analyzer system and by the inspection procedures prescribed in Part VI.

TABLE III-1.
EXHAUST EMISSION STANDARDS.

Model Year	CO (%)	HC (ppm)
1968-69	8.0	800
1970-74	6.0	600
1975-79	4.0	400
1980	2.0	220
1981 and later	1.2	220

B. The board may annually review and adjust the exhaust emission standards in Table III-1, +/- 2% for carbon monoxide and +/- 200 parts per million for hydrocarbons, if it finds the motor vehicle failure rate too high or too low to obtain the desired emission reduction required by the State Implementation Plan.

§ 3.2. Emissions control systems standards.

A. No motor vehicle manufactured for the model year 1973 or for subsequent model years shall be operated on the highways of the Commonwealth unless it is equipped with an emissions control system or device, or combination of such systems or devices, such as a crankcase emissions control system or device, exhaust emissions control system or device, fuel evaporative emissions control system or device, or other emissions control system or device which has been installed in accordance with federal laws and regulations.

B. No motor vehicle or engine shall be operated if any motor vehicle emissions control system or device has been defeated or replaced by installing any part or component which is not (i) a standard factory replacement part or component or (ii) a part or component certified by the U.S. Environmental Protection Agency to comply with the Federal Motor Vehicle Control Program requirements.

C. No motor vehicle or engine shall be operated with the motor vehicle emissions control system or device removed or otherwise rendered inoperable.

D. The provisions of this section shall not prohibit or prevent shop adjustments or replacement, or both, of equipment for maintenance or repair, or the conversion of engines to low polluting fuels such as, but not limited to, natural gas or propane.

§ 3.3. Visible emissions standards.

No motor vehicle shall discharge visible air pollutants for longer than five consecutive seconds after the engine has been brought up to operating temperature.

PART IV.
EMISSIONS INSPECTION STATION LICENSING AND OPERATIION.

§ 4.1. Station licenses and renewals.

A. The board is authorized to issue or deny licenses and approve procedures and other instructions for the operation of emissions inspection stations.

B. Application for licenses shall be made on forms issued by and in accordance with procedures approved by the board.

C. Applicants shall demonstrate to the board the ability to conform to applicable motor vehicle laws and this regulation.

D. No facility shall be represented as a licensed station unless the owner holds a valid license issued by the board.

E. Licenses obtained by false statement or misrepresentation of identity to the board shall be cancelled or revoked.

F. Certificates of vehicle emissions inspection shall only be issued by stations holding valid licenses issued by the board.

G. The board will endeavor to notify stations prior to the expiration of their license. However, it is the responsibility of the station to have a current valid license.

H. Within five days of notification of cancellation, revocation or suspension, stations shall surrender to the board all licenses, forms, data media and documents issued by or purchased from the department.

I. It is the responsibility of the station to notify the board of the termination of a suspension period and apply for reinstatement with the board.

J. All stations shall cooperate with the department during the conduct of audits, investigations and complaint resolutions.

K. Station licenses shall be issued to qualified applicants in the following categories, as determined by the board.

1. Emissions inspection station.

2. Fleet emissions inspection station meeting the requirements of § 4.7.

L. Station licenses shall not be issued to any facility not authorized by the superintendent to make safety inspections pursuant to Article 10 (§ 46.1-315 et. seq.) of Chapter 4 of Title 46.1 of the Code of Virginia.

M. Station licenses shall be valid only at the location for which they are issued and may not be transferred, loaned or used by any person other than the original applicant.

N. Transfer of or sale of business, changes in partnership, the addition or deletion of partners or changes in location will require a new license application.

O. The board may require proof of business ownership, articles of incorporation, partnership agreements, and lease agreement and proof of conformity with local zoning, use, or business licensing laws, ordinances or regulations prior to licensing a facility.

P. No license shall be issued to a business in violation of local zoning, use or business licensing laws, ordinances or regulations; and licenses shall be cancelled when a business no longer conforms to local zoning, use, or business licensing laws, ordinances or regulations.

Q. All station licenses shall be posted in a conspicuous place on the licensed premises, available to the public and approved by the board.

R. Licenses shall not be issued to businesses having owners, partners, or stockholders who have had licenses previously revoked or are currently under suspension by the board.

S. Licenses are valid only for the station to which they are issued.

T. Licenses are valid for time periods determined by the board, not to exceed three years.

U. Upon expiration of the license, the station shall no longer be authorized to perform inspections or emission related repairs.

V. Renewals of licenses shall be subject to the provisions of this regulation as are licenses.

§ 4.2. Station operations.

A. All stations shall conduct emissions inspections during normal business hours, except stations licensed under § 4.1 K 2, and shall inspect every vehicle presented for inspection within a reasonable time period.

B. All stations shall have records available for inspection by the department any time during normal business hours.

C. All stations shall employ at least one emissions mechanic and one emissions inspector. One person may serve in both capacities, if so defined in the license.

D. All stations shall have an emissions mechanic/inspector on duty during normal business hours, except stations licensed under § 4.1 K 2.

E. All station operations shall be conducted in accordance with applicable statutes and this regulation.

F. All test records shall be maintained by the licensee until transferred to the department.

G. All unused certificates of vehicle emissions inspection and other documents shall be kept in a secure location and only be available to emissions inspectors or authorized personnel, as approved by the department.

H. Emisssions mechanics/inspectors may conduct inspections, repairs and adjustments, or any combination of the preceding, as defined by the type of license issued.

I. Missing or stolen certificates of vehicle emissions inspection or other official documents shall be reported to the department within 24 hours.

J. Stations shall be accountable for all documents issued to them by the department.

K. Stations shall provide a free retest upon request within 15 days of the first test failure.

L. Stations finding it necessary to suspend inspections due to analyzer system malfunction or any other reason shall refund any inspection fee collected when a customer requests a free retest in accordance with § 6.2 L and cannot be accommodated.

M. Stations shall maintain a file of the name, address, and identification number of all currently employed emissions mechanics/inspectors and shall provide the file to the department upon request.

§ 4.3. Sign posting.

A. All stations, except those licensed under § 4.1 K 2, shall post a board approved sign designating the location as an Official Vehicle Emissions Control Program Inspection Station in a conspicuous location on the licensed premises, available to the public and approved by the department.

B. All stations will post the applicable exhaust emissions standards prescribed in Part III in a conspicuous location on the licensed premises, available to the public, and approved by the department.

C. All stations, except those licensed under § 4.1 K 2, shall post in a conspicuous location in a clearly legible fashion a department approved sign indicating the fees charged for emissions inspections and maximum fees for emissions related adjustments and repairs.

D. All stations, except those licensed under § 4.1 K 2, shall post all signs that are issued by the department in a location approved by the department.

E. Signs shall be posted in a manner that does not violate local sign ordinances or codes.

§ 4.4. Equipment and facility requirements.

A. All stations shall have adequate facilities to perform all elements of the test at all times.

B. All stations shall be equipped in accordance with this regulation and applicable statutes.

C. Licensed stations which no longer meet the requirements of this section shall be subject to enforcement actions in accordance with Part VII.

D. The following list of equipment, tools and reference material are the minimum requirements for licensing of stations.

1. A certified analyzer system as approved in accordance with VR 120-99-02.

a. As a provision of continued license to perform inspections, the certified analyzer system must be updated as required by the board.

b. Stations are encouraged to take advantage of available service/maintenance and extended warranty contracts. These contracts are not a requirement of licensing.

2. An automotive tachometer with a minimum revolutions per minute range of 0 through 3,000.

3. An automotive dwell meter.

4. An automotive ignition timing light.

5. Artificial enrichment (propane) kit for mixture adjustment or verification.

6. Span gas approved by the board and labeled with the department label and equipment for performing gas span checks.

7. Hand tools and diagnostic equipment for the proper performance of inspections, adjustments and repairs as approved by the board.

8. Suitable nonreactive exhaust hoses, or a probe adapter for inspecting vehicles with screened or baffled exhaust, or over length vehicles.

9. Automotive reference manuals which contain manufacturer's specifications for ignition dwell, ignition timing, idle mixture, idle speed, and fast idle. Additionally, references covering the emissions control systems description, diagnostic and repair procedures for the models of vehicles subject to this regulation.

10. An emissions control systems application guide which contains a quick reference for emissions control systems and their uses on specific make, model, and model year vehicles.

11. Analyzer manufacturer's maintenance and calibration manual.

12. Certified thermometer as defined within this regulation.

13. A fuel filler neck inspection gauge, as approved by the board.

14. This regulation (VR 120-99-01) and VR 120-99-02.

15. Telephone.

16. Lockable storage for securing documents.

17. Sufficient print medium supplies (ink cartridge, ribbon, etc.) to ensure proper legible documents are produced.

E. All equipment, tools, and reference manuals shall be in proper working order and available on the licensed premises at all times.

§ 4.5. Analyzer operation and certificate of vehicle emissions inspection usage.

A. All licensed stations shall maintain the analyzer in such a manner that will permit the proper operation in accordance with the requirements of this regulation, applicable statutes and any procedures approved by the board.

B. The analyzer shall be gas spanned and leak checked once every seven days.

C. No additions or modification shall be made to the analyzer unless approved by the analyzer manufacturer and the board.

D. No analyzer replacement parts shall be used that are not original equipment replacement, or equivalent, as approved by the board.

E. The licensee shall be responsible for ensuring that all certificates of vehicle emissions inspection printed are legible, and properly printed with all information appearing in the correct location on the form.

F. All certificates of vehicle emissions inspection voided due to damage, misfeed, or operator error shall be retained in a secure manner and be available for audit by the department.

G. Certificates of vehicle emissions inspection shall be used only for documentation of official test results and the issuance for registration of vehicles as appropriate. Certificates shall not be used to record the results of engine diagnosis.

H. No person shall tamper or circumvent any system or function of the analyzer.

I. Stations shall be responsible for preventing any tampering or unauthorized use of the analyzer or its functions.

J. Analyzer lockout conditions shall be removed only by authorized service or department personnel.

K. Data media used for the collection of official test data shall be property of the department.

L. Only data media issued by the department shall be used for data collection of official test result.

M. Only department or authorized analyzer manufacturers' service personnel shall exchange data media.

N. Stations shall notify the department when the analyzer indicates that storage capacity for 50 or less test records is available.

O. The department will endeavor to respond to data media exchange requests in a timely manner. The department is not responsible for any loss of business incurred due to inoperable data media.

P. Stations shall give the department three weeks notification when additional certificates of vehicle emissions inspection are needed.

§ 4.6. Inspector number and access code usage.

A. Each emissions inspector shall be assigned a unique numerical code to gain access to the analyzer at the inspector's place of employment.

B. Access codes and inspector numbers shall be added and deleted only by department personnel.

C. An access code shall be used only by the inspector to whom it was assigned.

D. An inspector number printed on a certificate of vehicle emissions inspection shall be electronic signature and an endorsement that the entire test was performed by the inspector to whom the number was assigned.

E. Emissions inspection stations shall report any unauthorized use of an access code to the department within 24 hours of the discovery of unauthorized use.

F. Emissions inspection stations shall be responsible for any violation or fraudulent inspection which occurs using the inspector numbers.

G. Emissions inspection stations shall be responsible for all certificates of vehicle emissions inspection bearing the inspector number of all employees, past and present.

H. A minimum of 10 inspector number access code combinations will be assigned to an analyzer.

§ 4.7. Fleet emissions inspection stations.

A person to whom there are 20 or more vehicles registered may be licensed as a "fleet emissions inspection station" and conduct inspection of that fleet. As a fleet inspection station, no inspections shall be conducted for the employees or general public, but only on vehicles owned, leased by the business, or consigned or held in inventory for sale. A fleet emissions inspection station shall comply with all applicable requirements for emissions inspection stations.

PART V.
EMISSIONS MECHANIC/INSPECTOR TESTING AND LICENSING.

§ 5.1. [~~*Requirements for licensing.*~~ *Emissions mechanic/inspector licenses and renewals.*]

A. Application for licenses shall be made on forms issued by and in accordance with procedures approved by

the department.

B. Applicants shall demonstrate to the department the ability to conform with applicable motor vehicle laws and this regulation.

C. No person shall be represented as [~~a licensed~~ an emissions] mechanic/inspector without holding a valid license issued by the department.

D. Licenses obtained by false statement or misrepresentation of identity to the department shall be [~~cancelled or~~] revoked.

E. Certificates of [vehicle] emissions inspection shall [~~only~~] be [~~signed~~ issued only] by [~~persons~~ emissions inspectors] employed by [~~stations holding valid licenses issued by the department~~ emissions inspections stations].

F. The department will endeavor to notify mechanics/inspectors prior to the expiration of their license. However, it is the responsibility of the [emissions] mechanic/inspector to have a current valid license.

G. Upon notification of [~~cancellation,~~] revocation or suspension, [the] mechanic/inspector shall surrender to the department all licenses issued [to him] by the department.

H. It is the responsibility of the [emissions] mechanic/inspector to notify the department of the termination of a suspension period and apply for reinstatement with the department.

I. Licenses are valid only for the person to whom they are issued.

J. All [emissions] mechanics/inspectors shall cooperate with the department during the conduct of audits, investigations and complaint resolution.

K. A person shall qualify under § 5.2 prior to being issued an emissions mechanic/inspector license.

[~~L. Qualified persons may, after filing application, obtain a temporary license valid for a period not to exceed 60 days from date of issuance.~~]

[~~M.~~ L. Emissions] mechanics/inspectors changing employment must have their license transferred by the department to the new place of employment prior to performing emission inspections [or emissions-related repairs].

[~~N.~~ M. Emissions] mechanics/inspectors shall keep their current mailing address and place of employment on file with the department.

[~~O. All mechanic/inspectors licenses may be required by the department to be posted in a conspicuous place on the licensed premises,~~ N. Licenses shall be] available to [~~the public and approved by the~~] department [personnel upon request].

[~~P.~~ O. Emissions] mechanics/inspectors may be licensed to perform tests [or emission related repairs] at more than one licensed station after [~~filing an application~~ notification to the department].

[~~Q.~~ P.] Requalification for [~~a~~ an emissions] mechanic/inspector license may be required at any time by the department.

[~~R.~~ Q.] Licenses are valid for [time periods determined by the department, not to exceed] three years.

[~~S.~~ R.] Upon expiration of the license, the [emissions] mechanic/inspector shall no longer be authorized to perform emissions inspections or emission related repairs.

[S. The provisions of this part apply to both initial licenses and any renewals of licenses.]

§ 5.2. Testing and licensing of applicants for emissions mechanics/inspectors.

A. Qualification requirements for emissions mechanic/inspector licenses [and renewals].

1. Applications to qualify for emissions mechanic/inspector licenses shall be filed with the department and the issuance of the licenses shall be administered by the department. Applications for such licenses shall be completed on forms provided by the department. Before an applicant may be given a license, he must comply with the requirements of this section. The department will notify applicants of the evaluation requirements prior to testing.

2. An applicant shall demonstrate the ability to [~~properly~~] operate [properly] the certified analyzer system on the licensed premises and perform a test as required by this regulation.

3. An applicant shall demonstrate knowledge, skill, and competence concerning either the conduct of emissions inspections or the adjustment and repair of vehicles to manufacturers' specifications or both depending upon license classification. Such knowledge, skill and competence [~~will be shown by~~ shall be demonstrated by completing training courses approved by the department and by] passing a qualification test including, but not limited to, knowledge of the following:

a. Operation and purpose of emissions control systems.

b. Relationship of hydrocarbon and carbon monoxide emissions to timing and air/fuel ratio control.

c. Adjustment and repair to manufacturers' specifications.

d. This regulation.

e. Contemporary diagnostic and engine tune-up procedures.

f. The provisions of the Emissions Control Systems Performance Warranty pursuant to § 207(b) of the Federal Clean Air Act as it applies to this regulation.

g. Visual inspection of the required emissions control equipment for 1973 and newer vehicles.

h. Operation of and proper use, care, maintenance, and gas span checking of certified analyzer systems.

i. Proper use of and distribution of inspection forms, certificates of emissions inspection, and supplemental documents.

j. Emissions related adjustment and repair requirements for all vehicles failing the initial emissions inspection.

k. Inspecting for visible smoke emissions.

[*4. An applicant shall be authorized by the superintendent to make safety inspections or vehicle repairs, as appropriate, pursuant to Article 21 (§ 46.2-1157 et seq.) of Chapter 10 of Title 46.2 of the Code of Virginia.*]

B. Requalification requirements for all emissions mechanics/inspectors.

1. Upon the determination by the department of the necessity of technically updating the qualifications for emissions mechanics/inspectors, and upon development or approval of retraining courses and retesting requirements for emissions mechanics/inspectors to demonstrate said qualifications, holders of emissions mechanics/inspectors licenses shall be required to requalify.

2. Emissions mechanics/inspectors shall be required to requalify within 90 days from the date of written notification by the department. Said notice shall be mailed to the address of record as maintained by the department. The notice shall inform the person of the necessity of requalification and the nature of such skills, systems, and procedures requiring the retraining for the continued performance of the emissions inspection. The notice shall give the name and location of training sources approved or accredited for purposes of retraining, the necessity of requalification by a certain date, and the nature and evidence of documentation to be filed with the department evidencing such requalification, and state that failure to requalify within said period of time shall result in suspension or revocation of the emissions mechanic/inspector license.

C. Issuance of emissions mechanics/inspectors licenses.

1. The department is authorized to issue or deny licenses to persons to conduct either emissions inspections (inspector) or adjustments and repairs (mechanic) or both at an emissions inspection station.

2. The department shall issue a license to any person so qualified or requalified under § 5.2.

PART VI.
INSPECTION PROCEDURES.

§ 6.1. General.

The key steps in the emissions inspection procedure are as follows:

1. An agreement with the customer, oral or written, to perform an emissions inspection.

2. The inspection of emissions control equipment.

3. The test of emissions levels using a certified analyzer system.

4. The test for visible smoke.

5. Document distribution.

6. Customer advisement.

7. Free retest, if necessary, within 15 days of original test.

§ 6.2. Inspection procedure.

A. All aspects of the inspection shall be performed by an emissions inspector, using the instructions programmed in the certified analyzer system and procedures approved by the board, within the designated inspection area, and on the licensed premises.

B. The emissions inspection station shall notify the customer prior to initiating an emissions inspection that the emissions inspection station is either able or unable to perform the low emissions tune-up and emission related repairs required by §§ 6.3 and 6.4 for that particular vehicle should that vehicle fail the inspection. The emissions inspector shall not conduct an inspection on a motor vehicle unless the customer gives approval after being notified according to the preceding sentence.

C. The entire inspection shall take place within the reach of the analyzer hose.

D. In consideration of maintaining inspection integrity:

1. The temperature of the inspection area shall be between 35°F and 110°F during the inspection. Inspection area temperatures shall be accurately recorded and monitored in a well-ventilated location away from vehicle engine and exhaust heat sources and out of direct sunlight. The analyzer shall not be operated when the temperature of the inspection area is not within the range stated above.

2. The analyzer system shall be kept in a stable environment which affords adequate protection from the weather and local sources of hydrocarbons on other pollutants that may interfere with analyzer performance or accuracy of test results, or both.

3. The electrical supply to the analyzer system shall be able to meet the manufacturer's requirements for voltage and frequency stability.

4. The inspection location shall be permanent and meet all applicable zoning requirements. Electrical supply shall be public utility designated for that area.

5. The analyzer system shall be operated according to quality assurance procedures and other procedures approved by the department.

E. The emissions inspector shall accurately identify and enter vehicle and owner information as required for vehicle emissions inspection records. The data entered into the analyzer and recorded on the certificate of vehicle emissions inspection must be the data from the vehicle being inspected and obtained from that vehicle.

F. For 1973 and later model year vehicles, the emissions inspector shall then perform an inspection for integrity of the emissions control systems. The inspection shall include:

1. Examining the emissions control information decal (sticker) under the hood or checking the reference manual or applications guide to determine if the vehicle, as manufactured or certified for sale, or both, or use within the United States, should be equipped with a catalytic converter, air system (air pump), fuel evaporative system, or positive crankcase ventilation valve, or requires the use of unleaded fuel, as appropriate.

2. Visually inspecting for the presence and operability of the air system (air pump), catalytic converter system, fuel evaporative system, positive crankcase ventilation valve, and fuel filler neck restrictor. If these parts or systems are inoperable, or have been removed or damaged, the vehicle will not qualify for a certificate of emissions inspection approval or waiver. If the necessary parts will not be available prior to the month of expiration of the present vehicle registration, and the owner obtains a signed form or statement to that effect from a manufacturer's dealer for that make vehicle, or from an automotive parts supplier which in the normal course of business supplies parts for that vehicle and presents the form or statement to the board, the board after verification may issue a temporary certificate of vehicle emissions inspection waiver valid up to 30 days. The form or statement provided must specifically identify by part numbers and description, the necessary parts. The owner then has until the expiration of the temporary waiver to complete the necessary repairs or replacement. Upon verification that parts are not available that meet the requirements of this regulation, the board may issue a waiver provided the motor vehicle has undergone a low emissions tune-up.

3. If the vehicle fails the fuel filler neck restrictor inspection, the fuel filler neck restrictor as well as the catalytic converters and, if applicable, exhaust gas oxygen (02) sensors shall be replaced to ensure the efficient operation of these emissions control systems. Any exception from this provision shall be verified as a result of a department approved performance test.

G. The entire vehicle shall be in normal operating condition and at normal operating temperature, which may be determined by feeling the top radiator hose, by checking the temperature gauge, or operating the vehicle prior to performing the idle mode emissions inspection, or any combination of the three.

H. The inspection shall be performed with the transmission in park or neutral and with all accessories off.

I. 1. The analyzer probe shall be inserted into the tailpipe at least 12 inches or as recommended by the manufacturer for a quality sample whichever is greater.

2. For all vehicles equipped with a multiple exhaust system, the analyzer system's dual exhaust procedure shall be used.

3. If a baffle or screen prevents probe insertion to an adequate depth, a suitable probe adapter or extension boot which effectively lengthens the tailpipe must be used.

4. The emissions inspection procedure shall be as follows:

a. For all model year vehicles, the emissions inspection shall be an idle mode test, conducted in the following manner: the vehicle shall be accelerated and stabilized at 2500 +/- 300 revolutions per minute for 30 seconds and shall be returned and stabilized at normal curb idle for the reading. An accurate tachometer as provided by the analyzer system shall be used to verify engine speeds when performing the test. For pass/fail determination, the vehicle's emissions level shall be the same as or less than the applicable exhaust emission standards at idle speed in order to pass

the emissions inspection.

b. The appropriate emissions standards shall be selected by the analyzer system. In selecting appropriate emissions standards, the emissions inspector shall identify that particular vehicle's make and model year by examining the vehicle information (metal) plate or sticker. If the vehicle information plate or sticker is missing, illegible or the information is not otherwise available, the emissions inspector shall examine the engine exhaust emissions control information label which is permanently affixed to the engine or other appropriate information to determine the model year status.

J. The vehicle shall be evaluated for the presence of visible smoke emissions at normal curb idle. Those vehicles exhibiting any gray, blue, blue-black, or black smoke emissions from the engine crankcase or tailpipe, or both, shall be issued a certificate of vehicle emissions inspection rejection.

K. A certificate of vehicle emissions inspection approval shall be issued if the vehicle meets the emissions control systems standard (for 1973 and newer model year vehicles only), the exhaust emissions standards, and there is no evidence of smoke emissions.

L. If the vehicle fails the initial emissions inspection a certificate of vehicle emissions inspection rejection shall be issued and the owner shall have 15 days in which to have repairs or adjustments made and return the vehicle to the station which performed the initial inspection for one free reinspection. A temporary certificate of vehicle emissions inspection waiver may be issued by the department to those vehicles failing the initial emissions inspection, continue to exceed applicable emissions standards after the adjustments specified in subsections A through F of § 6.3 have been accomplished, and for which emissions related parts are not presently available in order to make corrective repairs to that specific vehicle. Proof of parts nonavailability as described in subsection F 2 of this section shall be required. In order to obtain a vehicle registration from the Department of Motor Vehicles, the owner shall have a certificate that either indicates "Passed" or "Waiver" as specified below.

1. A certificate of vehicle emissions inspection approval ("Passed") may be issued if all of the following conditions are met:

a. The vehicle emissions levels are the same as or less than the applicable exhaust emission standards.

b. There are no smoke emissions visible from the vehicle engine crankcase or tailpipe, or both.

c. For 1973 and newer model year vehicles, the vehicle passes the emissions control systems standards.

2. A certificate of vehicle emissions inspection waiver ("Waiver") may be issued if all of the following conditions are met:

a. The vehicle passes the emission control systems standards (1973 and newer model year vehicles only) required by subsection F 2 of this section.

b. The vehicle continues to exceed applicable emissions standards after the low emissions tune-up and emission related repairs required by §§ 6.3 and 6.4 have been performed by an emissions mechanic.

c. At least the designated amount (for a particular model year as specified below) has been spent on emissions related repairs as specified in § 6.4 performed by an emissions mechanic, provided that proof of repair costs for that specific vehicle has been provided to the emissions inspection station in the form of an itemized bill, invoice, work order, manifest, or statement in which emissions related parts or repairs, or both, are specifically identified and the repairs have been confirmed by visual inspection by the emissions inspector.

(1) $60 for pre-1972 model vehicles.

(2) $125 for 1972-1974 model vehicles.

(3) $175 for 1975-1979 model vehicles.

(4) $200 for 1980 and new model vehicles.

3. A waiver shall not be issued to a vehicle which is eligible for the emissions control systems performance warranty, under the provisions of § 207(b) of the Federal Clean Air Act. Per the provisions of § 207(b), the repair costs necessary for compliance with emissions standards specified in Part III of this regulation will be borne by the vehicle manufacturer or his authorized dealer representative.

M. The analyzer system shall generate the appropriate certificate of vehicle emissions inspection and the emissions inspector shall make distribution. The emissions inspector shall remove any previously issued emissions inspection stickers from the vehicle.

N. The emissions inspector shall advise the customer as specified below upon completion of the inspection procedure.

1. If the test is not completed, explain defect in vehicle and advise of free retest.

2. If the vehicle passes, give certificate of vehicle emissions inspection approval and advise of registration requirement (including distribution of Part B of certificate of vehicle emissions inspection approval).

3. If the vehicle fails:

a. Give certificate of vehicle emissions inspection rejection or waiver to customer;

b. Advise of type of failure;

c. Advise of free retest; and

d. Advise of waiver requirements.

O. In cases of complaints or disputes between the emissions mechanic/inspector or emissions inspection station and the customer, the customer shall be advised of the location and phone number of the department to be contacted to obtain assistance in resolving disputes.

§ 6.3. Low emissions tune-up.

A. If the vehicle continues to exceed the applicable emissions standards, the vehicle shall undergo a low emissions tune-up, and if still not in compliance shall undergo specific emissions related repairs in accordance with § 6.4. The low emissions tune-up and repairs shall be accomplished to the point of compliance or the applicable cost ceiling specified in § 6.2 L 2 c shall have been met.

B. For computer controlled, closed loop, feed back emissions control systems, the emissions inspector shall inspect the operation of the emissions control system according to the motor vehicle manufacturer's specifications.

§ 6.4. Emissions related repairs.

A. Emissions related repairs generally include only those adjustments to and maintenance and repair of the motor vehicle which are directly related to the reduction of exhaust emissions necessary to comply with the applicable emissions standards. The expenditure for emissions related repairs does not include the inspection fee as specified in § 46.1-326.8 of the Motor Vehicle Emissions Control Law, the expense of emissions related adjustments, repairs or replacements required by subsection F 2 of § 6.2 or the expenses associated with the adjustments to and maintenance, replacement, and repair of air pollution control equipment on the vehicle if the need for such adjustment, maintenance, or repair is due to obvious disconnection of, tampering with, or abuse to such air pollution control equipment. Air pollution control equipment is any part, assembly or system originally installed by the manufacturer for the sole or primary purpose of reducing emissions.

B. Repairs and maintenance to the following systems shall qualify as emissions related repairs insofar as the purpose is to reduce exhaust emissions:

1. Air intake systems

2. Ignition systems

3. Fuel control systems

4. Emissions control systems

5. Basic engine systems

6. For microprocessor (O2) based air/fuel control systems, cooling systems

§ 6.5. Engine changes.

A. For those vehicles in which the original engine has been replaced, the emissions standards and applicable emissions control equipment for the year and model of the vehicle body/chassis, as per registration/title, shall apply. For those diesel powered vehicles which have been converted to operate on fuels other than diesel, the emissions standards and applicable emissions control equipment for the year, make and model of the gasoline equivalent for the vehicle body/chassis, per the registration, shall apply.

B. For those vehicles titled/registered as model year 1973 and newer, that were assembled by other than a licensed manufacturer, such as kit-cars, the applicable emissions control equipment shall be based upon a determination of the year of the vehicle engine. The year of the engine shall be presumed to be that stated by the vehicle owner unless it is determined by the board, after physical inspection of the vehicle engine, that the year of the engine is other than stated by the owner. The emissions standards for a vehicle of this classification shall be determined by the year of manufacture of the engine.

C. In order to provide for the accurate inspection and registration coordination of motor vehicles in which the original engine has been replaced, questions may be referred to the department for resolution.

PART VII.
ENFORCEMENT PROCEDURES.

§ 7.1. Enforcement of regulations and orders.

A. Whenever the department has reason to believe that a violation of any provision of these regulations or any order has occurred, notice shall be served on the alleged violator or violators, citing the applicable provision of these regulations or the order involved and the facts on which the violation is based. The department may act as the agent of the board to obtain compliance through either of the following enforcement proceedings:

1. Administrative proceedings.

The department may negotiate to obtain compliance through administrative means. Such means may be a consent agreement or any other mechanism that ensures or obtains compliance, including but not limited to those means prescribed in § 7.2. In cases where the use of an administrative means is expected

to result in compliance within 90 days or less, preferential consideration shall be given to the use of a consent agreement. Unless specified otherwise in these regulations, the administrative means shall be approved by the board.

2. Judicial proceedings.

The department may obtain compliance through legal means pursuant to § 46.1-326.13 of the Virginia Motor Vehicle Emissions Control Law.

B. Nothing in this section shall prevent the department from making efforts to obtain voluntary compliance through conference, warning or other appropriate means.

C. Orders and consent orders are considered administrative means and the board reserves the right to use such means in lieu of or to provide a legal basis for the enforcement of any administrative means negotiated or approved by the department under subsection A of this section.

D. Any enforcement proceeding under this section may be used as a mechanism to insure that the compliance with this regulation is reasonably maintained by the owner or other person.

E. Case decisions regarding the enforcement of regulations and orders shall be made by the executive director. These decisions (i) may be regarded by the aggrieved party as a final decision of the board and appealed pursuant to subsection C of § 2.5 or (ii) may be appealed to the board pursuant to subsection A of § 2.5. Appeals to the board shall be based on the record and not de novo.

§ 7.2. Penalties.

A. Basis for civil penalties.

The complete operation of an official emissions inspection station shall be the responsibility of the owner. Failure to comply with the appropriate provisions of the Motor Vehicle Emissions Control Law or this regulation may be considered sufficient cause for suspension or renovation of emission inspection privileges. In addition thereto, violators are also subject to criminal prosecution. Every emissions inspection station shall be subject to the schedule of penalties prescribed by the board:

B. Official documents.

Whenever an emissions inspection station license is suspended or cancelled, the board may order the surrender, upon demand, to an authorized representative of the board of the following items:

1. Inspection records/data media.

2. Station license.

3. Signature cards.

4. Unused certificates of vehicle emissions inspection.

5. All fees due the board for all inspections that have been performed.

C. Multiple violations.

In the case of multiple violations considered at one time, the department may impose separate penalties for each violation. However, in the case of multiple violations considered at one time, the department may, in its discretion, direct that suspensions be served concurrently.

D. Voluntary discontinuance.

A license shall be cancelled by the board whenever the owner voluntarily discontinues the operation of an emissions inspection station. Remaining emissions inspection materials shall be returned to the department immediately.

E. Abandonment.

A license shall be cancelled by the board, and inspection materials confiscated when the owner of record abandons the place of business and cannot be located.

F. Sale of business.

If an emissions inspection station is sold or leased to a new owner, an application will not be considered while the station is suspended and the license will not be restored pending an appeal of a suspension.

§ 7.3. Reapplication.

After a suspension has been served, inspection privileges shall not be restored until an application for relicensing has been approved by the board. Upon receipt of an application for relicensing following a suspension of more than three months or more, a complete and thorough investigation by the department will be conducted to determine if the applicant qualifies for relicensing under the requirements of the board. Other applications for relicensing are subject to investigation at the discretion of the department.

CHESAPEAKE BAY LOCAL ASSISTANCE BOARD

Title of Regulation: **VR 173-02-01. Chesapeake Bay Preservation Area Designation and Management Regulations.**

Statutory Authority: §§ 10.1-2103 and 10.1-2107 of the Code of Virginia.

Effective Date: September 1, 1989.

Summary:

This regulation establishes criteria for local government designation of Chesapeake Bay Preservation Areas and for use by local governments in granting, denying, or modifying requests to rezone, subdivide, or to use and develop land in Chesapeake Bay Preservation Areas. This regulation also identifes the requirements for changes which local governments must incorporate into their comprehensive plans, zoning ordinances, and subdivision ordinances to protect the quality of state waters pursuant to §§ 10.1-2109 and 10.1-2111 of the Chesapeake Bay Preservation Act.

The regulation is divided into six parts dealing with (i) introductory matters, (ii) local government requirements, (iii) Chesapeake Bay Preservation Area criteria, (iv) land use and development performance criteria, (v) implementation, assistance, and determination of consistency, and (vi) enforcement.

Part I, "Introduction," establishes the purpose, authority, and applicability of the regulation and defines terms.

Part II, "Local Government Programs," sets forth the objectives of local programs that implement the regulations and lists the elements that must be included in local programs.

Part III, "Chesapeake Bay Preservation Area Designation Criteria," includes the first set of criteria required by the Code. These criteria describe the characteristics and objectives of Chesapeake Bay Preservation Areas and list the land types that must be included or considered for inclusion in preservation areas. Chesapeake Bay Preservation Areas are to be subdivided into the more sensitive lands adjacent to the shore, called Resource Protection Areas, and less sensitive upland areas that have the potential to degrade water quality, called Resource Management Areas. In addition, this part provides local governments with the option to identify as an overlay "Intensively Developed Areas," which are allowed certain exemptions from the criteria.

Part IV, "Land Use and Development Performance Criteria," includes the second set of criteria required by the Code, called performance criteria. The performance criteria are subdivided into two groups: (i) general criteria that apply in all Chesapeake Bay Preservation Areas, and (ii) additional or more stringent criteria that apply only in the Resource Protection Areas. This part also sets forth exemptions from the criteria and establishes a local government process for granting exceptions.

Part V, "Implementation, Assistance, and Determination of Consistency," provides guidance in the orderly and timely development of local programs and criteria by which local program consistency will be determined. This part describes the local assistance manual to be provided by the board to local governments. It also addresses the first year requirements covering the mapping and designation of Chesapeake Bay Preservation Areas and the employment of the performance criteria. Finally, it addresses the second year program elements, including (i) necessary changes in local zoning and subdivision ordinances and comprehensive plans, (ii) implementation of a local process to review development proposals in preservation areas for compliance with the Act and regulations, (iii) conditions under which water quality impact assessments will be required for proposal developments, and (iv) review by the board of completed local programs for consistency and, upon request, board certification of local programs.

Part VI, "Enforcement," establishes administrative and legal procedures to secure compliance with the Act by local governments.

VR 173-02-01. Chesapeake Bay Preservation Area Designation and Management Regulations.

PART I.
INTRODUCTION.

§ 1.1. Application.

The board is charged with the development of regulations [~~*including*~~ *which establish*] *criteria that will provide for the protection of water quality* [~~*and conservation of habitat dependent on water quality in Chesapeake Bay Preservation Areas*~~] *, and that also will accommodate economic development. All counties, cities, and towns in Tidewater Virginia shall comply with these regulations. Other local governments not in Tidewater Virginia* [~~*are encouraged to*~~ *may*] *use the criteria, and* [~~*to*~~] *conform their ordinances as provided in these regulations to protect the quality of state waters in accordance with § 10.1-2110 of the Code of Virginia.*

§ 1.2. Authority for regulations.

These regulations are issued under the authority of §§ 10.1-2103 and 10.1-2107 of Chapter 21 of Title 10.1 of the Code of Virginia (the Chesapeake Bay Preservation Act, hereinafter "the Act").

§ 1.3. Purpose of regulations.

These regulations establish the criteria that counties, cities, and towns (hereinafter "local governments") [~~*must*~~ *shall*] *use to determine the extent of the Chesapeake Bay Preservation Areas within their jurisdictions.* [~~*They*~~ *These regulations*] *establish criteria for use by local governments in granting, denying, or modifying requests to rezone, subdivide, or to use and develop land in Chesapeake Bay Preservation Areas.* [~~*They*~~ *These regulations*] *identify the requirements for changes which local governments* [~~*must*~~ *shall*] *incorporate into their*

comprehensive plans, zoning ordinances, and subdivision ordinances to protect the quality of state waters pursuant to §§ 10.1-2109 and 10.1-2111 of the Act.

§ 1.4. Definitions.

The following words and terms used in these regulations have the following meanings, unless the context clearly indicates otherwise. In addition, some terms not defined herein are defined in § 10.1-2101 of the Act.

"Act" means the Chesapeake Bay Preservation Act found in Chapter 21 (§ 10.1-2100 et seq.) of Title 10.1 of the Code of Virginia.

"Board" means the Chesapeake Bay Local Assistance Board.

"Buffer [~~*zone*~~ *area*] *" means an area of natural or established vegetation managed to protect* [~~*aquatic, wetland, shoreline and other habitat dependent on water quality*~~ *other components of a Resource Protection Area and state waters*] *from significant degradation due to* [~~*man-made*~~ *land*] *disturbances.*

"Chesapeake Bay Preservation Area" means any land designated [*by a local government*] *pursuant to Part III of these regulations and § 10.1-2107 of the Act. A Chesapeake Bay Preservation Area shall not consist of a Resource Protection Area and a Resource Management Area.*

"Department" means the Chesapeake Bay Local Assistance Department.

"Development" means the construction, [~~*redevelopment*~~] *or substantial alteration of residential, commercial, industrial, institutional, recreation, transportation, or utility facilities or structures.*

"Director" means the Executive Director of the Chesapeake Bay Local Assistance Department.

"Floodplain" means [~~*an area*~~ *all lands*] *that would be inundated* [*by floodwater*] *as a result of a storm event of a 100-year return interval.*

"Highly erodible soils" means soils [*(excluding vegetation*] *with an erodibility* [~~*(K) value greater than .35 of all soils on slopes with a gradient exceeding 15%, as identified in local Soil Surveys published by the U.S. Department of Agriculture Soil Conservation Service, where such surveys exist*~~ *index (EI) from sheet and rill erosion equal to or greater than eight. The erodibility index for any soil is defined as the product of the formula RKLS/T, as defined by the "Food Security Act (F.S.A.) Manual" of August, 1988 in the "Field Office Technical Guide" of the U.S.D.A. - Soil Conservation Service, where K is the soil susceptibility to water erosion in the surface layer; R is the rainfall and runoff; LS is the combined effects of slope length and steepness; and T is the soil loss tolerance*].

"Highly permeable soils" means soils with a [~~high~~ given] *potential* [~~*for transmission of pollutants into groundwater, as identified in the soils information section of the "Field Office Technical Guides" published by the U.S. Department of Agriculture Soil Conservation Service*~~ *to transmit water through the soil profile. Highly permeable soils are identified as any soil having a permeability equal to or greater than six inches of water movement per hour in any part of the soil profile to a depth of 72 inches (permeability groups "rapid" and "very rapid") as found in the "National Soils Handbook" of July, 1983 in the "Field Office Technical Guide" of the U.S.D.A. - Soil Conservation Service*].

[*"Impervious cover" means a surface composed of any material that significantly impedes or prevents natural infiltration of water into the soil. Impervious surfaces include, but are not limited to, roofs, buildings, streets, parking areas, and any concrete, asphalt, or compacted gravel surface.*]

"Local governments" means counties, cities, and towns. These regulations apply to local governments in Tidewater Virginia, as defined in § 10.1-2101 of the Act, but the provisions of these regulations may be used by other local governments.

"Local program" means the measures by which a local government complies with the Act and regulations.

[*"Local program adoption date" means the date a local government meets the requirements of subsections A and B of § 2.2 of Part II.*]

"Nontidal wetlands" means those wetlands other than tidal wetlands that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support a prevalence of vegetation typically adapted for life in saturated soil conditions, as defined by the U.S. Environmental Protection agency pursuant to § 404 of the federal Clean Water Act [~~*as amended*~~] *, in 33 C.F.R. 328.3b, dated November 13, 1986* [*, as amended*].

[*"Plan of development" means any process for site plan review in local zoning and land development regulations designed to ensure compliance with § 10.1-2109 of the Act and these regulations, prior to issuance of a building permit.*]

"Redevelopment" means the process of developing land that is or has been [*previously*] *developed.*

"Redevelopment Management Area" means that component of the Chesapeake Bay Preservation Area that is not classified as the Resource Protection Area.

"Resource Protection Area" means that component of the Chesapeake Bay Preservation Area comprised of [

~~sensitive~~] lands at or near the shoreline that have an intrinsic water quality value due to the ecological and biological processes they perform or are sensitive to impacts which may result in significant degradation to the quality of state waters [~~and loss of aquatic habitat~~].

[~~"Subdivision" means the division of a parcel of land into three or more lots or parcels of less than five acres each for the purpose of transfer of ownership or building development, or, if a new street is involved in such division, any division of a parcel of land. The term includes resubdivision.~~]

[*"Substantial alteration" means expansion or modification of a building or development which would result in a disturbance of land exceeding an area of 2500 square feet in the Resource Management Area only.*]

"Tidal shore [~~line~~] *"* [*or "shore*] *means land contiguous to a tidal body of water* [~~to an elevation one and one-half times the local tide range above~~ *between*] *the mean low water level* [*and the mean high water level*].

"Tidal wetlands" means vegetated and nonvegetated wetlands as defined in § 62.1-13.2 of the Code of Virginia.

"Tidewater Virginia" means those jurisdictions named in § 10.1-2101 of the Act.

"Tributary stream" means any perennial stream that is so depicted on the most recent U.S. Geological Survey 7-1/2 minute topographic quadrangle map (scale 1:24,000).

"Use" means activity on the land other than development, including, but not limited to agriculture, horticulture, [*and*] *silviculture* [; ~~and recreation~~].

"Water-dependent facility" means a development of land that cannot exist outside of the Resource Protection Area and must be located on the shoreline by reason of the intrinsic nature of its operation. These facilities include, but are not limited to (i) ports; (ii) the intake and outfall structures of power plants, water treatment plants, sewage treatment plants, and storm sewers; (iii) marinas and other boat docking structures; (iv) beaches and other public water-oriented recreation areas, and (v) fisheries or other marine resources facilities.

[~~§ 1.5. Local government discretion.~~

~~These regulations represent minimum criteria to be used by localities.~~]

PART II.
LOCAL GOVERNMENT PROGRAMS.

§ 2.1. Local program development.

Local governments shall develop measures (hereinafter called "local programs") necessary to comply with the Act and regulations. Counties and towns are encouraged to cooperate in the development of their local programs. In conjunction with other state water quality programs, local programs shall encourage and promote: (i) protection of existing high quality state waters and restoration of all reasonable public uses and will support the propagation and growth of all aquatic life, including game fish, which might reasonably be expected to inhabit them; (ii) safeguarding the clean waters of the Commonwealth from pollution; (iii) prevention of any increase in pollution; (iv) reduction of existing pollution; and (v) promotion of water resource conservation in order to provide for the health, safety and welfare of the present and future citizens of the Commonwealth.

§ 2.2. Elements of program.

Local programs shall contain the elements listed below. [*Local governments shall adopt*] *elements A and B* [~~shall be adopted~~] *concurrently* [*and no later than*] *12 months after the* [~~effective~~ *adoption*] *date of these regulations. Elements C through G* [~~may~~ *shall*] *be in place within 24 months after the* [~~effective~~ *adoption*] *date.*

A. A [~~zoning~~] *map* [~~designating~~ *delineating*] *Chesapeake Bay Preservation Areas.*

B. Performance criteria applying in Chesapeake Bay Preservation Areas [*that achieve results*] *at least* [~~as stringent as~~ *equivalent to*] *those provided* [*by the criteria*] *in Part IV.*

C. A comprehensive plan or revision that incorporates the protection of Chesapeake Bay Preservation Areas and of the quality of state waters.

D. A zoning ordinance or revision that (i) incorporates measures to protect the quality of state waters in Chesapeake Bay Preservation Areas, [*and*] *(ii) requires compliance with all criteria set forth in Part IV* [; ~~and (iii) requires a plan of development prior to the issuance of a building permit to assure that use and development of land in Chesapeake Bay Preservation Areas are accomplished in a manner that protects the quality of state waters~~].

E. A subdivision ordinance or revision that (i) incorporates measures to protect the quality of state waters in Chesapeake Bay Preservation Areas, and (ii) assures that all subdivisions in Chesapeake Bay Preservation Areas comply with the criteria set forth in Part IV.

F. An erosion and sediment control ordinance or revision that requires compliance with the criteria in Part IV.

G. [~~A building permit process or revision that requires compliance with the criteria set forth in Part IV.~~ *A plan of development process prior to the issuance of a building*

permit to assure that use and development of land in Chesapeake Bay Preservation Areas is accomplished in a manner that protects the quality of state waters.]

PART III.
CHESAPEAKE BAY PRESERVATION AREA DESIGNATION CRITERIA.

§ 3.1. Purpose.

The criteria in this part provide direction for local government designation of the ecological and geographic extent of Chesapeake Bay Preservation Areas. Chesapeake Bay Preservation Areas are divided into Resource Protection Areas and Resource Management Areas that are subject to the criteria in Part IV and the requirements in Part V. [*In addition, the criteria in this part provide guidance for local government identification of areas suitable for redevelopment that are subject to the redevelopment criteria in Part IV.*]

§ 3.2. Resource Protection Areas.

A. Resource Protection Areas shall consist of sensitive lands at or near the shoreline that have an intrinsic water quality value due to the ecological and biological processes they perform [~~*and*~~ *or*] *are sensitive to impacts which may cause significant degradation to the quality of state waters* [~~*or loss of aquatic habitat*~~].

B. As a minimum, the Resource Protection Area shall include:

1. Tidal wetlands;

2. Nontidal wetlands [~~*hydrologically*~~] *connected by surface flow and contiguous to tidal wetlands or tributary streams;*

3. Tidal [~~*shorelines*~~ *shores*] *;*

4. Such other lands [~~*as might qualify*~~] *under the provisions of subsection A of § 2.2 of this part* [~~*that local governments deem*~~] *necessary to protect the quality of state waters;*

5. A vegetated buffer [~~*zone*~~ *area*] *located adjacent to and landward of the components listed in subdivisions 1 through 4 above, and along both sides of any tributary stream.*

a. The purpose of the buffer [~~*zone*~~ *area*] *is to (i) provide for the removal or reduction of sediments, nutrients, and potentially harmful or toxic substances in runoff entering the Bay and its tributaries;* [*and*] *(ii) minimize the adverse effects of human activities on wetlands, shorelines, state waters,* [*and*] *aquatic resources* [*;* ~~*and habitat dependent on water quality; and (iii) maintain the natural environment of streams*~~].

b. The width of the buffer [~~*zone*~~ *area*] *shall be* [~~*(i)*~~] *100 feet* [~~*landward of all other components of Resource Protection Areas contiguous to tidal waters, or (ii) 50 feet landward of all other components of Resource Protection Areas contiguous to nontidal waters*~~] . [*However, where the local government determines that the natural topography of the land within that 100 foot area is such that water drains away from the shore or other components of the Resource Protection Area, the buffer area shall consist only of the land that actualy drains toward the shore or other components of the Resource Protection Area. In no case shall the buffer areas have a width of less than 50 feet.*]

§ 3.3. Resource Management Areas.

A. Resource Management Areas shall include land types that, if improperly used or developed, have a potential for causing significant water quality degradation or for [~~*causing a loss of*~~ *diminishing*] *the functional value of the Resource Protection Area.*

B. A Resource Management Area shall be provided contiguous to the entire inland boundary of the Resource Protection Area. The following land categories shall be considered for inclusion in the Resource Management Area:

1. Floodplains;

2. Highly erodible soils, including steep slopes;

3. Highly permeable [~~*areas or other areas vulnerable to groundwater degradation*~~ *soils*];

4. Nontidal wetlands not included in the Resource Protection Area;

5. Such other lands [~~*as might qualify*~~] *under the provisions of subsection A of § 3.3 of this part* [~~*that local governments deem*~~] *necessary to* [~~*prevent nonpoint source pollution*~~ *protect the quality*] *of state waters.*

C. Resource Management Areas shall encompass a land area large enough to provide significant water quality protection through the employment of the criteria in Part IV and the requirements in Parts II and V.

[*§ 3.4. Intensely Developed Areas.*

At their option, local governments may designate Intensely Developed Areas as an overlay of Chesapeake Bay Preservation Areas within their jurisdictions. For the purposes of these regulations, Intensely Developed Areas shall serve as redevelopment areas in which development is concentrated while improving water quality. Areas so designated shall comply with the performance criteria for redevelopment in Part IV.

Local governments exercising this option shall examine the pattern of residential, commercial, industrial, and institutional development within Chesapeake Bay Preservation Areas. Areas of existing development and infill sites where little of the natural environment remains may be designated as Intensely Developed Areas provided at least one of the following conditions exist:

A. Development has severely altered the natural state of the area such that it has more than 50% impervious surface;

B. Public sewer and water is constructed and currently serves the area by the effective date. This condition does not include areas planned for public sewer and water;

C. Housing density is equal to or greater than four dwelling units per acre.]

PART IV.
LAND USE AND DEVELOPMENT PERFORMANCE CRITERIA.

§ 4.1. Purpose.

The purpose of this part is to implement the goals of the Act and Part II by establishing criteria to reduce nonpoint source pollution loads entering the Bay, its tributaries and other state waters, to protect the functional integrity of the Resource Protection Area, and to conserve water resources.

[*A.*] *These criteria* [*, or measures that achieve at least equivalent results, become mandatory upon the local program adoption date. They*] *are supplemental to the various planning and zoning concepts employed by local governments in granting, denying, or modifying requests to rezone, subdivide, or to use and develop land in Chesapeake Bay Preservation Areas.*

[*B. Local governments may exercise discretion in determining site-specific boundaries of Chesapeake Bay Preservation Area components and in making determinations of the application of these regulations, based on more reliable or specific information gathered from actual field evaluations of the parcel, in accordance with plan of development requirements in Part V.*]

§ 4.2. General performance criteria.

It must be demonstrated to the satisfaction of local governments that any use, development, or redevelopment of land in Chesapeake Bay Preservation Areas meets the following performance criteria:

1. No more land shall be disturbed than is necessary to provide for the desired use or development;

2. [~~*Natural*~~ *Indigenous*] *vegetation shall be preserved to the maximum extent possible* [*consistent with the use and development allowed*];

3. [~~*Nonstructural best management practices shall be employed rather than structural best management practices where either will perform the required function. In any case,*~~ *Where the*] *best management practices utilized* [~~*shall be self-maintaining or regular*~~ *require regular or periodic maintenance in order to continue their functions, such*] *maintenance* [~~*of their function must*~~ *shall*] *be ensured* [*by the local government through a maintenance agreement with the owner or developer or some other mechanism that achieves an equivalent objective* ;

4. All development [~~*of land*~~ *exceeding 2,500 square feet of land disturbance*] *shall be accomplished through a plan of development review process consistent with § 15.1-491 (h) of the Code of Virginia;*

5. Land development shall minimize impervious cover [*consistent with the use or development allowed*];

[~~*6. All subdivision lots platted after the effective date shall provide sufficient area for the construction of the principal structure, accessory structures, access road or driveway, and necessary on-site treatment facilities outside the Resource Protection Area.*~~]

[~~*7.*~~ *6.*] *Any land disturbing activity that exceeds an area of 2,500 square feet (including construction of all single family houses, septic tanks and drainfields, but otherwise as defined in § 10.1-560 of the Code of Virginia) shall comply with the requirements of the local erosion and sediment control ordinance;*

[~~*8. On-site sewage treatment systems not requiring a State Water Control Board permit shall:*~~

~~*a. Have inspection and pump-out accomplished at least every five years;*~~

~~*b. Provide a reserve drainfield site equal to the area of the primary drainfield site. The reserve drainfield site shall be shown on the plat map and building shall be prohibited on the area of the reserve drainfield;*~~

~~*c. Require a minimum vertical separation distance between the septic absorption area and the seasonally high water table of at least 18 inches at all times of the year.*~~]

[~~*9.*~~ *7.*] *Stormwater management criteria at least as stringent as the following apply:*

[~~*a. Sheet flows shall be maintained and concentrated flows avoided to the maximum extent possible;*~~]

[~~*b.*~~ *a.*] *For* [~~*new*~~] *development, the post-development nonpoint source pollution runoff load shall not exceed the predevelopment load based upon average land cover conditions;*

[~~c.~~ b.] Redevelopment [of any site that did not have best management practices incorporated into its existing development] shall [~~result in~~ achieve] a 10% reduction of nonpoint source pollution in runoff compared to the existing runoff load from the site. [Post-development runoff from any redevelopment site that did incorporate best management practices into its existing development shall not exceed the existing load of nonpoint source pollution in surface runoff. These criteria shall apply to redevelopment whether or not it is located within an Intensely Developed Area designated by the local government.

c. The following options may be used to comply with the stormwater management criteria of these regulations:

(1) Incorporation on the site of best management practices that achieve the required control;

(2) Compliance with a locally adopted regional stormwater management program incorporating pro-rata share payments pursuant to the authority provided in § 15.1-466(j) of the Code of Virginia that results in achievement of equivalent water quality protection;

(3) Compliance with a state or locally implemented program of stormwater discharge permits pursuant to § 402(p) of the federal Clean Water Act, as set forth in 40 C.F.R. Parts 122, 123, 124, and 504, dated December 7, 1988, as amended;

(4) For a redevelopment site that was completely impervious as originally developed, restoring a minimum 20% of the site to vegetated open space.

d. Any maintenance, alteration, use, or improvement to an existing structure not changing or affecting the quality of surface water discharge, as determined by the local government, may be exempted from the requirements of this subsection.]

[~~10.~~ 8.] [~~Agricultural lands~~ Land upon which agricultural activities are being conducted, including but not limited to crop production, pasture, and dairy and feedlot operations,] shall have a soil and water conservation plan [that accomplishes water quality protection] approved by the local Soil and Water Conservation District by January 1, 1995.

[a. The board will request the Department of Conservation and Recreation to evaluate the existing state and federal agricultural conservation programs for effectiveness in providing water quality protection. In the event that, by July 1, 1991, the Department of Conservation and Recreation finds that the implementation of the existing agricultural conservation programs is inadequate to protect water quality, the board will consider the promulgation of regulations to provide more effective protection of water quality from agricultural activities and may require implementation of best management practices on agricultural lands within the Chesapeake Bay Preservation Areas.]

[~~11. Where nontidal wetlands exist on the site, the following criteria apply:~~

~~a. Disturbance of nontidal wetlands or alteration of their biological function or character shall be avoided. Man-made nontidal bodies of water, including farm and stock ponds, irrigation ditches, drainage ditches and stormwater management best management practices other than created wetlands, are not considered wetlands by these regulations. However, man-made vegetated wetlands created as water quality best management practices or for purposes of compensation shall be considered equivalent to natural wetlands.~~

~~b. Except as provided in subsection B of § 4.3 of this part, if disturbance or alteration of nontida. wetlands cannot be completely avoided and exceeds an area of 10,000 square feet, the disturbed or altered area shall be replaced by at least an equal area of compensation wetlands on the site or within the same watershed wherever possible. Compensation wetlands shall be protected by perpetual conservation easements or other method of comparable effect.~~

~~c. Silvicultural activities shall implement best management practices for wetlands as established by the Virginia Department of Forestry. Notice that a logging operation is about to commence shall be given to appropriate officials of the Virginia Department of Forestry.~~]

[9. Silvicultural activities in Chesapeake Bay Preservation Areas are exempt from these regulations provided that silvicultural operations adhere to water quality protection procedures prescribed by the Department of Forestry in its "Best Management Practices Handbook for Forestry Operations." The Department of Forestry will oversee and document installation of best management practices and will monitor instream impacts of forestry operations in Chesapeake Bay Preservation Areas. In the event that, by July 1, 1991, the Department of Forestry programs are unable to demonstrate equivalent protection of water quality, the Department of Forestry will revise its programs to assure consistency of results and may require implementation of best management practices.]

[~~d.~~ 10.] Local governments shall require evidence of all [~~nontidal~~] wetlands permits required by law prior to authorizing grading or other on-site activities to

begin.

§ 4.3. Performance criteria for Resource Protection Areas.

The following criteria shall apply specifically within Resource Protection Areas and supplement the general performance criteria in § 4.2 of this part.

A. Allowable development.

A water quality impact assessment shall be required for any proposed development in accordance with Part V. Land development may be allowed only if it (i) is water dependent or (ii) constitutes redevelopment.

1. A new or expanded water-dependent facility may be allowed provided that:

a. It does not conflict with the comprehensive plan;

b. It complies with the performance criteria set forth in this part;

c. Any nonwater-dependent component is located outside of Resource Protection Areas;

[~~*d. Marina and community boat mooring locations conform to criteria established by the Virginia Marine Resources Commission;*~~]

[~~*e.*~~ *d.*] *Access will be provided with the minimum disturbance necessary. Where possible, a single point of access will be provided.*

2. Redevelopment shall conform to [~~*all*~~] *applicable* [*stormwater management and erosion and sediment control*] *criteria in this part.*

[~~*B. Nontidal wetlands.*~~

~~*Subject to the additional criteria in subsection K of § 4.2 of this part, any disturbed or altered area of nontidal wetlands shall be replaced by compensation nontidal wetlands of at least twice the area of the wetlands disturbed or altered.*~~]

[~~*C.*~~ *B.*] *Buffer* [~~*zone*~~ *area*] *requirements.*

In order to satisfy the buffer [~~*zone*~~ *area*] *requirements,* [~~*appropriate*~~] *vegetation* [*that is effective in retarding runoff, preventing erosion, and filtering nonpoint source pollution from runoff*] *shall be established where it does not exist* [~~*naturally*~~] *. Otherwise, the following performance criteria shall apply:*

1. [~~*Natural*~~ *In order to maintain the functional value of the buffer area,*] *vegetation* [~~*shall be preserved to the maximum extent possible, with the following exceptions*~~ *may be removed only to provide for reasonable sight lines, access paths, general woodlot management, and best management practices, as follows*] *:*

[~~*a. For shoreline erosion control projects, trees and woody vegetation may be removed, necessary control structures built, and appropriate vegetation established to protect or stabilize the shoreline in accordance with the best available technical advice and applicable permit conditions or requirements;*~~

~~*b. In order to maintain the functional value of the buffer zone, vegetation may be removed only to provide for reasonable sight lines, access paths, and general woodlot management.*~~]

[*a. Trees may be pruned or removed as necessary to provide for sight lines and vistas, provided that where removed, they shall be replaced with other vegetation that is equally effective in retarding runoff, preventing erosion, and filtering nonpoint source pollution from runoff.*

b. Any path shall be constructed and surfaced so as to effectively control erosion.

c. Dead, diseased, or dying trees or shrubbery may be removed at the discretion of the landowner, and silvicultural thinning may be conducted based upon the recommendation of a professional forester or arborist.

d. The landward fifty feet of the buffer area may be used for the installation and continued maintenance of best management practices appropriate for the site.

e. On land where the local government has determined to designate a buffer area less than 100 feet wide due to the drainage pattern, as set forth in subdivision 5.b of subsection B of § 3.2 of Part III, provisions shall be made to ensure that surface runoff is filtered in a manner equivalent to that provided by the buffer area prior to entering state waters.

f. For shoreline erosion control projects, trees and woody vegetation may be removed, necessary control techniques employed, and appropriate vegetation established to protect or stabilize the shoreline in accordance with the best available technical advice and applicable permit conditions or requirements.]

2. When the application of the buffer [~~*zone*~~ *area*] *would result in the loss of a buildable area on a lot or parcel recorded prior to the effective date* [*of these regulations*] *, modifications to the width of the buffer* [~~*zone*~~ *area*] *may be allowed in accordance with the following criteria:*

a. Modifications to the buffer [~~*zone*~~ *area*] *shall be the minimum necessary to achieve a reasonable*

buildable area for a principal structure and necessary utilities.

b. Where possible, an area equal to the area encroaching the buffer [~~zone~~ area] shall be estimated elsewhere on the lot or parcel in a way to maximize water quality protection.

c. In no case shall the reduced portion of the buffer [~~zone~~ area] be less than 50 feet in width.

[3. Redevelopment within Intensely Developed Areas may be exempt from the requirements of this subsection. However, while the immediate establishment of the buffer area may be impractical, local governments shall give consideration to implementing measures that would establish the buffer in these areas over time.]

[~~3.~~ 4.] In agricultural lands [, the full 100-foot width of the buffer area shall be maintained where it presently exists and be established where it does not presently exist with either trees with a dense ground cover or other vegetation that is equally effective in retarding runoff, preventing erosion, and filtering nonpoint source pollution from runoff. The buffer area is not required for agricultural drainage ditches if the adjacent agricultural land has in place best management practices in accordance with a conservation plan approved by the local Soil and Water Conservation District.]

[~~a. Where a naturally vegetated buffer zone up to the width required in Part III exists, it shall be maintained;~~

~~b. Existing agricultural activities in the buffer zone area shall maintain, as a minimum best management practice, a 25-foot wide vegetated filter strip measured landward from the mean high water level of tidal waters or tributary streams, or from the landward edge of any wetlands. The filter strip is not required for agricultural drainage ditches if the adjustment agricultural land has in place best management practices in accordance with a conservation plan approved by the local Soil and Water Conservation District;~~]

[~~c.~~ a.] The [~~filter strip shall be composed of either trees with a dense ground cover, a thick sod of grass, or an appropriate legume cover and~~ agricultural buffer area] shall be managed to prevent concentrated flows of surface water from breaching the [~~strip~~ buffer area] and noxious weeds (such as Johnson grass, kudzu, and multiflora rose) from invading the [~~strip~~ buffer area] .

[~~d. The filter strip shall be maintained until~~ b. The agricultural buffer area may be reduced to a minimum width of 50 feet when] the landowner has implemented [on the adjacent cropland] a program of Best Management Practices that improve water quality in accordance with a conservation plan approved by the local Soil and Water Conservation District, provided that the portion of the conservation plan being implemented for the Resource Protection Area achieves water quality protection at least the equivalent of that provided by the [~~filter strip~~ buffer area].

[~~4. Silvicultural activities shall maintain, as a minimum best management practice, a streamside management zone extending the full width of the buffer zone landward from all other components of Resource Protection Areas, in accordance with criteria developed by the Virginia Department of Forestry.~~]

§ 4.4. [~~Incorporation into local programs.~~ Local program development.]

Local governments shall incorporate the criteria in this part, or provisions at least the equivalent thereof, into their comprehensive plans, zoning ordinances, subdivision ordinances, and such other police and zoning powers as may be appropriate, in accordance with §§ 10.1-2111 and 10.1-2108 of the Act and Part V of these regulations. The criteria may be employed in conjunction with other planning and zoning concepts to protect the quality of state waters.

[§ 4.5. Administrative waivers and exemptions.

A. Nonconforming use and development waivers.

1. Local governments may permit the continued use, but not necessarily the expansion, of any structure in existence on the date of local program adoption. Local governments may establish an administrative review procedure to waive or modify the criteria of this part for structures on legal nonconforming lots or parcels provided that:

a. There will be no net increase in nonpoint source pollutant load.

b. Any development or land disturbance exceeding an area of 2500 square feet complies with all erosion and sediment control requirements of this part.

2. It is not the intent of these regulations to prevent the reconstruction of pre-existing structures within Chesapeake Bay Preservation Areas from occurring as a result of casualty loss unless otherwise restricted by local government ordinances.

B. Public utilities, railroads, and facilities exemptions.

1. Construction, installation, operation, and maintenance of electric, gas, and telephone transmission lines, railroads, and roadways and their appurtenant structures in accordance with the Erosion

and Sediment Control Law (§ 10.1-560 et seq. of the Code of Virginia) or an erosion and sediment control plan approved by the Virginia Soil and Water Conservation Board will be deemed to constitute compliance with these regulations.

2. Construction, installation, and maintenance of water, sewer, and local gas lines shall be exempt from the criteria in this part provided that:

a. To the degree possible, the location of such utilities and facilities should be outside Resource Protection Areas.

b. No more land shall be disturbed than is necessary to provide for the desired utility installation.

c. All such construction, installation, and maintenance of such utilities and facilities shall be in compliance with all applicable state and federal permits and designed and conducted in a manner that protects water quality.

d. Any land disturbance exceeding an area of 2500 square feet complies with all erosion and sediment control requirements of this part.

C. Exemptions in Resource Protection Areas.

The following land disturbances in Resource Protection Areas may be exempt from the criteria of this part provided that they comply with subdivisions 1 and 2 below of this subsection: (i) water wells; (ii) passive recreation facilities such as boardwalks, trails, and pathways; and (iii) historic preservation and archaeological activities.

1. Local governments shall establish administrative procedures to review such exemptions.

2. Any land disturbance exceeding an area of 2500 square feet shall comply with the erosion and sediment control requirements of this part.]

[~~*§ 4.5.*~~ *§ 4.6.*] *Exceptions to the criteria.*

Exceptions to the requirements of these regulations may be granted [~~*if: (i) strict application of the criteria will result in undue hardship unique to the particular situation of the applicant and (ii) granting the exception will not result in an increase of nonpoint source pollution over what would have resulted if the criteria had been applied*~~ *, provided that: (i) exceptions to the criteria shall be the minimum necessary to afford relief, and (ii) reasonable appropriate conditions upon any exception granted shall be imposed as necessary so that the purpose and intent of the Act is preserved. Local governments shall design an appropriate process or processes for the administration of exceptions, in accordance with Part V*].

[~~*A. Exceptions to the criteria shall be the minimum necessary to afford relief.*~~

~~*B. Reasonable and appropriate conditions upon any exception granted shall be imposed as necessary so that the purpose and intent of the Act is preserved.*~~]

PART V.
IMPLEMENTATION, ASSISTANCE, AND DETERMINATION OF CONSISTENCY.

§ 5.1. Purpose.

The purpose of this part is to assist local governments in the timely preparation of local programs to implement the Act, and to establish guidelines for determining local program consistency with the Act.

[~~*§ 5.2. Schedule of program adoption.*~~

~~*To ensure timely achievement of the requirements of the Act and timely receipt of assistance, local governments should adhere to the following schedule for the completion of program elements and their submission to the board for its information. The following schedule should be initiated and completed after the effective date of these regulations:*~~

~~*1. First year schedule.*~~

~~*a. Work plan within two months.*~~

~~*b. Proposed program for the designation of Chesapeake Bay Prevention Areas and adoption of performance criteria within six months.*~~

~~*c. Public hearings to designate Chesapeake Bay Preservation Areas and adopt performance criteria at the earliest possible date.*~~

~~*d. Work plan for second program year within nine months.*~~

~~*e. Local designation of Chesapeake Bay Preservation Areas and adoption of performance criteria must occur within 12 calendar months.*~~

~~*2. Second year schedule.*~~

~~*a. Proposed program for full implementation of the Act and regulations within 20 months.*~~

~~*b. Local adoption of complete local program within 24 months.*~~]

[*§ 5.2. Local assistance manual.*

A. The department will prepare a manual to provide guidance to assist local governments in the preparation of local programs in order to implement the Act and these regulations. The manual will be updated periodically to

reflect the most current planning and zoning techniques and effective best management practices. The manual will be made available to the public.

B. The manual will recommend a schedule for the completion of local program elements and their submission to the board for its information, to ensure timely achievement of the requirements of the Act and timely receipt of assistance. The board will consider compliance with the schedule in allocating financial and technical assistance. Those elements of the manual necessary to assist local governments in meeting the first year requirements will be completed by the effective date of these regulations.

C. The manual is for the purpose of guidance only and is not mandatory.]

§ 5.3. [~~*First year program elements.*~~ *Board to establish liaison.*]

[~~*A.*~~] *The board will establish liaison with each local government to assist that local government in developing and implementing its local program in obtaining technical and financial assistance, and in complying with the Act and regulations.*

[~~*B. Program work plan.*~~

~~*Local governments should provide the board with a tentative work plan for accomplishing their program which should include:*~~

~~*1. Identification and description of elements of the local program;*~~

~~*2. Identification of specific tasks necessary to achieve each program element and the responsible department or agency to perform each task;*~~

~~*3. Maps and resources to be used to designate Chesapeake Bay Preservation Areas;*~~

~~*4. Tentative dates for completion of program elements;*~~

~~*5. Anticipated needs for technical and financial assistance for specified program elements.*~~]

[~~*C.*~~ *§ 5.4.*] *Planning district comments.*

Local governments are encouraged to enlist the assistance and comments of regional planning district agencies early in the development of their local programs. [~~*Any comments from the regional planning district agency should be taken into consideration prior to completion and submission of a work plan.*~~]

[~~*D. Preliminary review by the board.*~~

~~*The board will review a work plan within 30 days. If it appears consistent with the Act, the board will schedule a conference with the local government to determine what technical and financial assistance may be needed and can be supplied to accomplish the work plan. If not, the board will notify the local government and recommend specific changes.*~~]

[~~*E.*~~ *§ 5.5.*] *Designation of Chesapeake Bay Preservation Areas.*

[~~*Local governments shall designate Chesapeake Bay Preservation Areas within 12 months after the effective date of these regulations. To assure timely adoption, they should prepare a proposed designation program and submit it to the board. The program should:*~~]

[*A. The designation of Chesapeake Bay Preservation Areas as an element of the local program should:*]

1. [~~*Inventory*~~ *Utilizing existing data and mapping resources, identify*] *and* [~~*analyze*~~ *describe*] *tidal wetlands, nontidal wetlands, tidal* [~~*shorelines*~~ *shores*] *, tributary streams, flood plains, highly erodible soils including steep slopes, highly permeable areas, and other sensitive environmental resources as necessary to comply with Part III.*

2. Determine, based upon the [~~*inventory*~~ *identification*] *and* [~~*analysis*~~ *description*] *, the extent of Chesapeake Bay Preservation Areas within* [~~*its*~~ *the local*] *jurisdiction.*

3. Prepare [~~*a*~~ *an appropriate*] *map* [*or maps*] *delineating Chesapeake Bay Preservation Areas.*

4. Prepare amendments to local ordinances which incorporate the performance criteria of Part IV or the model ordinance prepared by the board.

[~~*F.*~~ *B.*] *Review by the board.*

The board will review a proposed [~~*designation*~~] *program within 60 days. If it is consistent with the Act, the board will schedule a conference with the local government to determine what additional technical and financial assistance may be needed and* [~~*can be supplied*~~ *available*] *to accomplish the proposed program. If not* [*consistent*] *, the board will notify the local government and recommend specific changes.*

[~~*G.*~~ *C.*] *Adoption of first year program.*

[~~*As soon as possible*~~] *After being advised of program consistency, local governments shall hold a public hearing,* [~~*designate*~~ *delineate*] *Chesapeake Bay Preservation Areas* [~~*as an amendment to the local zoning map,*~~ *on an appropriate map or maps,*] *and adopt the performance criteria. Copies of the adopted program documents and subsequent changes thereto, shall be provided to the board.*

[*§ ~~5.4. Second year program elements.~~*

~~A. Work plan.~~

~~Within nine months after the effective date, local governments should provide a second year work plan to the board.~~

~~B. Preliminary review by the board.~~

~~The board will review the work plan within 30 days. If it is consistent with the Act, the board will schedule a conference with the local government to determine what technical and financial assistance may be needed and can be supplied to accomplish the work plan. If not, the board will notify the local government and recommend specific changes.~~]

[*~~C.~~ § 5.6.*] *Preparation and submission of management program.*

[*~~Within 20 months after the effective date, local governments should submit to the board completed local program documents~~ Local governments must adopt the full management program*] , *including any revisions to comprehensive plans, zoning ordinances, subdivision changes, and other local authorities necessary to implement the Act* [, *within 24 months of the adoption date of these regulations*] . *Prior to adoption, local governments may submit any proposed revisions to the board for comments. Guidelines are provided below for local government use in preparing local programs and the board's use in determining local program consistency.*

[*~~1.~~ A.*] *Comprehensive plans. Local governments shall review and revise their comprehensive plans, as necessary, for compliance with § 10.1-2109 of the Act. As a minimum, the comprehensive plan or plan component should consist of the following basic elements: (i) a summary of data collection and analysis; (ii) a policy discussion; (iii) a land use plan map; (iv) implementing measures, including specific objectives and a time frame for accomplishment.*

[*~~a.~~ 1.*] *Local governments should establish an information base from which to make policy choices about future land use and development that will protect the quality of state waters. This element of the plan should be based upon the following:*

[*~~(1) Inventories and analyses~~ a. Information*] *used to designate Chesapeake Bay Preservation Areas;*

[*~~(2)~~ b.*] *Other marine resources* [*~~and marine habitat~~*] ;

[*~~(3)~~ c.*] *Shoreline erosion problems and location of erosion control structures;*

[*~~(4)~~ d.*] *Conflicts between existing and proposed land uses and water quality* [*protection*] ;

[*~~(5)~~ e.*] *A map or map series, accurately representing the above information.*

[*~~b.~~ 2.*] *As part of the comprehensive plan, local governments should clearly indicate local policy on land use issues relative to water quality protection. Local governments should ensure consistency among the policies developed.*

[*~~(1)~~ a.*] *Local governments should discuss each component of Chesapeake Bay Preservation Areas in relation to the types of land uses considered appropriate and the reasons for including each type of land use.*

[*~~(2)~~ b.*] *As a minimum, local governments should prepare policy statements for inclusion in the plan on the following issues:*

[*~~(a)~~ (1)*] *Physical constraints to development, including soil limitations, with an explicit discussion of soil suitability for septic tank use;*

[*~~(b)~~ (2)*] *Protection of potable water supply, including groundwater resources;*

[*~~(c)~~ (3)*] *Relationship of land use to commercial and recreational fisheries* [*; ~~including nursery and habitat areas~~*] ;

[*~~(d)~~ (4)*] *Appropriate density for docks and piers;*

[*~~(e)~~ (5)*] *Public and private access to waterfront areas and effect on water qaulity;*

[*~~(f)~~ (6)*] *Existing pollution sources;*

[*~~(g)~~ (7)*] *Potential water quality improvement through the redevelopment of intensely developed areas.*

[*~~(3)~~ c.*] *For each of the policy issues listed above, the plan should contain a discussion of the scope and importance of the issue, alternative policies considered, the policy adopted by the local government for that issue, and a description of how the local policy will be implemented.*

[*~~(4)~~ d.*] *Within the policy discussion, local governments should address consistency between the plan and all adopted land use, public services, land use value taxation ordinances and policies, and capital improvement plans and budgets.*

[*~~c. Water-dependent facilities.~~*

~~(1) Local governments should include in their comprehensive plans a plan for water-dependent facilities. As a minimum, local governments should consider the following factors in the planning process:~~

~~(a) Impact of water-dependent uses on water quality;~~

~~(b) Existing wetlands, submerged aquatic plant beds, shellfish beds, anadramous fish spawning grounds, and other important habitat dependent on water quality;~~

~~(c) Extent and effects of any dredging required, including placment of dredged material;~~

~~(d) Compatibility of current land uses with water quality protection goals.~~

~~(2) Local governments should prepare an analysis of the capacity of existing water-dependent facilities and future demands. This analysis should address marinas, boat ramps, public docks, shoreline fishing areas, and other public access the waterfront or beach. Areas currently zoned for water-dependent facilities should also be evaluated.~~

~~(3) Local governments should identify areas suitable for water-dependent facilities with respect to other comprehensive plan policies and in accordance with performance criteria in Part IV.~~]

[~~2.~~ *B.*] *Zoning ordinances.*

Local governments shall review and revise their zoning ordinances, as necessary, to comply with § 10.1-2109 of the Act. The ordinances should:

[~~a.~~ *1.*] *Make provisions for the protection of* [~~Chesapeake Bay Preservation Areas~~ *the quality of state waters*] ;

[~~b.~~ *2.*] *Incorporate either explicitly or by direct reference, the performance criteria in Part IV;*

[~~c.~~ *3.*] *Be consistent with the comprehensive plan within Chesapeake Bay Preservation Areas.*

[~~3.~~ *C.*] *Plan of development review.*

Local governments shall make provisions as necessary to ensure that any development of land within Chesapeake Bay Preservation Areas must be accomplished through a plan of development procedure pursuant to § 15.1-491(h) of the Code of Virginia to ensure compliance with the Act and regulations. Any exemptions from those review requirements shall be established and administered in a manner that ensures compliance with these regulations.

[~~4.~~ *D.*] *Subdivision ordinances.*

Local governments shall review and revise their subdivision ordinances, as necessary, to comply with § 10.1-2109 of the Act. The ordinances should:

[~~a.~~ *1.*] *Include language to ensure the integrity of Chesapeake Bay Preservation Areas;*

[~~b.~~ *2.*] *Incorporate, either explicitly or by direct reference, the performance criteria of Part IV.*

[~~5.~~ *E.*] *Water quality impact assessment.*

A water quality impact assessment shall be required for any proposed development within the Resource Protection Area consistent with Part IV and for any other development in Chesapeake Bay Preservation Areas that may warrant such assessment because of the unique characteristics of the site or intensity of the proposed use or development. [~~Local governments should notify the board of all development requiring a water quality impact assessment. Upon request, the board will provide review and comment on any water quality impact assessment within 90 days, in accordance with advisory state review requirements of § 10.1-2112 of the Act.~~]

[*1. The purpose of the water quality impact assessment is to identify the impacts of proposed development on water quality and lands in Resource Protection Areas and to determine specific measures for mitigation of those impacts. The specific content and procedures for the water quality impact assessment shall be established by local governments. Local governments should notify the board of all development requiring such assessment. Upon request, the board will provide review and comment on any water quality impact assessment within 90 days, in accordance with advisory state review requirements of § 10.1-2112 of the Act.*

2. The assessment shall be of sufficient specificity to demonstrate compliance with the criteria of the local program.]

[~~D.~~ *F.*] *Review by the board.*

The board will review [~~a~~ *any*] *proposed management program within 90 days. If it is consistent with the Act, the board will schedule a conference with the local government to determine what additional technical and financial assistance may be needed and* [~~can be supplied~~ *available*] *to accomplish the long-term aspects of the local program. If the program or any part thereof is not consistent, the board will notify the local government in writing stating the reasons for a determination of inconsistency and recommending specific changes. Copies of the adopted program documents and subsequent changes thereto, shall be provided to the board.*

[*§* ~~5.~~ *§ 5.7.*] *Certification of local program.*

Upon request, the board will certify that a local program complies with the Act and regulations.

PART VI.
ENFORCEMENT.

§ 6.1. Applicablity.

The Act requires that the board ensure that local governments comply with the Act and regulations and that their comprehensive plans, zoning ordinances, and subdivision ordinances are in accordance with the Act. To satisfy these requirements, the board has adopted these regulations and will monitor each local government's compliance with the Act and regulations.

[~~*§ 6.2. Informal proceedings.*~~

~~*Prior to instituting notice and formal hearing proceedings or making a finding of noncompliance, the board will attempt through informal administrative proceedings to secure local program compliance with the Act.*~~

~~*§ 6.3. Notice and formal hearing.*~~

~~*When the board formally reviews a local government's compliance with the Act and regulations, it shall give the local government at least 15 days notice of the time and place of its next meeting and of its intention to then hear evidence on the local government's compliance. Evidence will be received from the staff and from the local government.*~~

~~*§ 6.4. Finding of noncompliance.*~~

~~*Upon a finding of noncompliance, the board will refer the matter for legal action.*~~]

[*§ 6.2. Administrative proceedings.*

Section 10.1-2103.8 of the Act provides that the board shall ensure that local government comprehensive plans, subdivision ordinances, and zoning ordinances are in accordance with the provisions of the Act, and that it shall determine such compliance in accordance with the provisions of the Administrative Process Act. When the board determines to decide such compliance, it will give the subject local government at least 15 days notice of its right to appear before the board at a time and place specified for the presentation of factual data, argument, and proof as provided by § 9-6.14:11. The board will provide a copy of its decision to the local government. If any deficiencies are found, the board will establish a schedule for the local government to come into compliance.

§ 6.3. Legal proceedings.

Section 10.1-2103.10 of the Act provides that the board shall take administrative and legal actions to ensure compliance by local governments with the provisions of the Act. Before taking legal action against a local government to ensure compliance, the board shall, unless it finds extraordinary circumstances, give the local government at least 15 days notice of the time and place at which it will decide whether [~~*or not*~~] *to take legal action. If it finds extraordinary circumstances, the board may proceed directly to request the Attorney General to enforce compliance with the Act and regulations. Administrative actions will be taken pursuant to § 6.2.*]

DEPARTMENT FOR THE DEAF AND HARD-OF-HEARING

Title of Regulation: **VR 245-01-01. Public Participation Guidelines.**

Statutory Authority: § 63.1-85.4 of the Code of Virginia.

Effective Date: August 30, 1989.

Summary:

The Public Participation Guidelines are steps the Virginia Department for the Deaf and Hard-of-Hearing shall take when developing or changing regulations. These steps include asking interested persons to submit their input and distributing notices of public hearings.

VR 245-01-01. Public Participation Guidelines.

PART I.
POLICY.

§ 1.1. The department will seek public participation from interested parties prior to formation and during the drafting, promulgation and final adoption process of regulations.

[~~*§ 1.2. Purpose.*~~

~~*Section 9-6.14:7.1 of the Code of Virginia requires each agency to formulate and promulgate public participation guidelines as regulations subject to the Administrative Process Act. The intent of the public participation guidelines is to establish written procedures to solicit input from "interested parties" prior to formation and drafting of the proposed regulations and during the formation, promulgation and final adoption process of the regulations.*~~

~~*This process will be applicable to the development of all regulations as defined by § 9-6.14:4 F of the Administrative Process Act:*~~

~~*"Rule" or "regulation" means any statement of general application, having the force of law, affecting the rights or conduct of any person, promulgated by an agency in accordance with the authority conferred on it by applicable basic laws.*~~]

PART II.
GUIDELINES.

§ 2.1. Notice of intent.

When the department deems it necessary to develop a regulation or make substantial change to regulations, a notice of intent will be published in The Virginia Register, General Notices section. This notice will invite those interested in providing input to notify the department of their interest. Various agencies and associations will be notified and requested to advise their constituency through newsletters, etc. In addition to this notice, known interested parties will be advised, through a special mailing, of the agency's desire to develop a regulation and will be invited to assist the department in developing the regulations or in providing information on how the regulations may affect the consumer.

The notice of intent will include:

1. Subject of the proposed regulation.

2. Identification of the entities that will be affected.

3. Timetable for reaching a decision, if available.

4. Name, address and telephone number of staff person to be contacted for further information.

§ 2.2. Formation of ad hoc advisory committees.

Whenever appropriate, as determined by the nature and scope of the regulation and the change(s) under consideration, an ad hoc advisory committee may be established by the director to include selected individuals who responded to the notice of intent, newsletter or special mailing and representatives of relevant associations or disciplines.

Committee members will be oriented to the department and program issues, constraints, entities to be affected, program options and time limitations. The committee will discuss the issues and make recommendations which will be considered in the drafting and adoption of regulations. Once the regulations have been developed the committee will review them and continue to participate during the promulgation process.

§ 2.3. Orientation/training.

The department will develop orientation/training materials to be used with members of the ad hoc advisory committee(s) which will include:

1. The responsibility/authority of the department.

2. Orientation to issues related to the proposed regulations; and

3. Method of promulgating regulations.

[~~PART III.~~
~~BASIS FOR POLICY.~~

~~§ 3.1. Chapter 5, Acts of Assembly of 1984, made amendments to the Administrative Process Act, § 9-6.14:1 et seq. of the Code of Virginia, which included statutory requirements for participation guidelines. These guidelines must be effective before other regulations can be adopted.~~
]

* * * * * * * *

Title of Regulation: **VR 245-03-01. Regulations Governing Interpreter Services for the Hearing Impaired.**

Statutory Authority: § 63.1-85.4 of the Code of Virginia.

Effective Date: August 30, 1989.

Summary:

These regulations have been amended to expand the initial provisions by: 1) recognizing highly experienced and skilled interpreters (Level IV); 2) requiring high ethical and professional standards of all interpreters (90% proficiency on the Code of Ethics assessment); and 3) allowing for the implementation of assessments for all communication modalities used by hearing impaired consumers. Part II has been deleted since it reiterates what is specified in the Administrative Process Act.

VR 245-03-01. Regulations Governing Interpreter Services for the Hearing Impaired.

PART I.
DEFINITIONS.

§ 1.1. Definitions.

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

"ASL" (American Sign Language) means the manual language predominantly used by members of the deaf community.

"Assessment team" refers to the group of individuals who serve on the panel for Virginia Quality Assurance Screenings.

"Candidate" refers to any person who has applied to take the Virginia Quality Assurance Screening.

"Certified interpreter" refers to an advanced level interpreter who holds valid certification issued by the Registry of Interpreters for the Deaf, Inc., or a cued speech interpreter certified by the National Cued Speech Association.

"Closed screening" means a screening which may be offered to a group who has requested a screening for eight candidates within that group. Candidates on the waiting list to be screened may not be notified of closed

screenings.

"Code of ethics" means the guidelines for interpreters as established by the national Registry of Interpreters for the Deaf, Inc.

"Consumer" refers to any [~~*hearing or hearing-impaired*~~ *individual with or without a hearing impairment who is a*] *recipient of interpreter services.*

"Coordinator" refers to the Coordinator of Interpreter [~~*Services*~~ *Programs*] *in the Department for the Deaf and Hard* [-] *of* [-] *Hearing.*

"Cued speech" means the phonetically-based hand supplement to speechreading which is independent to all sign language modalities.

"Department" means the Virginia Department for the Deaf and Hard [-] *of* [-] *Hearing.*

"Director" refers to the Director of the Virginia Department for the Deaf and Hard [-] *of* [-] *Hearing.*

"Directory" means the listing of qualified interpreters for the hearing impaired as compiled by the department.

"Expressive" means to convey a spoken message into a visual equivalent.

"Freelance" means to contract independently without long-term contractual commitments to any one employer.

"Hearing" refers to any person who is able to comprehend conversational speech [*without an assistive device*] *and* [*who*] *can speak intelligibly.*

"Hearing-impaired" refers to any person who is unable to comprehend conversational speech without the aid of an assistive device, such as a hearing aid, audible loop, or interpreter.

"Interpret" means to accurately convey messages without personal interjection between two or more parties using two languages.

"Interpreter" refers to any person who intermediates for the purpose of communication between two or more parties using different languages or different forms of the same language and refers to sign language, oral, and cued speech interpreters and transliterators. When the term is used to specifically identify an interpreter who interprets using ASL, this text will so indicate.

"Interpreting (ASL)" means the specific process of interpreting ASL vocabulary, structure, and components and does not include oral, cued speech, or other forms of interpreting using an English-based structure. The term is used specifically herein when discussing components of the VQAS assessment process.

[*"Manually-coded English" means any form of manual communication which utilizes specified handshapes to represent English syntax.*]

"MLS" (Minimal Language Skills) means a communication model, which may include informal gestures and home-signs, characterized by limited, or minimal, expressions based on a recognized language.

"Oral" means a communication mode which is dependent upon [~~*lipreading*~~ *speech reading and spoken communication*].

"Panel" refers to the people selected to serve on an assessment team of the quality assurance screening.

"Panelist" refers to any person who has satisfied the requirements for serving as a member of the assessment team for quality assurance screenings.

"QAS" (Quality Assurance Screening) means the process of assessing candidates to determine a level of interpreting competency. Standards established for the QAS are based on those originally set forth by the national Registry of Interpreters for the Deaf, Inc.

"Qualified interpreter" refers to an interpreter who currently holds valid national certification or a state screening/evaluation level.

"Receptive" means to convey a visual message into a spoken equivalent.

"RID" (Registry of Interpreters for the Deaf, Inc.) means the national governing body of the interpreting profession.

"Screening" means the Virginia Quality Assurance Screening.

"Screening level" means the level of competency awarded to an interpreter who has successfully satisfied the minimum standards established for VQAS.

"Service provider" refers to the person requesting interpreter services who may or may not also be the consumer.

"Transliterate" means to accurately convey messages without personal interjection between two or more parties using different forms of the same language, such as written or spoken English and a manually-coded form of English.

"VQAS" means Virginia Quality Assurance Screening.

[~~*PART II.*~~
~~*GENERAL INFORMATION.*~~

~~*§ 2.1. Authority for regulations.*~~

~~*Section 63.1-85.4:1 of the Code of Virginia establishes*~~

~~the responsibility of a statewide interpreter service as follows: "The department is authorized to establish, maintain, and coordinate a statewide interpreter service to provide courts, state and local legislative bodies and agencies, both public and private, and hearing-impaired persons who request the same with qualified interpreters for the hearing impaired out of such funds as may be appropriated for these purposes. Those courts and state and local agencies which have funds designated to employ qualified interpreters shall pay for the actual cost of such interpreter. The department is further authorized to establish and maintain lists of qualified interpreters for the hearing impaired to be available to the courts and state and local legislative bodies and agencies, both public and private, and to hearing-impaired persons." Section 63.1-85.4 authorizes the department to make, adopt and promulgate such regulations, consistent with Chapter 5.1 (§ 63.1-85.1:1 et seq.) of Title 63.1 of the Code of Virginia, as may be necessary to carry out the purpose and intent of this chapter and other laws of the Commonwealth as administered by the director of the department.~~

~~§ 2.2. Purpose of regulations.~~

~~The department has promulgated these regulations to establish consistency and fairness in the provision of the directory of qualified interpreters for the hearing impaired.~~

~~§ 2.3. Administration of regulations.~~

~~These regulations are administered by the director of the department.~~

~~§ 2.4. Recipients of services.~~

~~These regulations shall apply specifically to persons who are interested in being listed in the directory.~~

~~§ 2.5. Effective date of regulations.~~

~~These regulations will be effective 30 days from the date final regulations are published in The Virginia Register of Regulations.~~

~~§ 2.6. Application of the Administrative Process Act.~~

~~The provisions of the Administrative Process Act govern the adoption of these regulations and any subsequent amendments.~~

~~§ 2.7. Powers and procedures of regulations not exclusive.~~

~~The department reserves the right to authorize any procedure necessary for the enforcement of the provisions set forth herein under the provisions of § 63.1-85.4:1 of the Code of Virginia.~~]

PART [~~III.~~ *II.*]
ADMINISTRATION OF INTERPRETER SERVICES.

[~~§ 3.1. Qualifications of interpreter eligibility.~~ *§ 2.1. Responsibilities of the department.*]

[*A. The department will:*

1. Compile a directory of qualified interpreters;

2. Distribute the directory upon request;

3. Maintain a list of directory recipients and distribute updates;

4. Refer only qualified interpreters to consumers and service providers; and

5. Assist consumers and service providers in selecting an appropriate interpreter when requested.

B. The department may:

1. Assign interpreters when requested by a consumer or service provider; and

2. Compensate interpreters from available funds appropriated for that purpose.]

[~~A.~~ *C.*] *The department will provide, upon request, information about the different levels of qualifications and the various modes of communication* [~~: Hearing-impaired consumers may use any of the following communication modalities:~~ *and will assist consumers in selecting an interpreter with the appropriate skills.*]

[~~1. ASL;~~

~~2. Manually coded forms of English;~~

~~3. Oral;~~

~~4. Cued Speech; or~~

~~5. MLS.~~]

[~~B. The department will also:~~

~~1. Compile a directory of qualified interpreters;~~

~~2. Distribute the directory upon request;~~

~~3. Refer only qualified interpreters to consumers and service providers; and~~

~~4. Assist consumers and service providers in selecting an appropriate interpreter when requested.~~

~~C. The department may:~~

~~1. Assign interpreters when requested by a consumer or service provider; and~~

~~2. Compensate interpreters from available funds~~

~~appropriated for that purpose.~~]

[§ ~~3.2.~~ § 2.2.] Directory of qualified interpreters.

A. A qualified interpreter listed in the directory holds at least one of the following credentials:

1. RID certification;

2. VQAS screening level;

3. Certification issued by the National Cued Speech Association; or

4. A screening level or recognized evaluation from another state when:

a. The credentials meet the minimum requirements of VQAS; [and]

b. The credentials are valid and current in the state issued.

NOTE: Notwithstanding subdivision 4 of this subsection, the interpreter must receive a VQAS screening level or national certification [~~within~~ prior to] one year from the date listed in the directory.

B. Before an interpreter will be listed in the directory, the department will:

1. Verify the validity of all credentials;

2. Ensure that all credentials are current; and

3. Obtain a written request from the interpreter to be listed in the directory as a qualified interpreter.

[§ ~~3.3.~~ § 2.3.] Appeal procedure.

If an interpreter desires to contest the department's decision to exclude that interpreter's request to be listed as a qualified interpreter, that interpreter must file a written appeal with the director within 30 days of the determination. The director, or designee, shall provide an informal conference with that interpreter within 30 days from the date received.

PART [~~IV.~~ III.]
VIRGINIA QUALITY ASSURANCE SCREENINGS (VQAS).

In order to maintain the referenced directory and ensure the maintenance of quality interpreter services, the department will administer Virginia Quality Assurance Screenings in accordance with the provisions specified in this part.

[§ ~~4.1.~~ § 3.1.] Notification of intent to be screened.

Candidates interested in being screened should contact:

Coordinator of Interpreter [~~Services~~ Programs]
Virginia Department for the Deaf and Hard [-] of [-] Hearing
James Monroe Building, 7th Floor
101 North 14th Street
Richmond, Virginia 23219-3678
(804) 225-2570 in Richmond
(800) 552-7917 Toll-free Statewide

All requests to be screened will be acknowledged by the coordinator, or designee, in writing within 30 days of receipt of the request.

[§ ~~4.2.~~ § 3.2.] Scheduling of screenings.

The department may offer a screening whenever eight or more candidates are waiting to be screened but screenings may be cancelled when fewer than six candidates apply to be screened as scheduled. A minimum of two screenings per year will be offered in geographical regions most conducive to the accessibility of candidates and panelists.

[§ ~~4.3.~~ § 3.3.] Notifying and scheduling of candidates.

Candidates will be notified by mail of the next scheduled screening at least 10 days prior to the scheduled date. Closed screenings may be offered upon request to groups who satisfy the requirements established by the department for offering a screening ([§ ~~4.2~~ § 3.2]).

Candidates must complete and return a form requesting to be screened. The coordinator will be responsible for scheduling and confirming requests in the order received. Candidates whose requests are received after the screening schedule has been filled shall be retained as alternates and may be contacted in the event of a cancellation.

[§ ~~4.4.~~ § 3.4.] VQAS assessment process.

A. Assessment team.

1. A screening panel shall consist of at least three but no more than five panelists with at least one hearing and one hearing-impaired panelist.

2. Hearing panelists shall be certified interpreters who have successfully completed VQAS assessment team training as administered by the department.

3. Hearing-impaired panelists shall [~~be fluent in both ASL and English and shall~~] have successfully completed VQAS assessment team training as administered by the department.

[4. All panelists shall be fluent in English and the second language modality being assessed.]

[~~4.~~ 5.] *Employees of the department may not serve as panelists.*

B. Screening components.

Each screening is comprised of three major categories:

1. Part I - Code of Ethics: (General knowledge and application). May be administered prior to the other two categories - orally (in front of a live panel, on videotape, or both) or in writing (in the presence of a monitor).

2. Part II - Interpreting (ASL [ ) Performance)] : (Expressive and receptive abilities using ASL vocabulary, structure, and components). May be administered in front of a live panel, on videotape, or both.

3. Part III - Transliterating [(Performance)] : (Expressive and receptive abilities using a form of manually-coded English). May be administered in front of a live panel, on videotape, or both.

C. Awarding of screening levels.

Each panelist will independently assess a candidate's performance and assign a raw score for the required competencies within each category (Parts I, II, and III). Raw scores will be totaled for each part, converted to percentages, and averaged with the other panelists' scores. [Part I may be scored independently by the department when administered in writing.] Depending on the results, a candidate may:

1. Not receive any level at this time;

2. Receive a level for Interpreting (ASL) only;

3. Receive a level for Transliterating only; or

4. Receive a level for both Interpreting (ASL) and Transliterating.

D. Criteria for screening levels.

A screening level of I, II, [~~or~~] III, [or IV] will be awarded to candidates who satisfy the minimum [competency] requirements [~~for a level~~] . These minimum requirements are:

[~~1. Screening Level III:~~

~~a. Interpreting (ASL) - 80% Part I - Code of Ethics and 80% Part II - Interpreting (ASL)~~

~~b. Transliterating - 80% Part I - Code of Ethics and 80% Part III - Transliterating~~

~~2. Screening Level II:~~

~~a. Interpreting (ASL) - 75% Part I - Code of Ethics and 65% Part II - Interpreting (ASL)~~

~~b. Transliterating - 75% Part I - Code of Ethics and 65% Part III - Transliterating~~

~~3. Screening Level I:~~

~~a. Interpreting (ASL) - 70% Part I - Code of Ethics and 50% Part II - Interpreting (ASL)~~

~~b. Transliterating - 70% Part I - Code of Ethics and 50% Part III - Transliterating~~]

[*1. 90% Code of Ethics (Part I) and*

2. Performance Scores Parts II and III (Interpreting or Transliterating):

a. 95% - Level IV

b. 80% - Level III

c. 75% - Level II

d. 50% - Level I

NOTE: A Level will not be awarded until the candidate has achieved 90% on the Code of Ethics assessment.]

E. The department will notify candidates in writing of the status of their screening within 90 days of the screening date.

[*§ ~~4.5.~~ § 3.5.*] *Validity period.*

A screening level shall remain valid for three years.

[*§ ~~4.6.~~ § 3.6.*] *Appeal procedure.*

If a candidate desires to contest the panel's decision, the candidate must file an appeal with the director within 30 days of the date of the adverse decision. The director, or designee, shall provide for an informal conference with the candidate within 30 days. The only remedy which the director may award is the opportunity to retake the screening at the next scheduled date.

DEPARTMENT OF LABOR AND INDUSTRY

Title of Regulation: **VR 425-02-29. Hazardous Waste Operations and Emergency Response Standard. Virginia Occupational Safety and Health Standards for General Industry.**

Statutory Authority: § 40.1-22(5) of the Code of Virginia.

Effective Date: March 6, 1990.

Summary:

1. *Scope*

The Final Rule covers essentially the same 4 major areas addressed by the Interim Rule with an additional clarification that coverage extends to voluntary clean-ups at government identified sites.

[NOTE: See attachment for discussion of applicability of VOSH standards to "volunteers."]

2. *Safety and Health Program*

Basic requirements remain the same.

3. *Site Characterization and Analysis*

Basic requirements remain the same.

4. *Site Control*

Basic requirements remain the same.

5. *Training*

"OSHA has revised its proposal for 40 hours of training for all employees engaged in hazardous waste operations at uncontrolled hazardous waste sites. For general site workers, OSHA is retaining the 40-hour, three-day on-the-job training requirement. OSHA has concluded that this level of training is necessary to protect general site workers because they are engaged in difficult work in areas with safety and health hazards. Moreover, OSHA believes the Congressional language is quite clear on this matter.

However, for certain types of other workers, OSHA has concluded that less training may be appropriate. For example, those workers who visit sites only on occasion and then under the supervision of experienced site workers are required to have 24 hours of training and one day of on-the-job training.

OSHA has also concluded that this same level of training would be appropriate for those general site workers who work in areas which have been monitored and fully characterized indicating that exposures are under both permissible exposure limits and that respirators are not necessary." (54 Fed. Reg. 9305).

6. *Medical Surveillance*

The Final Rule is modified to make clear that the medical surveillance requirements only apply to firefighters that wear respirators more than 30 days a year when involved in hazardous waste activities.

In addition, the physician responsible for medical surveillance is given the discretion under the standard to determine the appropriate medical surveillance protocol for each employee. This eliminates the previous requirement for annual medical examinations and leaves the decision to the discretion of the physician. (The frequency of medical examinations cannot be less than biannually.)

Finally, medical surveillance protocols have been placed in an appendix to the standard, with a recommendation added that a physician licensed in occupational medicine be used to supervise or administer the examination. (54 Fed. Reg. 9306).

7. *Engineering Controls*

Basic requirements remain the same.

8. *Monitoring*

A clarification has been added specifying that monitoring is not necessary where the site environment or safety precautions taken by the employer prevent employee exposure to hazardous levels of chemical exposure. Monitoring is only required where there may be a question as to an employee's exposure. (54 Fed. Reg. 9307).

9. *Certain Operation Conducted Under RCRA*

Two new paragraphs are added to require the employer to address new technology programs and material handling programs.

10. *Emergency Response to Hazardous Substance Releases Not Previously Covered*

The Final Rule will only require "those employees engaged in emergency response and exposed to hazardous substances presenting an inhalation hazard or potential inhalation hazard" to wear positive pressure self-contained breathing apparatus." (54 Fed. Reg. 9309).

History:

On March 6, 1989, Federal OSHA published in the Federal Register an Amendment Concerning Hazardous Waste Operations and Emergency Response Standard, 29 CFR 1910.120; which "provides for employee protection during initial site characterization and analysis, monitoring activities, materials handling activities, training and emergency response."

Federal OSHA originally adopted on December 19, 1986 an Interim Final Rule on this subject as required by Congress in the Amendments and Reauthorization Act of 1986 (as amended)(SARA). The Virginia Safety

and Health Codes Board adopted the Interim Final Rule as a VOSH standard on March 23, 1987. The Interim Final Rule will stay in effect until the amended standard becomes effective on March 6, 1990.

Industry Profile

"The standard will affect about 20,000 uncontrolled hazardous waste sites, about 4,000 hazardous waste operations conducted under the Resource Conservation and Recovery Act (RCRA) of 1976, about 13,600 spills of hazardous materials that occur annually outside a fixed facility, and about 11,000 spills of hazardous material that occur annually inside a fixed facility.

The firms that will be affected by this standard are as follows: about 100 contractors that perform hazardous waste site clean-ups, about 50 engineering or technical services firms that perform hazardous waste preliminary assessments or site investigations and remedial investigations or feasibility studies for hazardous waste site cleanups, about 300 RCRA-regulated commercial treatment, storage and disposal facilities; about 3,700 RCRA-regulated facilities that are operated by a hazardous waste generator; about 19,000 state and local police departments; about 28,000 fire departments; about 750 private hazardous materials (HAZMAT) response teams; and about 22,000 manufacturers that use in-hours personnel to respond to emergency spills of hazardous materials within the facility." (54 Fed. Reg. 9311).

Benefits

"As many as 1.758 million employees, police officers, and firefighters may be at risk from exposure to hazardous waste or to hazardous materials during an emergency response to a hazardous material spill. Of these employees, about 14,000 work at uncontrolled hazardous waste site cleanups, 52,700 at RCRA-regulated facilities, 563,200 are police officers, 944,500 are firefighters, 7,500 are private HAZMAT members, and 176,000 are members of industrial fire brigades that provide in-plant emergency responses to hazardous material spills. Most of these employees, however, do not work fulltime around hazardous waste. In fact, most police officers will not face a hazardous material emergency response and most firefighters and industrial fire brigade personnel, who are at risk, are annually exposed to hazardous materials for only a few hours." (54 Fed. Reg. 9311).

"This standard will protect 1.758 million employees and firefighters from health and safety hazards caused by their exposure to hazardous wastes. The benefits of this standard are quantified in Chapter 3 of the Final Regulatory Analysis (FRA). The FRA indicates that this standard will prevent 20 cancer deaths per year and from 6 to 20 deaths per year from cardiovascular, neurological, renal and liver disorders. The standard will also prevent 1,925 injuries per year involving 18,700 lost work days.

The FRA also estimates that 6 fatalities that are not illness related will be prevented. This last figure is likely to be an underestimate. Individual incidents which are discussed in Chapter 3 and which may have been prevented by following the standard have sometimes led to more than 6 deaths. Also, the FRA does not take into account the benefits to the surrounding, nonworker community derived from the better handling of hazardous waste and emergency response incidents by the more qualified, properly trained and equipped response teams that are likely to result from compliance with this standard.

Chapter 3 of the FRA also presents risk rates. For example, the 17 excess cancer deaths per 1,000 exposed hazardous waste workers for an occupational lifetime of exposures is likely to be reduced by 75 percent.

OSHA concludes, therefore, that this standard will substantially reduce the significant risk of material impairment of health which results from exposure to hazardous waste either at hazardous waste operations or from emergency response.

However, section 126 of SARA gives OSHA clear statutory directions to issue this standard and is reasonably explicit about what type of provisions should be included. Section 126 is also a free standing provision and not an amendment to the OSHA Act.

Accordingly, it evidences a legislative intent to issue these regulations without the specific need to quantify benefits and reach significant risk conclusions." (54 Fed. Reg. 9311-12).

Impact and Cost to Employers

1. Cost

"OSHA used current work practices as its baseline for estimating the cost of full compliance with the standard. This estimated cost does not include any cost that is currently being incurred by employers as part of their work practices because those work practices, and therefore those costs, would continue whether or not the final standard was promulgated.

OSHA estimated that the total annualized incremental cost of full compliance with the standard will be about $153.422 million, of which $27.966 million will be spent by contractors on government-mandated cleanups of uncontrolled hazardous waste sites, $18.372 million will be spent by RCRA-regulated facility cleanups and operations, $17.332 million will be spent by police departments,

$50.553 million will be spent by fire departments, $4.226 million will be spent by private HAZMAT teams, and $29.179 million will be spent by industrial fire brigades.

The provision with the largest annual cost of compliance is the employee training provision ($92.978 million), followed by the medical surveillance provision ($11.293 million), the use of escape self-contained breathing apparatus ($9.507 million), and the written plan to minimize employee exposure to hazardous materials during postemergency cleanups of hazardous materials spills ($8.381 million)." (54 Fed. Reg. 9312).

2. *Impact*

"Most of the incremental cost of compliance will be paid by the government or the private firm responsible for the hazardous waste cleanup. OSHA calculated that it is economically feasible for every affected industry or group to comply with the standard. There may be an impact upon some labor markets as a consequence of the provision that only sufficiently experienced employees, or employees certified to have received the necessary training at an appropriate training facility, will be allowed to work on hazardous waste sites. This provision will effectively curtail the current practice of using local subcontractors to provide short-term employees for hazardous waste site cleanups and limit the number of employees eligible to work at hazardous waste sites. This in turn, may increase future wage rates and the cost of hazardous waste site cleanups." (54 Fed. Reg. 9312).

"Based on the available information, OSHA determined that the standard may have some impact upon some small entities. The cost of adequately training an employee off-site prior to working at a hazardous waste site cleanup will substantially reduce the use of subcontractor labor on a one-time basis. Thus, some local subcontractors face a potential reduction in hazardous waste site cleanup work. The majority of this subcontracted work will probably be performed by those subcontractors who concentrate upon this type of work. Subcontractors who have performed cleanup work but who do not elect to train employees needed to qualify for future work will probably be excluded from working in this market.

In addition, there could be an economic impact upon some small local fire departments depending upon the amount of financial resources available to them for additional training. With the allowance for different amounts of training hours depending upon the expected extent of involvement with hazardous materials spills, OSHA believes that this economic impact will not significantly affect a substantive number of local fire departments." (54 Fed. Reg. 9312).

3. *Environmental Effects*

"While OSHA does not anticipate any significant environmental effects as a result of this standard, there is a potential for some beneficial impacts. In general, as the work practices and procedures requirements of the standard reduce the incidence of employee injury, an indirect result should be a reduction in the likelihood of environmental releases of hazardous materials. (Virtually all provisions of the standard can be categorized in this manner, because once they are implemented, they will have a positive influence on worker safety.) As these requirements also provide guidance for routine reactions to situations encountered in emergencies, they may help to reduce the severity of such emergencies." (54 Fed. Reg. 9313).

4. *Feasibility*

The standard does not require the use of any large-scale capital equipment that is not currently used in normal work operations. In addition, each provision requires equipment and work practices that are currently available. Thus, OSHA has determined that the standard is technologically feasible.

Impact on Employees

The amendment will not have a significant additional impact on employees since the basic approach to employee safety and health contained in the Interim Final Rule remains the same in the amendment. Employees will still have to undergo mandatory training, receive instruction on proper personal protective equipment, undergo medical surveillance, learn site characterization and control, decontamination and emergency response procedures.

Since this amendment was adopted without public comment in accordance with § 9-6.14:4.1 C 4(c) of the Code of Virginia, the Department of Labor and Industry will receive, consider and respond to petitions by any interested person at anytime with respect to reconsideration or revision.

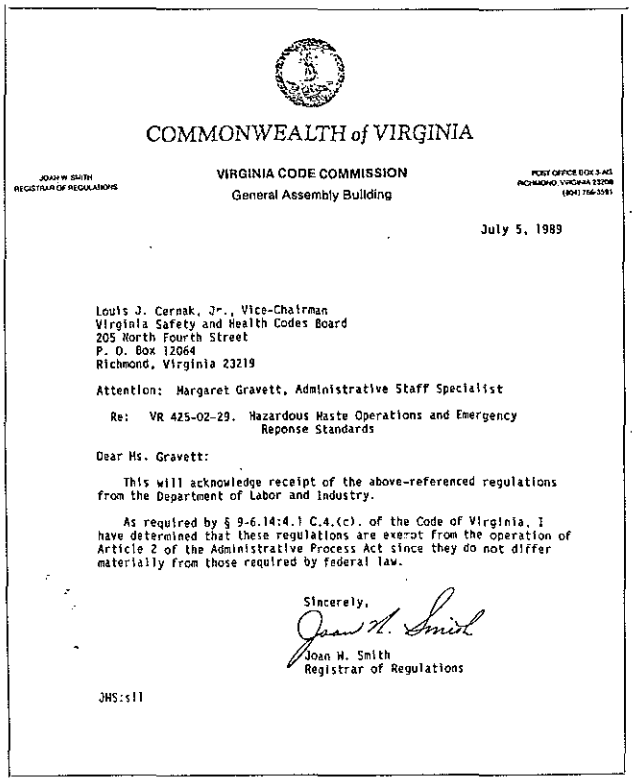
Note on Incorporation by Reference

Pursuant to § 9-6.18 of the Code of Virginia, the Hazardous Waste Operations and Emergency Response Standard (§ 1920.120) is declared a document generally available to the public and appropriate for incorporation by reference. For this reason, the standard itself will not be printed in The Virginia Register of Regulations. Copies of this standard are available for inspection at the Department of Labor and Industry, 205 North Fourth Street, Richmond, Virginia, and in the Office of the Registrar of Regulations, Room 292, General Assembly Building, Capitol Square, Richmond, Virginia.

VR 425-02-29. Hazardous Waste Operations and Emergency Response Standard. Virginia Occupational Safety and

Health Standards for General Industry.

The Virginia Occupational Safety and Health Codes Board adopted on June 19, 1989, the Federal OSHA Amendment Concerning the Hazardous Waste Operations and Emergency Response Standard as codified in 29 CFR § 1953.23 (a) (2), and published in the Federal Register, Vol. 54, No. 42, pp. 9317-9336, Monday, March 6, 1989. The amendments as adopted are not set out.



COMMONWEALTH of VIRGINIA

JOAN W. SMITH
REGISTRAR OF REGULATIONS

VIRGINIA CODE COMMISSION
General Assembly Building

POST OFFICE BOX 3-AG
RICHMOND, VIRGINIA 23208
(804) 786-3591

July 5, 1989

Louis J. Cernak, Jr., Vice-Chairman
Virginia Safety and Health Codes Board
205 North Fourth Street
P. O. Box 12064
Richmond, Virginia 23219

Attention: Margaret Gravett, Administrative Staff Specialist

Re: VR 425-02-29. Hazardous Waste Operations and Emergency Reponse Standards

Dear Ms. Gravett:

This will acknowledge receipt of the above-referenced regulations from the Department of Labor and Industry.

As required by § 9-6.14:4.1 C.4.(c). of the Code of Virginia, I have determined that these regulations are exempt from the operation of Article 2 of the Administrative Process Act since they do not differ materially from those required by federal law.

Sincerely,

Joan W. Smith
Registrar of Regulations

JHS:sll

* * * * * * * *

Title of Regulation: **VR 425-02-63. Crane or Derrick Suspended Personnel Platforms (1926.550). Virginia Occupational Safety and Health Standards for Construction Industry.**

Statutory Authority: § 40.1-22 (5) of the Code of Virginia.

Effective Date: September 4, 1989.

The Virginia Occupational Safety and Health Codes Board adopted the Federal OSHA Amendment Concerning Crane or Derrick Suspended Personnel Platforms, Redesignation as codified in 29 CFR § 1926.550 (g) and published in the Federal Register, Vol. 54, No. 73, p. 15406, Tuesday, April 18, 1989. The amendment is not set out; however, a summary of the change is printed below:

Summary:

The amendment redesignates § 1926.550(g)(3)(i)(D) to § 1926.550(g)(3)(ii)(D). This section addresses controlled load lowering and the prohibition of free fall and "requires that cranes or derricks used to hoist personnel 'have a system or device on the power train' to ensure that employees receive the necessary protection." However, that language appears with the 'Operational Criteria' (paragraph (g)(3)(i)) rather than with the 'Instruments and Components' provisions (paragraph (g)(E)(ii)). (54 Fed. Reg. 15404)

On April 18, 1989, Federal OSHA published in the Federal Register an Amendment Concerning Crane or Derrick Suspended Personnel Platforms, Redesignation, 29 CFR 1926.550(g), which redesignates § 1926.550(g)(3)(i)(D) to § 1926.550(g)(3)(ii)(D).

The change is made to eliminate some confusion concerning the regulatory intent of the redesignated section. Because of the location of paragraph (g)(3)(i)(D) in the "Operational Criteria" section, some employers have "mistakenly concluded that cautious operation alone would be an acceptable substitute for the installation of 'instruments and components....' By this redesignation, the Agency [Federal OSHA] will indicate clearly that the intended degree of employee protection is achieved through the cautious operation of a properly equipped crane or derrick lacking the required safety equipment" (54 Fed. Reg. 15405).

No additional cost to Virginia employers is anticipated. The amendment will have a positive impact on employees through the elimination of any confusion concerning the requirements of the Standard.

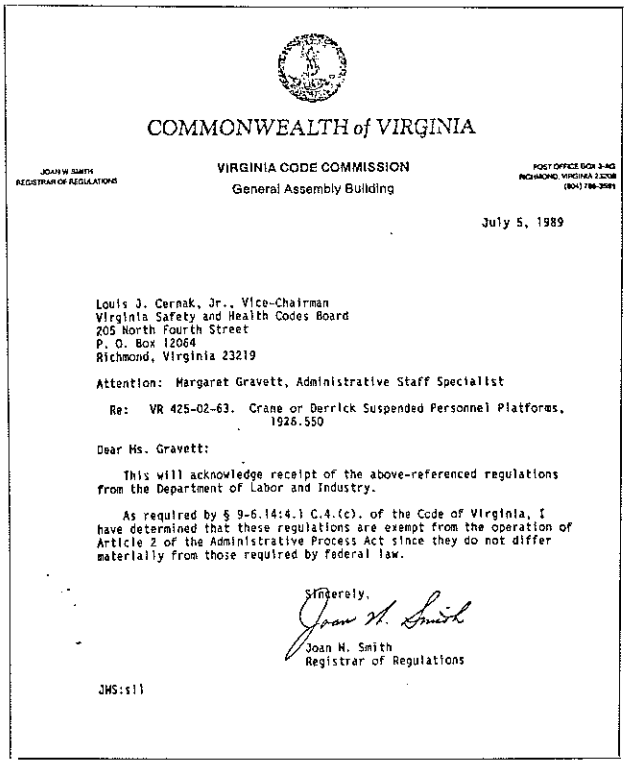
The amendment will have a positive impact on employees through the elimination of any confusion on the safe operation of cranes or derricks as personnel hoists.

Since this amendment was adopted without public comment in accordance with § 9-6.14:4 C 4(c) of the Code of Virginia, the Department of Labor and Industry will receive consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.

VR 425-02-63. Crane or Derrick Suspended Personnel Platforms (1926.550). Virginia Occupational Safety and Health Standards for Construction Industry.

§ 1926.550 [Amended]

2. In § 1926.550(g)(3)(i), paragraph (g)(3)(i)(D) is redesignated as paragraph (g)(3)(ii)(D) and paragraphs (g)(3)(i)(E) through (g)(3)(i)(G) are redesignated as paragraphs (g)(3)(i)(D) through (g)(3)(i)(F), respectively.



COMMONWEALTH of VIRGINIA

JOAN W. SMITH
REGISTRAR OF REGULATIONS

VIRGINIA CODE COMMISSION
General Assembly Building

POST OFFICE BOX 3-AG
RICHMOND, VIRGINIA 23208
(804) 786-3591

July 5, 1989

Louis J. Cernak, Jr., Vice-Chairman
Virginia Safety and Health Codes Board
205 North Fourth Street
P. O. Box 12064
Richmond, Virginia 23219

Attention: Margaret Gravett, Administrative Staff Specialist

Re: VR 425-02-63. Crane or Derrick Suspended Personnel Platforms, 1926.550

Dear Ms. Gravett:

This will acknowledge receipt of the above-referenced regulations from the Department of Labor and Industry.

As required by § 9-6.14:4.1 C.4.(c). of the Code of Virginia, I have determined that these regulations are exempt from the operation of Article 2 of the Administrative Process Act since they do not differ materially from those required by federal law.

Sincerely,

Joan W. Smith
Registrar of Regulations

JWS:slj

MARINE RESOURCES COMMISSION

NOTE: The Marine Resources Commission is exempted from the Administrative Process Act (§ 9-6.14:1 of the Code of Virginia); however, it is required by § 9-6.14:22 B to publish all final regulations.

Title of Regulation: **VR 450-01-0036. Pertaining to Time Restrictions on Commercial Crabbing.**

Statutory Authority: § 28.1-23 of the Code of Virginia.

Effective Date: July 1, 1989.

Preamble:

This regulation describes three time restrictions on commercial crabbing in Virginia. The purpose of these restrictions is to allow for conservation of crabs and to improve the enforceability of other laws pertaining to crabbing.

VR 450-01-0036. Pertaining to Time Restrictions on Commercial Crabbing.

§ 1. Authority, prior regulations, effective date.

A. This regulation is promulgated pursuant to authority contained in § 28.1-23 of the Code of Virginia.

B. Related restrictions on commercial crabbing are found in Title 28.1, Chapter 6 of the Code of Virginia and in VR 450-01-0007, VR 450-01-0012, VR 450-01-0041, and VR 450-01-0049.

C. Sections 3 and 4 of this regulation were added and made effective by Commission action on May 23, 1988; the original regulation was promulgated on November 26, 1985. The effective date of this regulation as amended is ~~May 4, 1989~~ *July 1, 1989* .

§ 2. Sunday prohibition.

It shall be unlawful to take or catch crabs for commercial purposes on Sunday. This section shall not apply to the harvest of peeler crabs by crab traps or peeler pots or to the working of floats, pens, or onshore facilities for soft crab shedding operations.

§ 3. Daily time limits.

It shall be unlawful to take or catch crabs for commercial purposes between sunset and three hours before sunrise.

§ 4. Penalty.

As set forth in § 28.1-23 of the Code of Virginia, any person, firm, or corporation violating any provision of this regulation shall be guilty of a Class 1 misdemeanor.

/s/ William A. Pruitt
Commissioner

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES (BOARD OF)

REGISTRAR'S NOTICE: Due to its length, the regulation entitled "Eligibility Conditions and Requirements" filed by the Department of Medical Assistance Services is not being published. However, in accordance with § 9-6.14:22 of the Code of Virginia, a summary is being published in lieu of full text. Also, the page containing the proposed amendments is set out below. The full text of the regulation is available for public inspection at the office of the Registrar of Regulations and the Department of Medical Assistance Services.

Title of Regulation: **VR 460-02-2.6100. Eligibility Conditions and Requirements: State Plan for Medical Assistance Relating to Continued Eligibility for Pregnant Women.**

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

Effective Date: September 1, 1989.

Summary:

This regulation provides continuous eligibility for pregnant women, once their Medicaid eligibility is established, without regard for changes in their family income for the duration of their pregnancies. This is a provision approved by the Omnibus Budget Reconciliation Act of 1987.

Revision: HCFA-PM-87-4 (BERC) ATTACHMENT 2.6-A
MARCH 1987 Page 8
OMB No.: 0938-0193

Citation	Condition or Requirement
	... The disregards of the State supplementary payment program, as follows:
	... The disregards of the SSI program, except for the following restrictions applied under the provision of § 1902(f) of the Act.
1902(1)(3)(E) of the Act, P.L. 99-509 (§ 9401(b))	e. For pregnant women and infants or children covered under the provisions of § 1902(a)(10)(A)(ii)(IX) of the Act –
	(1) In determining countable income, the following disregards and exemptions are those in the State's approved AFDC plan; or those in the State's approved title IV-E plan, as appropriate.
1902(e)(6) of the Act. P.L. 99-509 (§ 9401(d))	XX (2) The agency continues to treat women as being eligible under the provisions of § 1902(a)(10)(A)(ii)(IX) of the Act, without regard to any changes in family income until the end of the 60-day period beginning on the last day of pregnancy.

* * * * * * * *

Title of Regulation: **VR 460-02-4.191; VR 460-02-4.192; VR 460-02-4.194. State Plan for Medical Assistance Relating to Nonenrolled Provider Reimbursement.**

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

Effective Date: September 1, 1989.

Summary:

The purpose of the Nonenrolled Provider Reimbursement final regulations is to regulate the reimbursement of providers who provide low volumes of care to Virginia Medicaid recipients. These final permanent regulations require providers' enrollment if they provide a minimum of 500 bed days of care.

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 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, HHS on a demonstration or experimental basis for the payment of reasonable costs by methods other than those described in paragraphs I and II above.

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

(1) Hospitals were grouped by classes according to number of beds and urban versus rural. (Three groupings for rural–0 to 100 beds, 101 to 170 beds, and over 170 beds; four groupings for urban–0 to 100, 101 to 400, 401 to 600, and over 600 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 were established as of July 1, 1982, for each grouping. Hospitals with a fiscal year end after June 30, 1982, were subject to the new reimbursement ceilings.

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

Effective July 1, 1986, and until June 30, 1988, providers subject to the prospective payment system of reimbursement had their prospective operating cost rate and prospective operating cost ceiling computed using a new methodology. This method uses 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 began.

The prospective operating cost rate is 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 is 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 allowance for inflation percent of change for the quarter in which the provider's new fiscal year began is added to this base to determine the new operating cost ceiling. This new ceiling was 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.

Effective on and after July 1, 1988, and until June 30, 1989, for providers subject to the prospective payment system, the allowance for inflation will be based on the percent of change in the moving average of the Data Resources, Incorporated Health Care Cost HCFA-Type Hospital Market Basket determined in the quarter in which the provider's new fiscal year begins. Such providers will have their prospective operating cost rate and prospective operating cost ceiling established in accordance with the methodology which became effective July 1, 1986. Rates and ceilings in effect July 1, 1988, for all such hospitals will be adjusted to reflect this change.

Effective on and after July 1, 1989, for providers subject to the prospective payment system, the allowance for inflation will be based on the percent of change in the moving average of the Health Care Cost HCFA-Type Hospital Market Basket, adjusted for Virginia, as developed by Data Resources, Incorporated, determined in the quarter in which the provider's new fiscal year begins. Such providers will have their prospective operating cost rate and prospective operating cost ceiling established in accordance with the methodology which became effective July 1, 1986. Rates and ceilings in effect July 1, 1989, for all such hospitals will be adjusted to reflect this change.

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) 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:

Group Ceiling	Hospital's Allowable Cost Per Day	Difference $	Difference % of Ceiling	Sliding Scale Incentive $	Sliding Scale Incentive % of Difference
$230	$230	0	0	0	0
$230	207	23.00	10%	2.30	10%
$230	172	57.50	25%	14.38	25%
$230	143	76.00	33%	19.00	25%

(6) There will be special consideration for exception

to the median operating cost limits in those instances where extensive neonatal care is provided.

(7) Disporportionat.. share hospitals defined.

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% 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%.

VI. 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 expenses, a statement of retained earnings (or fund 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 the cost reporting forms are sent to the provider.

Although utilizing the cost apportionment and cost 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 o. 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.

A. Lump sum payment.

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

B. Offset.

If the provider has been overpaid for a particular fiscal year and has been underpaid for another fiscal year, the underpayment shall be offset against the overpayment. So long as the provider has an overpayment balance, any underpayments discovered by subsequent review or audit shall also be used to reduce the remaining amount of the overpayment.

C. Payment schedule.

If the provider cannot refund the total amount of the overpayment (i) at the time it files a cost report indicating that an overpayment has occurred, the provider shall request an extended repayment schedule at the time of filing, or (ii) within 30 days after receiving the DMAS demand letter, the provider shall promptly request an extended repayment schedule.

DMAS may establish a repayment schedule of up to 12 months to recover all or part of an overpayment or, if a provider demonstrates that repayment within a 12-month period would create severe financial hardship, the Director of the Department of Medical Assistance Services ("the director") may approve a repayment schedule of up to 36 months.

A provider shall have no more than one extended repayment schedule in place at one time. If an audit later uncovers an additional overpayment, the full amount shall be repaid within 30 days unless the provider submits further documentation supporting a modification to the existing extended repayment schedule to include the additional amount.

If, during the time an extended repayment schedule is in effect, the provider withdraws from the Program or fails to file a cost report in a timely manner, the outstanding balance shall become immediately due and payable.

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

D. Extension request documentation.

In the request for an extended repayment schedule, the provider shall document the need for an extended (beyond 30 days) repayment and submit a written proposal scheduling the dates and amounts of repayments. If DMAS approves the schedule, DMAS shall send the provider written notification of the approved repayment schedule, which shall be effective retroactive to the date the provider submitted the proposal.

E. Interest charge on extended repayment.

Once an initial determination of overpayment has been made, DMAS shall undertake full recovery of such overpayment whether or not the provider disputes, in whole or in part, the initial determination of overpayment. If an appeal follows, interest shall be waived during the period of administrative appeal of an initial determination of overpayment.

Interest charges on the unpaid balance of any overpayment shall accrue pursuant to § 32.1-313 of the Code of Virginia from the date the director's determination becomes final.

The director's determination shall be deemed to be final on (i) the due date of any cost report filed by the provider indicating that an overpayment has occurred, or (ii) the issue date of any notice of overpayment, issued by DMAS, if the provider does not file an appeal, or (iii) the issue date of any administrative decision issued by DMAS after an informal factfinding conference, if the provider does not file an appeal, or (iv) the issue date of any administrative decision signed by the director, regardless of whether a judicial appeal follows. In any event, interest shall be waived if the overpayment is completely liquidated within 30 days of the date of the final determination. In cases in which a determination of overpayment has been judicially reversed, the provider shall be reimbursed that portion of the payment to which it is entitled, plus any applicable interest which the provider paid to DMAS.

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

XI. Pursuant to Item 389 E4 of the 1988 Appropriation Act (as amended), effective July 1, 1988, a separate group ceiling for allowable operating costs shall be established for state-owned university teaching hospitals.

XII. Nonenrolled providers.

A. Hospitals that are not enrolled as providers with the Department of Medical Assistance Services (DMAS) which

submit claims shall be paid [~~using~~ based on] the DMAS average reimbursable inpatient cost-to-charge ratio, updated annually, for enrolled hospitals less five percent. The five percent is for the cost of the additional manual processing of the claims. Hospitals that are not enrolled shall submit claims using the required DMAS invoice formats. Such claims must be submitted within 12 months from date of services. A hospital is determined to regularly treat Virginia Medicaid recipients and shall be required by DMAS to enroll if it provides more than [~~100~~ 500] days of care to Virginia Medicaid recipients during the hospitals' financial fiscal year. A hospital which is required by DMAS to enroll 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, IX, and X. The hospital shall be placed in one of the [~~existing~~ DMAS] peer groupings which most nearly reflects its licensed bed size and location (Section V.(1) above). These hospitals shall 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).

B. A newly enrolled facility shall have an interim rate determined using the provider's most recent filed Medicare cost report or a pro forma cost report or detailed budget prepared by the provider and accepted by DMAS, which represents its anticipated allowable cost for the first cost reporting period of participation. For the first cost reporting period, the provider shall be limited to the lesser of its actual operating costs or its peer group ceiling. Subsequent rates shall be determined in accordance with the current Medicaid Prospective Payment System as noted in the preceding paragraph of XII.A.

C. Once a hospital has obtained the enrolled status, [~~100~~ 500] days of care, the hospital must agree to become enrolled as required by DMAS to receive reimbursement. This status shall continue during the entire term of the provider's current Medicare certification and subsequent recertification or until mutually terminated with 30 days written notice by either party. The provider must maintain this enrolled status to receive reimbursement. If an enrolled provider elects to terminate the enrolled agreement, the nonenrolled reimbursement status will not be available to the hospital for future reimbursement, except for emergency care.

D. Prior approval must be received from the DMAS Health Services Review Division when a referral has been made for treatment to be received from a nonenrolled acute care facility (in-state or out-of-state), except in the case of an emergency or because medical resources or supplementary resources are more readily available in another state.

E. Nothing in this regulation is intended to preclude DMAS from reimbursing for special services, such as rehabilitation, ventilator, and transplantation, on an exception basis and reimbursing for these services on an individually, negotiated rate basis.

Hospital Reimbursement Appeals Process

§ 1. Right to appeal and initial agency decision.

A. Right to appeal.

Any hospital seeking to appeal its prospective payment rate for operating costs related to inpatient care or other allowable costs shall submit a written request to the Department of Medical Assistance Service within 30 days of the date of the letter notifying the hospital of its prospective rate unless permitted to do otherwise under § 5 E. The written request for appeal must contain the information specified in § 1 B. The department shall respond to the hospital's request for additional reimbursement within 30 days or after receipt of any additional documentation requested by the department, whichever is later. Such agency response shall be considered the initial agency determination.

B. Required information.

Any request to appeal the prospective payment rate must specify: (i) the nature of the adjustment sought; (ii) the amount of the adjustment sought; and (iii) current and prospective cost containment efforts, if appropriate.

C. Nonappealable issues.

The following issues will not be subject to appeal: (i) the organization of participating hospitals into peer groups according to location and bedsize and the use of bedsize and the urban/rural distinction as a generally adequate proxy for case mix and wage variations between hospitals in determining reimbursement for inpatient care; (ii) the use of Medicaid and applicable Medicare Principles of Reimbursement to determine reimbursement of costs other than operating costs relating to the provision of inpatient care; (iii) the calculation of the initial group ceilings on allowable operating costs for inpatient care as of July 1, 1982; (iv) the use of the inflation factor identified in the State Plan as the prospective escalator; and (v) durational limitations set forth in the State Plan (the "twenty-one day rule").

D. The rate which may be appealed shall include costs which are for a single cost reporting period only.

E. The hospital shall bear the burden of proof throughout the administrative process.

§ 2. Administrative appeal of adverse initial agency determination.

A. General.

The administrative appeal of an adverse initial agency determination shall be made in accordance with the

Virginia Administrative Process Act, § 9-6.14:11 through § 9-6.14:14 of the Code of Virginia as set forth below.

B. The informal proceeding.

1. The hospital shall submit a written request to appeal an adverse initial agency determination in accordance with § 9-6.14:11 of the Code of Virginia within 15 days of the date of the letter transmitting the initial agency determination.

2. The request for an informal conference in accordance with § 9-6.14:11 of the Code of Virginia shall include the following information:

a. The adverse agency action appealed from;

b. A detailed description of the factual data, argument or information the hospital will rely on to challenge the adverse agency decision.

3. The agency shall afford the hospital an opportunity for an informal conference in accordance with § 9-6.14:11 of the Code of Virginia within 45 days of the request.

4. The Director of the Division of Provider Reimbursement of the Department of Medical Assistance Services, or his designee, shall preside over the informal conference. As hearing officer, the director (or his designee) may request such additional documentation or information from the hospital or agency staff as may be necessary in order to render an opinion.

5. After the informal conference, the Director of the Division of Provider Reimbursement, having considered the criteria for relief set forth in §§ 4 and 5 below, shall take any of the following actions:

a. Notify the provider that its request for relief is denied setting forth the reasons for such denial; or

b. Notify the provider that its appeal has merit and advise it of the agency action which will be taken; or

c. Notify the provider that its request for relief will be granted in part and denied in part setting forth the reasons for the denial in part and the agency action which will be taken to grant relief in part.

6. The decision of the informal hearing officer shall be rendered within 30 days of the conclusion of the informal conference.

§ 3. The formal administrative hearing: procedures.

A. The hospital shall submit its written request for a formal administrative hearing under § 9-6.14:12 of the Code of Virginia within 15 days of the date of the letter transmitting the adverse informal agency decision.

B. At least 21 days prior to the date scheduled for the formal hearing, the hospital shall provide the agency with:

1. Identification of the adverse agency action appealed from; and

2. A summary of the factual data, argument and proof the provider will rely on in connection with its case.

C. The agency shall afford the provider an opportunity for a formal administrative hearing within 45 days of the receipt of the request.

D. The Director of the Department of Medical Assistance Services, or his designee, shall preside over the hearing. Where a designee presides, he shall make recommended findings and a recommended decision to the director. In such instance, the provider shall have an opportunity to file exceptions to the proposed findings and conclusions. In no case shall the designee presiding over the formal administrative hearing be the same individual who presided over the informal appeal.

E. The Director of the Department of Medical Assistance Services shall make the final administrative decision in each case.

F. The decision of the agency shall be rendered within 60 days of the conclusion of the administrative hearing.

§ 4. The formal administrative hearing: necessary demonstration of proof.

A. The hospital shall bear the burden of proof in seeking relief from its prospective payment rate.

B. A hospital seeking additional reimbursement for operating costs relating to the provision of inpatient care shall demonstrate that its operating costs exceed the limitation on operating costs established for its peer group and set forth the reasons for such excess.

C. In determining whether to award additional reimbursement to a hospital for operating costs relating to the provision of inpatient care, the Director of the Department of Medical Assistance Services shall consider the following:

1. Whether the hospital has demonstrated that its operating costs are generated by factors generally not shared by other hospitals in its peer group. Such factors may include, but are not limited to, the addition of new and necessary services, changes in case mix, extraordinary circumstances beyond the control of the hospital, and improvements imposed by licensing or accrediting standards.

2. Whether the hospital has taken every reasonable action to contain costs on a hospital-wide basis.

a. In making such a determination, the director or his designee may require that an appellant hospital provide quantitative data, which may be compared to similar data from other hospitals within that hospital's peer group or from other hospitals deemed by the director to be comparable. In making such comparisons, the director may develop operating or financial ratios which are indicators of performance quality in particular areas of hospital operation. A finding that the data or ratios or both of the appellant hospital fall within a range exhibited by the majority of comparable hospitals, may be construed by the director to be evidence that the hospital has taken every reasonable action to contain costs in that particular area. Where applicable, the director may require the hospital to submit to the agency the data it has developed for the Virginia Health Services Cost Review Council. The director may use other data, standards or operating screens acceptable to him. The appellant hospital shall be afforded an opportunity to rebut ratios, standards or comparisons utilized by the director or his designee in accordance with this section.

b. Factors to be considered in determining effective cost containment may include the following:

- Average daily occupancy,
- Average hourly wage,
- FTE's per adjusted occupied bed,
- Nursing salaries per adjusted patient day,
- Average length of stay,
- Average cost per surgical case,
- Cost (salary/nonsalary) per ancillary procedure,
- Average cost (food/nonfood) per meal served,
- Cost (salary/nonsalary) per pharmacy prescription,
- Housekeeping cost per square foot,
- Maintenance cost per square foot,
- Medical records cost per admission,
- Current ratio (current assets to current liabilities),
- Age of receivables,
- Bad debt percentage,
- Inventory turnover,
- Measures of case mix,
- Average cost per pound of laundry.

c. In addition, the director may consider the presence or absence of the following systems and procedures in determining effective cost containment in the hospitals's operation.

- Flexible budgeting system,
- Case mix management systems,
- Cost accounting systems,
- Materials management system,
- Participation in group purchasing arrangements,
- Productivity management systems,
- Cash management programs and procedures,
- Strategic planning and marketing,
- Medical records systems,
- Utilization/peer review systems.

d. Nothing in this provision shall be construed to require a hospital to demonstrate every factor set forth above or to preclude a hospital from demonstrating effective cost containment by using other factors.

The director or his designee may require that an onsite operational review of the hospital be conducted by the department or its designee.

3. Whether the hospital has demonstrated that the Medicaid prospective payment rate it receives to cover operating costs related to inpatient care is insufficient to provide care and service that conforms to applicable state and federal laws, regulations and quality and safety standards.[1]

D. In no event shall the Director of the Department of Medical Assistance Services award additional reimbursement to a hospital for operating costs relating to the provision of inpatient care unless the hospital demonstrates to the satisfaction of the director that the Medicaid rate it receives under the Medicaid prospective payment system is insufficient to ensure Medicaid recipients reasonable access to sufficient inpatient hospital services of adequate quality.[2] In making such demonstration, the hospital shall show that:

1. The current Medicaid prospective payment rate jeopardizes the long-term financial viability of the hospital. Financial jeopardy is presumed to exist if, by providing care to Medicaid recipients at the current Medicaid rate, the hospital can demonstrate that it is, in the aggregate, incurring a marginal loss.[3]

For purposes of this section, marginal loss is the amount by which total variable costs for each patient day exceed the Medicaid payment rate. In calculating marginal loss, the hospital shall compute variable costs at 60% of total inpatient operating costs and fixed costs at 40% of total inpatient operating costs; however, the director may accept a different ratio of fixed and variable operating costs if a hospital is able to demonstrate that a different ratio is appropriate for its particular institution.

Financial jeopardy may also exist if the hospital is incurring a marginal gain but can demonstrate that it has unique and compelling Medicaid costs, which if unreimbursed by Medicaid, would clearly jeopardize the hospital's long-term financial viability; and

2. The population served by the hospital seeking additional financial relief has no reasonable access to other inpatient hospitals. Reasonable access exists if most individuals served by the hospital seeking financial relief can receive inpatient hospital care

within a 30 minute travel time at a total per diem rate which is less to the Department of Medical Assistance Services than the costs which would be incurred by the Department of Medical Assistance Services per patient day were the appellant hospital granted relief.[4]

E. In determining whether to award additional reimbursement to a hospital for reimbursement cost which are other than operating costs related to the provision of inpatient care, the director shall consider Medicaid applicable Medicare rules of reimbursement.

§ 5. Available relief.

A. Any relief granted under §§ 1 through 4 above shall be for one cost reporting period only.

B. Relief for hospitals seeking additional reimbursement for operating costs incurred in the provision of inpatient care shall not exceed the difference between:

1. The cost per allowable Medicaid day arising specifically as a result of circumstances identified in accordance with § 4 (excluding plant and education costs and return on equity capital); and

2. The prospective operating cost per diem, identified in the Medicaid Cost Report and calculated by the Department of Medical Assistance Services.[5]

C. Relief for hospitals seeking additional reimbursement for (i) costs considered as "pass-throughs" under the prospective payment system, or (ii) costs incurred in providing care to a disproportionate number of Medicaid recipients, or (iii) costs incurred in providing extensive neonatal care shall not exceed the difference between the payment made and the actual allowable cost incurred.

D. Any relief awarded under §§ 1 through 4 above shall be effective from the first day of the cost period for which the challenged rate was set. Cost periods for which relief will be afforded are those which begin on or after January 4, 1985. In no case shall this limitation apply to a hospital which noted an appeal of its prospective payment rate for a cost period prior to January 4, 1985.

E. All hospitals for which a cost period began on or after January 4, 1985, but prior to the effective date of these regulations, shall be afforded an opportunity to be heard in accordance with these regulations if the request for appeal set forth in subsection A of § 1 is filed within 90 days of the effective date of these regulations.

§ 6. Catastrophic occurrence.

A. Nothing in §§ 1 through 5 shall be construed to prevent a hospital from seeking additional reimbursement for allowable costs incurred as a consequence of a natural or other catastrophe. Such reimbursement will be paid for the cost period in which such costs were incurred and for cost periods beginning on or after July 1, 1982.

B. In order to receive relief under this section, a hospital shall demonstrate that the catastrophe met the following criteria:

1. One time occurrence;
2. Less that 12 months duration;
3. Could not have been reasonably predicted;
4. Not of an insurable nature;
5. Not covered by federal or state disaster relief;
6. Not a result of malpractice or negligence.

C. Any relief sought under this section must be calculable and auditable.

D. The agency shall pay any relief afforded under this section in a lump sum.

.....

Footnotes:

[1] See 42 U.S.C. § 1396(a)(13)(A). This provision reflects the Commonwealth's concern that it reimburse only those excess operating costs which are incurred because they are needed to provide adequate care. The Commonwealth recognizes that hospitals may choose to provide more than "just adequate" care and, as a consequence, incur higher costs. In this regard, the Commonwealth notes that "Medicaid programs do not guarantee that each recipient will receive that level of health care precisely tailored to his or her particular needs. Instead, the benefit provided through Medicaid is a particular package of health care services. . . that package of services has the general aim of assuring that individuals will receive necessary medical care, but the benefit provided remains the individual services offered – not "adequate health care." Alexander v. Choate – U.S. – decided January 9, 1985, 53 U.S. L.W., 4072, 4075.

[2] In Mary Washington Hospital v. Fisher, the court ruled that the Medicaid rate "must be adequate to ensure reasonable access." Mary Washington Hospital v. Fisher, at p. 18. The need to demonstrate that the Medicaid rate is inadequate to ensure recipients reasonable access derives directly from federal law and regulation. In its response to comments on the NPRM published September 30, 1981, HCFA points out Congressional intent regarding the access issue:

The report on H.R. 3982 states the expectation that payment levels for inpatient services will be adequate to assure that a sufficient number of facilities providing a sufficient level of services actively participate in the Medicaid Program to enable all Medicaid beneficiaries to obtain quality inpatient services. This report further states that payments should be set at a level that ensures the active treatment of Medicaid patients in a majority of the hospitals in the state.

46 Fed. Reg. 47970.

[3] The Commonwealth believes that Congressional intent is threatened in situations in which a hospital is incrementally harmed for each additional day a Medicaid patient is treated – and therefore has good cause to consider withdrawal from the Program – and where no alternative is readily available to the patient, should withdrawal occur. Otherwise, although the rate being paid a hospital may be less than that paid by other payors

– indeed, less than average cost per day for all patients – it nonetheless equals or exceeds the variable cost per day, and therefore benefits the hospital by offsetting some amount of fixed costs, which it would incur even if the bed occupied by the Medicaid patient were left empty.

It should be emphasized that application of this marginal loss or "incremental harm" concept is a device to assess the potential harm to a hospital continuing to treat Medicaid recipients, and not a mechanism for determining the additional payment due to a successful appellant. As discussed below, once a threat to access has been demonstrated, the Commonwealth may participate in the full average costs associated with the circumstances underlying the appeal.

[4] With regard to the 30 minute travel standard, this requirement is consistent with general health planning criteria regarding acceptable travel time for hospital care.

[5] The Commonwealth recognizes that in cases where circumstances warrant relief beyond the existing payment rate, it may share in the cost associated with those circumstances. This is consistent with existing policy, whereby payment is made on an average per diem basis. The Commonwealth will not reimburse more than its share of fixed costs. Any relief to an appellant hospital will be computed on an occupancy adjusted basis. Relief will be computed using patient days adjusted for the level of occupancy during the period under appeal. In no case will any additional payments made under this rule reflect lengths of stay which exceed the 21 day limit currently in effect.

.....

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 expenses, a statement of retained earnings (or fund balance), and a statement of changes in financial position;

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 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 (charge to the general public), 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

(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 items (1) through (5) (except that items (1) and (2) will not apply when presciptions are certified as brand necessary by the prescribing physician in accordance with the procedures set forth in 42 CFR 447.331 (c) if the brand cost is higher than the HCFA upper limit of VMAC cost) subject to the conditions, where applicable, set forth in items (6) and (7) below:

(1) The upper limit established by the Health Care Financing Adminstration (HCFA) for multiple source drugs which are included both on HCFA's list of mutiple source drugs and on the Virginia Voluntary Formulary (VVF), unless specified otherwise by the agency;

(2) The Virginia Maximum Allowable Cost (VMAC) established by the agency plus a dispensing fee, if a legend drug, for multiple source drugs listed on the VVF;

(3) The estimated acquisition cost established by the agency for legend drugs except oral contraceptives; plus the dispensing fee established by the state agency, or

(4) A mark-up allowance determined by the agency for covered nonlegend drugs and oral contraceptives; or

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

(6) Payment for pharmacy services will be as described above; however, payments for legend drugs (except oral contraceptives) will include the allowed cost of the drug plus only one dispensing fee per month for each specific drug. Payments will be reduced by the amount of the established copayment per prescription by noninstitutionalized clients with exceptions as provided in federal law and regulation.

(7) 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 maximum allowed drug cost for specific multiple source drugs will be the lesser of: either the VMAC based on the 60th percentile cost level identified by the state agency or HCFA's upper limits. All other 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.

l. Expanded prenatal care services to include patient education, homemaker, and nutritional services shall be reimbursed at the lowest of: state agency fee schedule, actual charge, or Medicare (Title XVIII) allowances.

m. Targeted case management for high-risk pregnant women and infants up to age 1 shall be reimbursed at the lowest of: state agency fee schedule, actual charge, or Medicare (Title XVIII) allowances.

n. Reimbursement for all other nonenrolled institutional and noninstitutional providers.

(1) All other nonenrolled providers shall be reimbursed the lesser of the charges submitted, the DMAS cost to charge ratio, or the Medicare limits for the services provided.

(2) Outpatient hospitals that are not enrolled as providers with the Department of Medical Assistance Services (DMAS) which submit claims shall be paid [~~*using*~~ *based on*] *the DMAS average reimbursable outpatient cost-to-charge ratio, updated annually, for enrolled outpatient hospitals less five percent. The five percent is for the cost of the additional manual processing of the claims. Outpatient hospitals that are nonenrolled shall submit claims on DMAS invoices.*

(3) Nonenrolled providers of noninstitutional services shall be paid on the same basis as enrolled in-state providers of noninstitutional services. Nonenrolled providers of physician, dental, podiatry, optometry, and clinical psychology services, etc., shall be reimbursed the lesser of the charges submitted, or the DMAS rates for the services.

(4) All nonenrolled noninstitutional providers shall be reviewed every two years for the number of Medicaid recipients they have served. Those providers who have had no claims submitted in the past twelve months shall be declared inactive.

(5) Nothing in this regulation is intended to preclude DMAS from reimbursing for special services, such as rehabilitation, ventilator, and transplantation, on an exception basis and reimbursing for these services on an individually, negotiated rate basis.

o. Refund of overpayments.

(1) Providers reimbursed on the basis of a fee plus cost of materials.

(a) When DMAS determines an overpayment has been made to a provider, DMAS shall promptly send the first demand letter requesting a lump sum refund. Recovery shall be undertaken even though the provider disputes in whole or in part DMAS's determination of the overpayment.

(b) If the provider cannot refund the total amount of the overpayment within 30 days after receiving the DMAS demand letter, the provider shall promptly request an extended repayment schedule.

DMAS may establish a repayment schedule of up to 12 months to recover all or part of an overpayment or, if a provider demonstrates that repayment within a 12-month period would create severe financial hardship, the Director of the Department of Medical Assistance Services (the "director") may approve a repayment schedule of up to 36 months.

A provider shall have no more than one extended repayment schedule in place at one time. If an audit later uncovers an additional overpayment, the full amount shall be repaid within 30 days unless the provider submits further documentation supporting a modification to the existing extended repayment schedule to include the additional amount.

If, during the time an extended repayment schedule is in effect, the provider withdraws from the Program, the outstanding balance shall become immediately due and payable.

When a repayment schedule is used to recover only part of an overpayment, the remaining amount shall be recovered by the reduction of interim payments

to the provider or by lump sum payments.

(c) In the request for an extended repayment schedule, the provider shall document the need for an extended (beyond 30 days) repayment and submit a written proposal scheduling the dates and amounts of repayments. If DMAS approves the schedule, DMAS shall send the provider written notification of the approved repayment schedule, which shall be effective retroactive to the date the provider submitted the proposal.

(d) Once an initial determination of overpayment has been made, DMAS shall undertake full recovery of such overpayment whether the provider disputes, in whole or in part, the initial determination of overpayment. If an appeal follows, interest shall be waived during the period of administrative appeal of an initial determination of overpayment.

Interest charges on the unpaid balance of any overpayment shall accrue pursuant to § 32.1-313 of the Code of Virginia from the date the director's determination becomes final.

The director's determination shall be deemed to be final on (i) the issue date of any notice of overpayment, issued by DMAS, if the provider does not file an appeal, or (ii) the issue date of any administrative decision issued by DMAS after an informal factfinding conference, if the provider does not file an appeal, or (iii) the issue date of any administrative decision signed by the director, regardless of whether a judicial appeal follows. In any event, interest shall be waived if the overpayment is completely liquidated within 30 days of the date of the final determination. In cases in which a determination of overpayment has been judicially reversed, the provider shall be reimbursed that portion of the payment to which it is entitled, plus any applicable interest which the provider paid to DMAS.

(2) Providers reimbursed on the basis of reasonable costs.

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

(b) If the provider has been overpaid for a particular fiscal year and has been underpaid for another fiscal year, the underpayment shall be offset against the overpayment. So long as the provider has an overpayment balance, any underpayments discovered by subsequent review or audit shall also be used to reduce the remaining amount of the overpayment.

(c) If the provider cannot refund the total amount of the overpayment (i) at the time it files a cost report indicating that an overpayment has occurred, the provider shall request an extended repayment schedule at the time of filing, or (ii) within 30 days after receiving the DMAS demand letter, the provider shall promptly request an extended repayment schedule.

DMAS may establish a repayment schedule of up to 12 months to recover all or part of an overpayment or, if a provider demonstrates that repayment within a 12-month period would create severe financial hardship, the Director of the Department of Medical Assistance Services (the "director") may approve a repayment schedule of up to 36 months.

A provider shall have no more than one extended repayment schedule in place at one time. If an audit later uncovers an additional overpayment, the full amount shall be repaid within 30 days unless the provider submits further documentation supporting a modification to the existing extended repayment schedule to include the additional amount.

If, during the time an extended repayment schedule is in effect, the provider withdraws from the Program or fails to file a cost report in a timely manner, the outstanding balance shall become immediately due and payable.

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

(d) In the request for an extended repayment schedule, the provider shall document the need for an extended (beyond 30 days) repayment and submit a written proposal scheduling the dates and amounts of repayments. If DMAS approves the schedule, DMAS shall send the provider written notification of the approved repayment schedule, which shall be effective retroactive to the date the provider submitted the proposal.

(e) Once an initial determination of overpayment has been made, DMAS shall undertake full recovery of such overpayment whether or not the provider disputes, in whole or in part, the initial determination of overpayment. If an appeal follows, interest shall be waived during the period of administrative appeal of an initial determination of overpayment.

Interest charges on the unpaid balance of any

overpayment shall accrue pursuant to § 32.1-313 of the Code of Virginia from the date the director's determination becomes final.

The director's determination shall be deemed to be final on (i) the due date of any cost report filed by the provider indicating that an overpayment has occurred, or (ii) the issue date of any notice of overpayment, issued by DMAS, if the provider does not file an appeal, or (iii) the issue date of any administrative decision issued by DMAS after an informal factfinding conference, if the provider does not file an appeal, or (iv) the issue date of any administrative decision signed by the director, regardless of whether a judicial appeal follows. In any event, interest shall be waived if the overpayment is completely liquidated within 30 days of the date of the final determination. In cases in which a determination of overpayment has been judicially reversed, the provider shall be reimbursed that portion of the payment to which it is entitled, plus any applicable interest which the provider paid to DMAS.

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 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 audits are conducted annually within six months of receipt of a completed cost report from the provider.

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

(5) (Reserved.)

(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.

(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 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.

e. Reimbursement of nonenrolled long-term care facilities.

(1) Nonenrolled providers of institutional long-term care services shall be reimbursed based upon the average per diem cost, updated annually, reimbursed to enrolled intermediate or skilled care providers.

(2) Prior approval must be received from the DMAS Medical Social Services Division for recipients to receive institutional services from nonenrolled long-term care facilities. Prior approval can only be granted:

(a) When the nonenrolled long-term care facility with an available bed is closer to the recipient's Virginia residence than the closest facility located in Virginia with an available bed, or

(b) When long-term care special services, such as intensive rehabilitation services, are not available in Virginia, or

(c) If there are no available beds in Virginia facilities.

(3) Nothing in this regulation is intended to preclude DMAS from reimbursing for special services, such as rehabilitation, ventilator, and transplantation, on an exception basis and reimbursing for these services on an individually, negotiated rate basis.

NURSING HOME INVOICE

VIRGINIA
MEDICAL ASSISTANCE PROGRAM

021
1 TRANSMISSION CODE
2 PROVIDER I.D. NO. (7)
3 RECIPIENT I.D. NUMBER (12)
4 RECIPIENT'S LAST NAME
FIRST NAME
5 PRIMARY CARRIER INFORMATION-CHECK ONE
2 ☐ NO OTHER COVERAGE
3 ☐ BILLED AND PAID
5 ☐ BILLED, NO COVERAGE
6 ATTENDING PHYSICIAN I.D. NO. (7)
6A OTHER PHYSICIAN I.D. NO. (7)
7 PATIENT ACCOUNT NUMBER (10 MAXIMUM)
8 MAP CONTROL #
DATE MO. (2) DAY (2) YEAR (2)
9 DIAGNOSIS CODE (PRIMARY)
DIAGNOSIS CODE (SECONDARY)
10 DATE OF THIS ADMISSION MO. (2) DAY (2) YEAR (2) HR. (2) MIN. (2)
11 STATEMENT COVERS PERIOD FROM MO. (2) DAY (2) YEAR (2) THRU MO. (2) DAY (2) YEAR (2)
11A WAS TREATMENT DUE TO ACCIDENTAL INJURY? YES ☐ NO ☐
12 PATIENT STATUS—ENTER ONE
0-STILL A PATIENT | 1-TRANS. HOSP. | 2-DISC./TRANS. SNF | 3-DISC. TRANS. ICF
4-DISC. TRANS. OTHER | 5-DISC. HOME/SELF CARE | 6-DISC. UNDER CARE H.H. AGENCY
7-LEFT AGAINST ADVICE | 8-DIED

STATEMENT OF SERVICES RENDERED

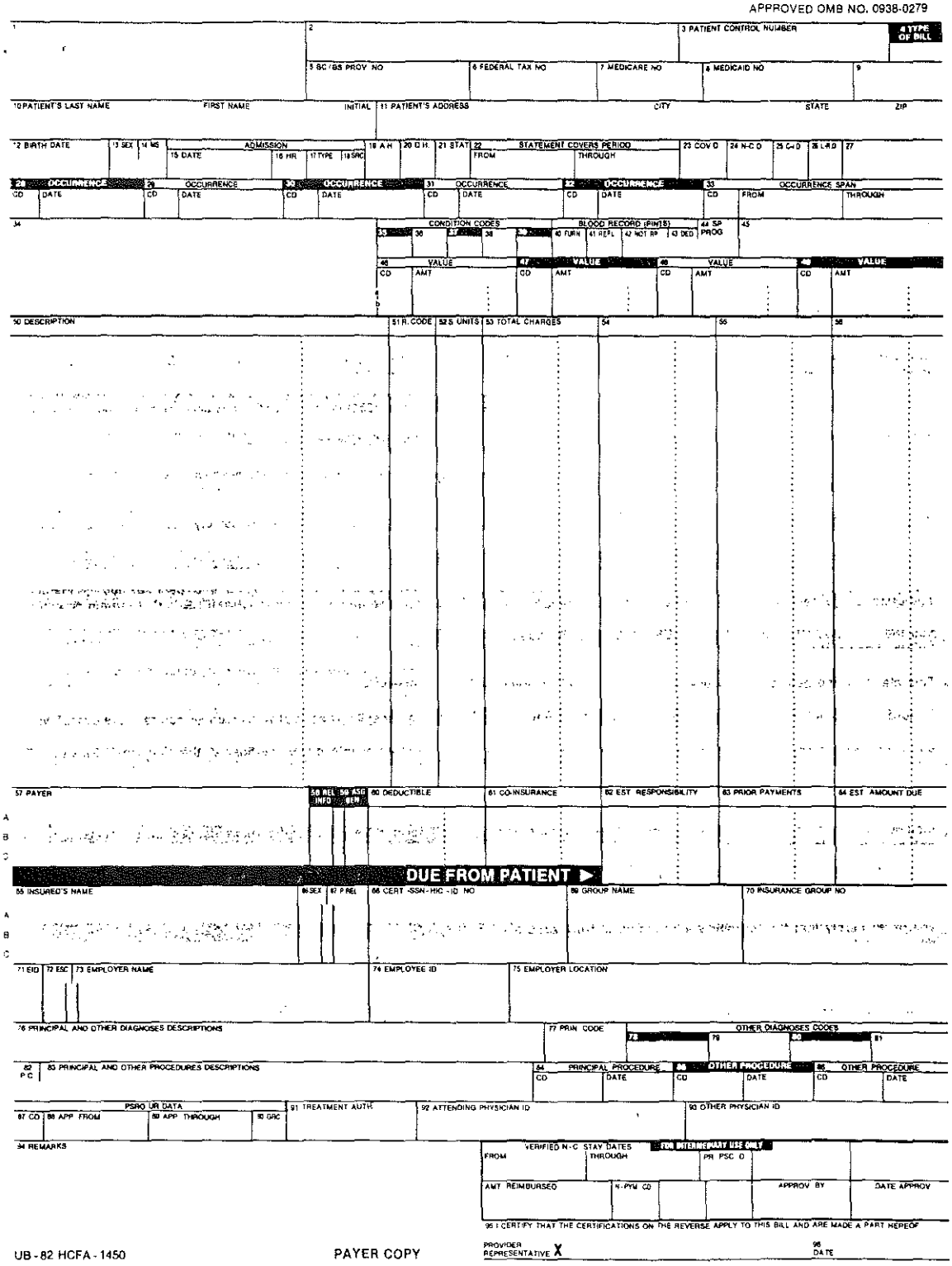
13 ACCOMMODATION	LATE DISCH.	RATE	COVERED DAYS	CHARGE
A. 1 BED				
B. 2-3-4 BED				
C.				
D.				
E.				
F.				
14 TOTAL ACCOMMODATION CHARGES (Sum of A—F)				
15 ANCILLARIES				
A. LABORATORY				
B. RADIOLOGY—DIAGNOSTIC				
C. RADIOLOGY—THERAPEUTIC				
D. PHARMACY				
E. MEDICAL—SURGICAL SUPPLIES				
F. EKG				
G. EEG				
H. BLOOD				
I. BLOOD ADMINISTRATION				
J. PHYSICAL THERAPY				
K. OCCUPATIONAL THERAPY				
L. SPEECH THERAPY				
M. OXYGEN—INHALATION THERAPY				
N. CHARGE A				
O. CHARGE B				
P. CHARGE C				
Q. CHARGE D				
R. CHARGE E				
16 TOTAL ANCILLARY CHARGE (Sum of Lines 15 A—R)				
17 TOTAL SERVICE CHARGE (Sum of Lines 14 and 16)				
18 TOTAL NON-COVERED CHARGE				
19 TOTAL CHARGE (Sum of Lines 17 and 18)				
20 AMOUNT COVERED BY PRIMARY CARRIER				
21 PATIENT PAY AMOUNT (Co-Pay For Long Stay Institutions)				
22 DATE PATIENT PAYMENT BEGINS (For Long Stay Institutions)				MO. (2) DAY (2) YEAR (2)

23 UTILIZATION REVIEW/PSRO STATUS

* THIS IS TO CERTIFY THAT THE FOREGOING INFORMATION IS TRUE, ACCURATE AND COMPLETE. I UNDERSTAND THAT PAYMENT AND SATISFACTION OF THIS CLAIM WILL BE FROM FEDERAL AND STATE FUNDS, AND THAT ANY FALSE CLAIMS, STATEMENTS, OR DOCUMENTS OR CONCEALMENT OF A MATERIAL FACT, MAY BE PROSECUTED UNDER APPLICABLE FEDERAL OR STATE LAWS.

SIGNATURE DATE

INTERMEDIARY COPY
MAP-215 R 1 78


APPROVED OMB NO. 0938-0279
1
2
3 PATIENT CONTROL NUMBER
4 TYPE OF BILL
5 FED TAX NO
6 FEDERAL TAX NO
7 MEDICARE NO
8 MEDICAID NO
9
10 PATIENT'S LAST NAME
FIRST NAME
INITIAL
11 PATIENT'S ADDRESS
CITY
STATE
ZIP
12 BIRTH DATE
13 SEX
14 MS
ADMISSION
15 DATE
16 HR
17 TYPE
18 SRC
19 A H
20 D H
21 STAT
22 STATEMENT COVERS PERIOD
FROM
THROUGH
23 COV D
24 N-C D
25 C-D
26 L-R D
27
28 OCCURRENCE
29 OCCURRENCE
30 OCCURRENCE
31 OCCURRENCE
32 OCCURRENCE
33 OCCURRENCE SPAN
CD
DATE
FROM
THROUGH
34
CONDITION CODES
35
36
37
38
39
BLOOD RECORD (PINTS)
40 FURN
41 REPL
42 NOT RP
43 DED
44 SP PROG
45
46 VALUE
47 VALUE
48 VALUE
49 VALUE
CD
AMT
50 DESCRIPTION
51 R. CODE
52 S UNITS
53 TOTAL CHARGES
54
55
56
57 PAYER
58 REL INFO
59 ASG BEN
60 DEDUCTIBLE
61 CO-INSURANCE
62 EST RESPONSIBILITY
63 PRIOR PAYMENTS
64 EST AMOUNT DUE
A
B
C
DUE FROM PATIENT ▶
65 INSURED'S NAME
66 SEX
67 P REL
68 CERT -SSN- HIC - ID NO
69 GROUP NAME
70 INSURANCE GROUP NO
71 EID
72 ESC
73 EMPLOYER NAME
74 EMPLOYEE ID
75 EMPLOYER LOCATION
76 PRINCIPAL AND OTHER DIAGNOSES DESCRIPTIONS
77 PRIN CODE
OTHER DIAGNOSES CODES
78
79
80
81
82 P C
83 PRINCIPAL AND OTHER PROCEDURES DESCRIPTIONS
84 PRINCIPAL PROCEDURE
85 OTHER PROCEDURE
86 OTHER PROCEDURE
CD
DATE
PSRO UR DATA
87 CD
88 APP FROM
89 APP THROUGH
90 GRC
91 TREATMENT AUTH
92 ATTENDING PHYSICIAN ID
93 OTHER PHYSICIAN ID
94 REMARKS
VERIFIED N-C STAY DATES
FROM
THROUGH
FOR HCFA/FAA USE ONLY
PR PSC D
AMT REIMBURSED
H-PYM CD
APPROV BY
DATE APPROV
95 I CERTIFY THAT THE CERTIFICATIONS ON THE REVERSE APPLY TO THIS BILL AND ARE MADE A PART HEREOF
PROVIDER REPRESENTATIVE X
96 DATE
UB-82 HCFA-1450
PAYER COPY

HOME HEALTH AGENCY INVOICE

VIRGINIA

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

1 TRANSMISSION CODE: 041	2 PROVIDER I.D. NUMBER (7)	3 RECIPIENT I.D. NUMBER (12)	4 RECIPIENT'S LAST NAME / FIRST NAME
5 PATIENT ACCOUNT NUMBER (10 MAXIMUM)	6 PRIMARY CARRIER INFORMATION (CHECK ONE): 2 ☐ NO OTHER COVERAGE; 3 ☐ BILLED AND PAID; 5 ☐ BILLED, NO COVERAGE		
7 DATE CARE BEGAN: MO. (2) / DAY (2) / YEAR (2)	8 STATEMENT COVERS PERIOD: FROM MO. (2) / DAY (2) / YEAR (2); THRU MO. (2) / DAY (2) / YEAR (2)	9 DISCHARGE STATUS (CHECK ONE): 1 ☐ DISCHARGED; 2 ☐ DIED; 3 ☐ STILL A PATIENT	10 DIAGNOSIS CODE

11 STATEMENT OF SERVICES RENDERED

	VISITS	CHARGE
A. SKILLED NURSING CARE		
B. PHYSICAL THERAPY		
C. SPEECH THERAPY		
D. OCCUPATIONAL THERAPY		
E. MEDICAL SOCIAL SERVICES		
F. HOME HEALTH AIDE		
G. OTHER VISITS		
H. SUPPLIES		
I. RENTAL - MEDICAL EQUIPMENT		
12 TOTAL COVERED CHARGE		
13 AMOUNT COVERED BY PRIMARY CARRIER		

REMARKS:

THIS IS TO CERTIFY THAT THE FOREGOING INFORMATION IS TRUE, ACCURATE AND COMPLETE. I UNDERSTAND THAT PAYMENT AND SATISFACTION OF THIS CLAIM WILL BE FROM FEDERAL AND STATE FUNDS, AND THAT ANY FALSE CLAIMS, STATEMENTS OR DOCUMENTS OR CONCEALMENT OF A MATERIAL FACT, MAY BE PROSECUTED UNDER APPLICABLE FEDERAL OR STATE LAWS.

SIGNATURE _____ DATE _____

INTERMEDIARY COPY

DMAS - 92 R7/77

PRACTITIONER INVOICE

VIRGINIA

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

1 TRANSMISSION CODE: 051	2 PROVIDER I.D. NUMBER (7)	3 RECIPIENT I.D. NUMBER (12)	4 RECIPIENT'S LAST NAME	FIRST NAME
5 PATIENT ACCOUNT NUMBER (10 MAXIMUM)	CODE FOR BLOCK 15 PRIMARY CARRIER INFORMATION			2 NO OTHER CARRIER 3 BILLED AND PAID 5 BILLED, NO COVERAGE

	6 SERVICE PERIOD FROM MO (2)	DAY (2)	YEAR (2)	THRU MO (2)	DAY (2)	YEAR (2)	7 DIAGNOSIS	8 PLACE OF TREAT (1)	9	10 TYPE SERV (1)	11 PROCEDURE CODE (5)	12	13 VISITS/UNIT STUDIES	14 CHARGE	15	16 PAYMENT FR PRIMARY CARRIE
0																
1																
2																
3																
4																

PLACE OF TREATMENT CODE

CODE	SERVICE
1	INPATIENT HOSPITAL
2	OUTPATIENT HOSPITAL
3	PRACTITIONER'S OFFICE
4	PATIENT'S HOME
8	NURSING HOME
9	AMBULANCE

PROCEDURE MODIFIERS

A. ----PROFESSIONAL COMPONENT
B. ----ASSISTANT SURGEON
C. ----CONCURRENT CARE
D. ----INDIVIDUAL CONSIDERATION
E. ----TECHNICAL COMPONENT
------BLANK, IF NONE OF THE ABOVE

WAS TREATMENT DUE TO ACCIDENTAL INJURY?

PLACE (X) IF YES

TYPE OF SERVICE CODE

CODE	SERVICE
2	SURGERY
3	MATERNITY
4	ANESTHESIA
5	RADIOLOGY
6	MEDICAL CARE
8	DIAGNOSTIC EXAMINATION (PATH)
9	CONSULTATION

REMARKS

THIS IS TO CERTIFY THAT THE FOREGOING INFORMATION TRUE, ACCURATE AND COMPLETE. I UNDERSTAND THAT PA MENT AND SATISFACTION OF THIS CLAIM WILL BE FRO FEDERAL AND STATE FUNDS, AND THAT ANY FALSE CLAIM STATEMENTS, OR DOCUMENTS, OR CONCEALMENT OF MATERIAL FACT, MAY BE PROSECUTED UNDER APPLICABL FEDERAL OR STATE LAWS.

SIGNATURE DATE

ORIGINAL COPY

DMAS-12 R 5-87

DAILY PHARMACY DRUG CLAIM LEDGER

VIRGINIA

MEDICAL ASSISTANCE PROGRAM

061		MO.	DAY	YR.
1 TRANSMISSION CODE	2 PHARMACY I.D. NO.	3 DATE OF SERVICE		

4 PATIENT I.D. NO.	5 PRESCRIPTION NUMBER	6 DRUG CODE	7 METRIC QUANTITY	8	9 CHARGE	10 PRESCRIBER'S DEA NO.	11	PHARMACIST'S USE
0								
1								
2								
3								
4								
5								
6								
7								
8								
9					PHARMACIST'S USE TOTAL CHARGE			

A bold arrow ↓ may be used for repeat items.
Do not use ditto marks.

↑

REFILLS

1. LEGEND DRUGS MAY BE REFILLED AS SPECIFIED BY THE PRESCRIBER OR ACCORDING TO STATE AND FEDERAL LAWS.

0 = ORIGINAL
1 = FIRST REFILL
2 = ADDITIONAL REFILLS

BRAND NECESSARY

LINE NUMBER	PRESCRIPTION NUMBER	MFG. DRUG NAME, STRENGTH, AND DOSAGE FORM FOR COMPOUNDED PRESCRIPTIONS AND DRUGS NOT ON DRUG LIST

THIS IS TO CERTIFY THAT THE FOREGOING INFORMATION IS TRUE, ACCURATE AND COMPLETE. I UNDERSTAND THAT PAYMENT AND SATISFACTION OF THIS CLAIM WILL BE FROM FEDERAL AND STATE FUNDS, AND THAT ANY FALSE CLAIMS, STATEMENTS OR DOCUMENTS OR CONCEALMENT OF A MATERIAL FACT, MAY BE PROSECUTED UNDER APPLICABLE FEDERAL OR STATE LAWS.

SIGNATURE _____ DATE _____

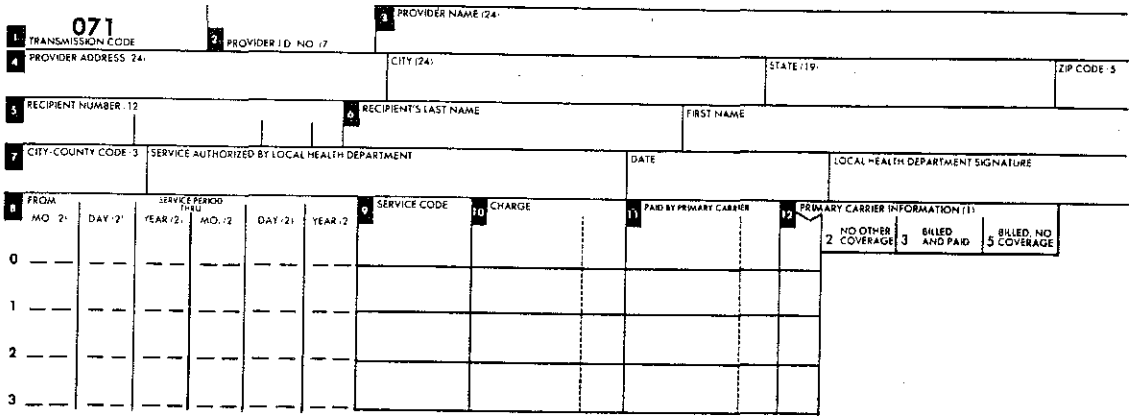
MAP-173 R9/78

ORIGINAL COPY

SPECIAL SERVICE INVOICE

VIRGINIA

MEDICAL ASSISTANCE PROGRAM



NOTE TO PROVIDER:

This authorization is only for the item(s) listed.

REMARKS

THIS IS TO CERTIFY THAT THE FOREGOING INFORMATION IS TRUE, ACCURATE AND COMPLETE. I UNDERSTAND THAT PAYMENT AND SATISFACTION OF THIS CLAIM WILL BE FROM FEDERAL AND STATE FUNDS, AND THAT ANY FALSE CLAIMS, STATEMENTS, OR DOCUMENTS OR CONCEALMENT OF A MATERIAL FACT, MAY BE PROSECUTED UNDER APPLICABLE FEDERAL OR STATE LAWS.

INTERMEDIARY COPY

SIGNATURE DATE

MAP 199 87 77

INDEPENDENT LABORATORY INVOICE

VIRGINIA

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

081
1 TRANSMISSION CODE
2 PROVIDER I.D. NUMBER (7)
3 RECIPIENT I.D. NUMBER (12)
4 RECIPIENT'S LAST NAME
FIRST NAME
5 PATIENT ACCOUNT NUMBER (10 MAXIMUM)
CODE FOR BLOCK 11
PRIMARY CARRIER INFORMATION
2 NO OTHER COVERAGE
3 BILLED AND PAID
5 BILLED, NO COVERAGE

	6 SERVICE PERIOD FROM MO (2)	DAY (2)	YEAR (2)	THRU MO (2)	DAY (2)	YEAR (2)	7 PROCEDURE CODE (5)	8 NO. UNITS	9 CHARGE (6)	10 PAID BY PRIMARY CARRIER (6)	11	12 REFERRING PHYSICIAN VMAP I.D. (7)
0												
1												
2												
3												
4												
5												
6												
7												
8												
9												

REMARKS.

THIS IS TO CERTIFY THAT THE FOREGOING INFORMATION IS TRUE ACCURATE AND COMPLETE I UNDERSTAND THAT PAYMENT AND SATISFACTION OF THIS CLAIM WILL BE FROM FEDERAL AND STATE FUNDS, AND THAT ANY FALSE CLAIMS STATEMENTS OR DOCUMENTS OR CONCEALMENT OF A MATERIAL FACT, MAY BE PROSECUTED UNDER APPLICABLE FEDERAL OR STATE LAWS

SIGNATURE DATE

DMAS-123 4/85

TITLE XVIII (MEDICARE) DEDUCTIBLE AND COINSURANCE INVOICE

VIRGINIA

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

091

1 TRANSMISSION CODE 2 PROVIDER I.D. NO.

0

3 RECIPIENT'S LAST NAME | FIRST NAME 4 RECIPIENT I.D. NUMBER (12) 5 PATIENT ACCOUNT NUMBER 6 RECIPIENT'S HIB NUMBER (MEDICARE)

7 PRIMARY CARRIER INFORMATION OTHER THAN (MEDICARE)
☐ 2 NO OTHER COVERAGE
☐ 3 BILLED AND PAID
☐ 5 BILLED NO COVERAGE

8 TYPE COVERAGE (MEDICARE) ☐ A ☐ B

9 PLACE OF TREATMENT

10 ACCIDENT/EMERGENCY INDICATOR ☐ ACC ☐ EMER ☐ OTHER

11 PROCEDURE CODE

12 DATE OF ADMISSION MO (2) | DAY (2) | YEAR (2)

13 STATEMENT COVERS PERIOD FROM MO (2) | DAY (2) | YEAR (2) THRU MO (2) | DAY (2) | YEAR

14 CHARGES TO MEDICARE 15 ALLOWED BY MEDICARE 16 PAID BY MEDICARE 17 DEDUCTIBLE 18 COINSURANCE 19 PAID BY CARRIER OTHER THAN MEDICARE 20 PATIENT PAY AMOUNT LTC ONLY

1

3 RECIPIENT'S LAST NAME | FIRST NAME 4 RECIPIENT I.D. NUMBER (12) 5 PATIENT ACCOUNT NUMBER 6 RECIPIENT'S HIB NUMBER (MEDICARE)

7 PRIMARY CARRIER INFORMATION OTHER THAN (MEDICARE)
☐ 2 NO OTHER COVERAGE
☐ 3 BILLED AND PAID
☐ 5 BILLED NO COVERAGE

8 TYPE COVERAGE (MEDICARE) ☐ A ☐ B

9 PLACE OF TREATMENT

10 ACCIDENT/EMERGENCY INDICATOR ☐ ACC ☐ EMER ☐ OTHER

11 PROCEDURE CODE

12 DATE OF ADMISSION MO (2) | DAY (2) | YEAR (2)

13 STATEMENT COVERS PERIOD FROM MO (2) | DAY (2) | YEAR (2) THRU MO (2) | DAY (2) | YEAR

14 CHARGES TO MEDICARE 15 ALLOWED BY MEDICARE 16 PAID BY MEDICARE 17 DEDUCTIBLE 18 COINSURANCE 19 PAID BY CARRIER OTHER THAN MEDICARE 20 PATIENT PAY AMOUNT LTC ONLY

2

3 RECIPIENT'S LAST NAME | FIRST NAME 4 RECIPIENT I.D. NUMBER (12) 5 PATIENT ACCOUNT NUMBER 6 RECIPIENT'S HIB NUMBER (MEDICARE)

7 PRIMARY CARRIER INFORMATION OTHER THAN (MEDICARE)
☐ 2 NO OTHER COVERAGE
☐ 3 BILLED AND PAID
☐ 5 BILLED NO COVERAGE

8 TYPE COVERAGE (MEDICARE) ☐ A ☐ B

9 PLACE OF TREATMENT

10 ACCIDENT/EMERGENCY INDICATOR ☐ ACC ☐ EMER ☐ OTHER

11 PROCEDURE CODE

12 DATE OF ADMISSION MO (2) | DAY (2) | YEAR (2)

13 STATEMENT COVERS PERIOD FROM MO (2) | DAY (2) | YEAR (2) THRU MO (2) | DAY (2) | YEAR

14 CHARGES TO MEDICARE 15 ALLOWED BY MEDICARE 16 PAID BY MEDICARE 17 DEDUCTIBLE 18 COINSURANCE 19 PAID BY CARRIER OTHER THAN MEDICARE 20 PATIENT PAY AMOUNT LTC ONLY

3

3 RECIPIENT'S LAST NAME | FIRST NAME 4 RECIPIENT I.D. NUMBER (12) 5 PATIENT ACCOUNT NUMBER 6 RECIPIENT'S HIB NUMBER (MEDICARE)

7 PRIMARY CARRIER INFORMATION OTHER THAN (MEDICARE)
☐ 2 NO OTHER COVERAGE
☐ 3 BILLED AND PAID
☐ 5 BILLED NO COVERAGE

8 TYPE COVERAGE (MEDICARE) ☐ A ☐ B

9 PLACE OF TREATMENT

10 ACCIDENT/EMERGENCY INDICATOR ☐ ACC ☐ EMER ☐ OTHER

11 PROCEDURE CODE

12 DATE OF ADMISSION MO (2) | DAY (2) | YEAR (2)

13 STATEMENT COVERS PERIOD FROM MO (2) | DAY (2) | YEAR (2) THRU MO (2) | DAY (2) | YEAR

14 CHARGES TO MEDICARE 15 ALLOWED BY MEDICARE 16 PAID BY MEDICARE 17 DEDUCTIBLE 18 COINSURANCE 19 PAID BY CARRIER OTHER THAN MEDICARE 20 PATIENT PAY AMOUNT LTC ONLY

REMARKS: IDENTIFY LINE ITEM TO WHICH REMARKS REFER

THIS IS TO CERTIFY THAT THE FOREGOING INFORMATION IS TRUE, ACCURATE AND COMPLETE. I UNDERSTAND THAT PAYMENT AND SATISFACTION OF THIS CLAIM WILL BE FROM FEDERAL AND STATE FUNDS, AND THAT ANY FALSE CLAIMS, STATEMENTS OR DOCUMENTS OR CONCEALMENT OF A MATERIAL FACT, MAY BE PROSECUTED UNDER APPLICABLE FEDERAL OR STATE LAWS

SIGNATURE DATE

DMAS - 30 R 2-84

DENTAL INVOICE

VIRGINIA

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

1 TRANSMISSION CODE: 111 | 2 PROVIDER I.D. NO. (7) | 3 RECIPIENT I.D. NO. (12) | 4 RECIPIENT'S LAST NAME | FIRST NAME

5 IS TREATMENT DUE TO ACCIDENT? | 6 PATIENT ACCOUNT NO. (10 MAX.)

	7 DATE OF SERVICE (MO D, DAY (T), YEAR D)	8 AUTHORIZATION NUMBER	9 TOOTH CODE	10 SURFACE CODE (M O D F L)	11 Quadrant's (1 2 3 4)	12 PROCEDURE CODE	13 NO. OF PROC.	14 CHARGE	15 PAYMENT FROM PRIMARY CARRIER	16 I. C.
0.										
1.										
2.										
3.										
4.										
5.										
6.										
7.										
8.										

TOTAL

TOOTH IDENTIFICATION NUMBER OR LETTER. USE UNIVERSAL TOOTH IDENTIFICATION SYSTEM. ENTER ONLY ONE (1) TOOTH IDENTIFYING CHARACTER PER LINE.

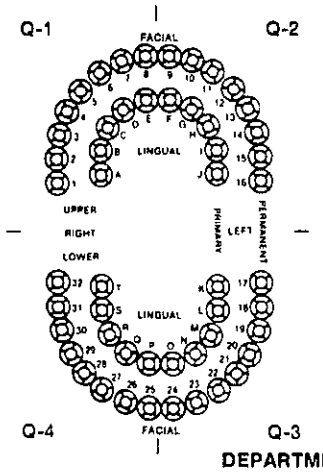
SURFACE CODE LETTERS
M —MESIAL
O —OCCLUSAL
D —DISTAL
F —FACIAL
L —LINGUAL

17 IS TREATMENT COMPLETE ☐ YES ☐ NO

THIS IS TO CERTIFY THAT THE FOREGOING INFORMATION IS TRUE, ACCURATE, AND COMPLETE. I UNDERSTAND THAT PAYMENT AND SATISFACTION OF THIS CLAIM WILL BE FROM FEDERAL AND STATE FUNDS, AND THAT ANY FALSE CLAIMS, STATEMENTS, OR DOCUMENTS OR CONCEALMENT OF MATERIAL FACT, MAY BE PROSECUTED UNDER APPLICABLE FEDERAL OR STATE LAWS.

SUBMITTED BY: _____ DATE: _____
SIGNATURE OF PROVIDER OR AGENT

REMARKS



DEPARTMENT OF MEDICAL ASSISTANCE SERVICES COPY

TRANSPORTATION SERVICES
Special Services Invoice
VIRGINIA
MEDICAL ASSISTANCE PROGRAM

131
1 TRANS. CODE 2 PROVIDER I.D. NO. 3 PROVIDER NAME
4 PROVIDER ADDRESS | CITY | STATE | ZIP CODE
5 CITY CO. CODE | SERVICE AUTHORIZED BY LOCAL HEALTH DEPT. | DATE | LOCAL HEALTH SIGNATURE

	6 RECIPIENT I.D. NO.	7 SERVICE PERIOD MO. DAY YR.	8 WAIT TIME	NO. PASS.	MILES	9 SERVICE CODE	10 COVERED CHARGES	11 PAID BY PRIMARY CARRIER	12 COB
0	RECIPIENT NAME	PICK-UP POINT	DESTINATION		MED. RES. CODE	☐ 1 WAY ☐ R.TRIP 13			
1	RECIPIENT NAME	PICK-UP POINT	DESTINATION		MED. RES. CODE	☐ 1 WAY ☐ R.TRIP 13			
2	RECIPIENT NAME	PICK-UP POINT	DESTINATION		MED. RES. CODE	☐ 1 WAY ☐ R.TRIP 13			
3	RECIPIENT NAME	PICK-UP POINT	DESTINATION		MED. RES. CODE	☐ 1 WAY ☐ R.TRIP 13			
4	RECIPIENT NAME	PICK-UP POINT	DESTINATION		MED. RES. CODE	☐ 1 WAY ☐ R.TRIP 13			

WAS TRIP A RESULT OF AN ACCIDENTAL INJURY? IF YES (X) IN BLOCK 13.

COMMENTS

0 _____

1 _____

2 _____

3 _____

4 _____

THIS IS TO CERTIFY THAT THE FOREGOING INFORMATION IS TRUE, ACCURATE AND COMPLETE. I UNDERSTAND THAT PAYMENT AND SATISFACTION OF THIS CLAIM WILL BE FROM FEDERAL AND STATE FUNDS, AND THAT ANY FALSE CLAIMS, STATEMENTS, OR DOCUMENTS OR CONCEALMENT OF A MATERIAL FACT, MAY BE PROSECUTED UNDER APPLICABLE FEDERAL OR STATE LAWS.

_____ DATE

INTERMEDIARY COPY

MAP 7-07-77

DENTAL PREAUTHORIZATION REQUEST

VIRGINIA

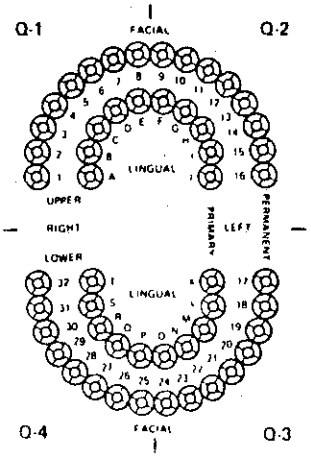
MEDICAL ASSISTANCE PROGRAM

1 TRANSMISSION CODE: 791
2 PROVIDER I.D. NO. (7)
3 RECIPIENT I.D. NO. (12)
4 RECIPIENT'S LAST NAME
FIRST NAME
5 IS TREATMENT DUE TO ACCIDENT? (YES)
6 PATIENT ACCOUNT NO. (10 MAX.)

7 DATE OF REQUEST MO. (2)	DAY (2)	YEAR (2)	8 AUTHORIZATION NUMBER	9 TOOTH CODE	10 SURFACE					11 QUADRANTS				12 PROCEDURE CODE	13 NO. OF PROCEDURES	14 DO NOT USE. FOR AUTHORIZATION OF SERVICE ONLY
					M	O	D	F	L	1	2	3	4			
1					M	O	D	F	L	1	2	3	4			
2					M	O	D	F	L	1	2	3	4			
3					M	O	D	F	L	1	2	3	4			
4					M	O	D	F	L	1	2	3	4			
5																

CRITERIA

1. AGE OF PATIENT _____
2. ORAL HYGIENE HABITS OF PATIENT _____
3. WILL PATIENT KEEP HIS/HER MOUTH CLEAN AFTER TREATMENT? _____
4. PERTINENT PRESENT OR PAST DENTAL HISTORY _____
   _____
5. PATIENT'S ACCEPTANCE OF TREATMENT _____
6. CHANCES FOR JOB PLACEMENT _____
7. WILL TREATMENT PSYCHOLOGICALLY BENEFIT THE PATIENT? _____
8. ARE SUPPORTING TISSUES AND ABUTMENT TEETH SOUND? _____



SUPPORTING DOCUMENTS ATTACHED

☐ X-RAY(S) ENCLOSED FOR REQUEST EVALUATION (SPECIFY TYPE)

☐ WRITTEN INFORMATION IF NEEDED, TO SUPPORT PREAUTHORIZATION REQUEST ATTACH LETTER IF NEEDED.

THIS IS TO CERTIFY THAT THE FOREGOING INFORMATION IS TRUE, ACCURATE AND COMPLETE. I UNDERSTAND THAT PAYMENT AND SATISFACTION OF THIS CLAIM WILL BE FROM FEDERAL AND STATE FUNDS, AND THAT ANY FALSE CLAIMS, STATEMENTS, OR DOCUMENTS OR CONCEALMENT OF A MATERIAL FACT, MAY BE PROSECUTED UNDER APPLICABLE FEDERAL OR STATE LAWS.

SUBMITTED BY: _____ DATE _____
SIGNATURE OF PROVIDER OR AGENT

DMAS-704 R1/78

* * * * * * * *

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. The Department of Medical Assistance Services will receive, consider and respond to petitions by any interested persons at any time with respect to reconsideration or revision.

Title of Regulation: **VR 460-03-3.1100. Amount, Duration and Scope of Services Relating to Exemption of Selected Hospital Inpatient Utilization Review Requirements.**

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

Effective Date: September 1, 1989.

Summary:

The purpose of this final regulation is to promulgate the department's internal practice of exempting specific hospitals from utilization review requirements when their own review process meets department standards. This final regulation amends the narrative Plan section concerning the Amount, Duration, and Scope of Services.

VR 460-03-3.1100. Amount, Duration, and Scope of Services.

General.

The provision of the following services cannot be reimbursed except when they are ordered or prescribed, and directed or performed within the scope of the license of a practitioner of the healing arts: laboratory and x-ray services, family planning services, and home ealth services. Physical therapy services will be reimbursed only when prescribed by a physician.

§ 1. Inpatient hospital services other than those provided in an institution for mental diseases.

A. Medicaid inpatient hospital admissions (lengths-of-stay) are limited to the 75th percentile of PAS (Professional Activity Study of the Commission on Professional and Hospital Activities) diagnostic/procedure limits. For admissions under 15 days that exceed the 75th percentile, the hospital must attach medical justification records to the billing invoice to be considered for additional coverage when medically justified. For all admissions that exceed 14 days up to a maximum of 21 days, the hospital must attach medical justification records to the billing invoice. (See the exception to subsection F of this section.)

B. Medicaid does not pay the medicare (Title XVIII) coinsurance for hospital care after 21 days regardless of the length-of-stay covered by the other insurance. (See exception to subsection F of this section.)

C. Reimbursement for induced abortions is provided in only those cases in which there would be a substantial endangerment to health or life of the mother if the fetus were carried to term.

D. Reimbursement for covered hospital days is limited to one day prior to surgery, unless medically justified. Hospital claims with an admission date more than one day prior to the first surgical date will pend for review by medical staff to determine appropriate medical justification. The hospital must write on or attach the justification to the billing invoice for consideration of reimbursement for additional preoperative days. Medically justified situations are those where appropriate medical care cannot be obtained except in an acute hospital setting thereby warranting hospital admission. Medically unjustified days in such admissions will be denied.

E. Reimbursement will not be provided for weekend (Friday/Saturday) admissions, unless medically justified. Hospital claims with admission dates on Friday or Saturday will be pended for review by medical staff to determine appropriate medical justification for these days. The hospital must write on or attach the justification to the billing invoice for consideration of reimbursement coverage for these days. Medically justified situations are those where appropriate medical care cannot be obtained except in an acute hospital setting thereby warranting hospital admission. Medically unjustified days in such admission will be denied.

F. Coverage of inpatient hospitalization will be limited to a total of 21 days for all admissions within a fixed period, which would begin with the first day inpatient hospital services are furnished to an eligible recipient and end 60 days from the day of the first admission. There may be multiple admissions during this 60-day period; however, when total days exceed 21, all subsequent claims will be reviewed. Claims which exceed 21 days within 60 days with a different diagnosis and medical justification will be paid. Any claim which has the same or similar diagnosis will be denied.

EXCEPTION: SPECIAL PROVISIONS FOR ELIGIBLE INDIVIDUALS UNDER 21 YEARS OF AGE: Consistent with 42 CFR 441.57, payment of medical assistance services shall be made on behalf of individuals under 21 years of age, who are Medicaid eligible, for medically necessary stays in acute care facilities in excess of 21 days per admission when such services are rendered for the purpose of diagnosis and treatment of health conditions identified through a physical examination. Medical documentation justifying admission and the continued length of stay must be attached to or written on the invoice for review by medical staff to determine medical necessity. Medically unjustified days in such admissions will be denied.

G. Reimbursement will not be provided for inpatient hospitalization for any selected elective surgical procedures that require a second surgical opinion unless a properly

executed second surgical opinion form has been obtained from the physician and submitted with the hospital invoice for payment, or is a justified emergency or exemption. The requirements for second surgical opinion do not apply to recipients in the retroactive eligibility period.

H. Reimbursement will not be provided for inpatient hospitalization for those surgical and diagnostic procedures listed on the mandatory outpatient surgery list unless the inpatient stay is medically justified or meets one of the exceptions. The requirements for mandatory outpatient surgery do not apply to recipients in the retroactive eligibility period.

I. For the purposes of organ transplantation, all similarly situated individuals will be treated alike. Coverage of transplant services for all eligible persons is limited to transplants for kidneys and corneas. Kidney transplants require preauthorization. Cornea transplants do not require preauthorization. The patient must be considered acceptable for coverage and treatment. The treating facility and transplant staff must be recognized as being capable of providing high quality care in the performance of the requested transplant. The amount of reimbursement for covered kidney transplant services is negotiable with the providers on an individual case basis. Reimbursement for covered cornea transplants is at the allowed Medicaid rate. Standards for coverage of organ transplant services are in Attachment 3.1 E.

J. The department may waive portions or all of the utilization review documentation requirements of subsections A, D, E, G, or H in writing for specific hospitals from time to time as part of its ongoing hospital utilization review performance evaluation.

§ 2. Outpatient hospital and rural health clinic services.

2a. Outpatient hospital services.

1. Outpatient hospital services means preventive, diagnostic, therapeutic, rehabilitative, or palliative services that:

a. Are furnished to outpatients;

b. Except in the case of nurse-midwife services, as specified in § 440.165, are furnished by or under the direction of a physician or dentist; and

c. Are furnished by an institution that:

(1) Is licensed or formally approved as a hospital by an officially designated authority for state standard-setting; and

(2) Except in the case of medical supervision of nurse-midwife services, as specified in § 440.165, meets the requirements for participation in Medicare.

2. Reimbursement for induced abortions is provided in only those cases in which there would be substantial endangerment of health or life to the mother if the fetus were carried to term.

3. Reimbursement will not be provided for outpatient hospital services for any selected elective surgical procedures that require a second surgical opinion unless a properly executed second surgical opinion form has been obtained from the physician and submitted with the invoice for payment, or is a justified emergency or exemption.

2b. Rural health clinic services and other ambulatory services furnished by a rural health clinic.

No limitations on this service.

§ 3. Other laboratory and x-ray services.

Service must be ordered or prescribed and directed or performed within the scope of a license of the practitioner of the healing arts.

§ 4. Skilled nursing facility services, EPSDT and family planning.

4a. Skilled nursing facility services (other than services in an institution for mental diseases) for individuals 21 years of age or older.

Service must be ordered or prescribed and directed or performed within the scope of a license of the practitioner of the healing arts.

4b. Early and periodic screening and diagnosis of individuals under 21 years of age, and treatment of conditions found.

1. Consistent with 42 CFR 441.57, payment of medical assistance services shall be made on behalf of individuals under 21 years of age, who are Medicaid eligible, for medically necessary stays in acute care facilities, and the accompanying attendant physician care, in excess of 21 days per admission when such services are rendered for the purpose of diagnosis and treatment of health conditions identified through a physical examination.

2. Routine physicals and immunizations (except as provided through EPSDT) are not covered except that well-child examinations in a private physician's office are covered for foster children of the local social services departments on specific referral from those departments.

3. Eyeglasses are provided only as a result of Early and Periodic Screening, Diagnosis and Treatment (EPSDT) and require prior authorization by the Program.

4c. Family planning services and supplies for individuals of child-bearing age.

Service must be ordered or prescribed and directed or performed within the scope of the license of a practitioner of the healing arts.

§ 5. Physician's services whether furnished in the office, the patient's home, a hospital, a skilled nursing facility or elsewhere.

A. Elective surgery as defined by the Program is surgery that is not medically necessary to restore or materially improve a body function.

B. Cosmetic surgical procedures are not covered unless performed for physiological reasons and require Program prior approval.

C. Routine physicals and immunizations are not covered except when the services are provided under the Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) Program and when a well-child examination is performed in a private physician's office for a foster child of the local social services department on specific referral from those departments.

D. Psychiatric services are limited to an initial availability of 26 sessions, with one possible extension (subject to the approval of the Psychiatric Review Board) of 26 sessions during the first year of treatment. The availability is further restricted to no more than 26 sessions each succeeding year when approved by the Psychiatric Review Board. Psychiatric services are further restricted to no more than three sessions in any given seven-day period. These limitations also apply to psychotherapy sessions by clinical psychologists licensed by the State Board of Medicine.

E. Any procedure considered experimental is not covered.

F. Reimbursement for induced abortions is provided in only those cases in which there would be a substantial endangerment of health or life to the mother if the fetus were carried to term.

G. Physician visits to inpatient hospital patients are limited to a maximum of 21 days per admission within 60 days for the same or similar diagnoses and is further restricted to medically necessary inpatient hospital days as determined by the Program.

EXCEPTION: SPECIAL PROVISIONS FOR ELIGIBLE INDIVIDUALS UNDER 21 YEARS OF AGE: Consistent with 42 CFR 441.57, payment of medical assistance services shall be made on behalf of individuals under 21 years of age, who are Medicaid eligible, for medically necessary stays in acute care facilities in excess of 21 days per admission when such services are rendered for the purpose of diagnosis and treatment of health conditions identified through a physical examination. Payments for physician visits for inpatient days determined to be medically unjustified will be adjusted.

H. Psychological testing and psychotherapy by clinical psychologists licensed by the State Board of Medicine are covered.

I. Reimbursement will not be provided for physician services for those selected elective surgical procedures requiring a second surgical opinion unless a properly executed second surgical opinion form has been submitted with the invoice for payment, or is a justified emergency or exemption. The requirements for second surgical opinion do not apply to recipients in a retroactive eligibility period.

J. Reimbursement will not be provided for physician services performed in the inpatient setting for those surgical or diagnostic procedures listed on the mandatory outpatient surgery list unless the service is medically justified or meets one of the exceptions. The requirements of mandatory outpatient surgery do not apply to recipients in a retroactive eligibility period.

K. For the purposes of organ transplantation, all similarly situated individuals will be treated alike. Coverage of transplant services for all eligible persons is limited to transplants for kidneys and corneas. Kidney transplants require preauthorization. Cornea transplants do not require preauthorization. The patient must be considered acceptable for coverage and treatment. The treating facility and transplant staff must be recognized as being capable of providing high quality care in the performance of the requested transplant. The amount of reimbursement for covered kidney transplant services is negotiable with the providers on an individual case basis. Reimbursement for covered cornea transplants is at the allowed Medicaid rate. Standards for coverage of organ transplant services are in Attachment 3.1 E.

§ 6. Medical care by other licensed practitioners within the scope of their practice as defined by state law.

A. Podiatrists' services.

1. Covered podiatry services are defined as reasonable and necessary diagnostic, medical, or surgical treatment of disease, injury, or defects of the human foot. These services must be within the scope of the license of the podiatrists' profession and defined by state law.

2. The following services are not covered: preventive health care, including routine foot care; treatment of structural misalignment not requiring surgery; cutting or removal of corns, warts, or calluses; experimental procedures; acupuncture.

3. The Program may place appropriate limits on a service based on medical necessity or for utilization

control, or both.

B. Optometric services.

1. Diagnostic examination and optometric treatment procedures and services (except for orthoptics) by ophthamologists, optometrists, and opticians, as allowed by the Code of Virginia and by regulations of the Boards of Medicine and Optometry, are covered for all recipients. Routine refractions are limited to once in 24 months except as may be authorized by the agency.

C. Chiropractors' services.

Not provided.

D. Other practitioners' services.

1. Clinical psychologists' services.

a. These limitations apply to psychotherapy sessions by clinical psychologists licensed by the State Board of Medicine. Psychiatric services are limited to an initial availability of 26 sessions, with one possible extension of 26 sessions during the first year of treatment. The availability is further restricted to no more than 26 sessions each succeeding year when approved by the Psychiatric Review Board. Psychiatric services are further restricted to no more than three sessions in any given seven-day period.

b. Psychological testing and psychotherapy by clinical psychologists licensed by the State Board of Medicine are covered.

§ 7. Home Health services.

A. Service must be ordered or prescribed and directed or performed within the scope of a license of a practitioner of the healing arts.

B. Intermittent or part-time nursing service provided by a home health agency or by a registered nurse when no home health agency exists in the area.

C. Home health aide services provided by a home health agency.

Home health aides must function under the supervision of a professional nurse.

D. Medical supplies, equipment, and appliances suitable for use in the home.

1. All medical supplies, equipment, and appliances are available to patients of the home health agency.

2. Medical supplies, equipment, and appliances for all others are limited to home renal dialysis equipment and supplies, and respiratory equipment and oxygen, and ostomy supplies, as preauthorized by the local health department.

E. Physical therapy, occupational therapy, or speech pathology and audiology services provided by a home health agency or medical rehabilitation facility.

Service covered only as part of a physician's plan of care.

§ 8. Private duty nursing services.

Not provided.

§ 9. Clinic services.

A. Reimbursement for induced abortions is provided in only those cases in which there would be a substantial endangerment of health or life to the mother if the fetus was carried to term.

B. Clinic services means preventive, diagnostic, therapeutic, rehabilitative, or palliative items or services that:

1. Are provided to outpatients;

2. Are provided by a facility that is not part of a hospital but is organized and operated to provide medical care to outpatients; and

3. Except in the case of nurse-midwife services, as specified in 42 CFR § 440.165, are furnished by or under the direction of a physician or dentist.

§ 10. Dental services.

A. Dental services are limited to recipients under 21 years of age in fulfillment of the treatment requirements under the Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) Program and defined as routine diagnostic, preventive, or restorative procedures necessary for oral health provided by or under the direct supervision of a dentist in accordance with the State Dental Practice Act.

B. Initial, periodic, and emergency examinations; required radiography necessary to develop a treatment plan; patient education; dental prophylaxis; fluoride treatments; routine amalgam and composite restorations; crown recementation; pulpotomies; emergency endodontics for temporary relief of pain; pulp capping; sedative fillings; therapeutic apical closure; topical palliative treatment for dental pain; removal of foreign body; simple extractions; root recovery; incision and drainage of abscess; surgical exposure of the tooth to aid eruption; sequestrectomy for osteomyelitis; and oral antral fistula closure are dental services covered without preauthorization by the state agency.

C. All covered dental services not referenced above require preauthorization by the state agency. The following services are not covered: full banded orthodontics; permanent crowns and all bridges; removable complete and partial dentures; routine bases under restorations; and inhalation analgesia.

D. The state agency may place appropriate limits on a service based on dental necessity, for utilization control, or both. Examples of service limitations are: examinations, prophylaxis, fluoride treatment (once/six months); space maintenance appliances; bitewing x-ray – two films (once/12 months); routine amalgam and composite restorations (once/three years); and extractions, permanent crowns, endodontics, patient education (once).

E. Limited oral surgery procedures, as defined and covered under Title XVIII (Medicare), are covered for all recipients, and also require preauthorization by the state agency.

§ 11. Physical therapy and related services.

11a. Physical therapy.

Services for individuals requiring physical therapy are provided only as an element of hospital inpatient or outpatient service, skilled nursing home service, home health service, or when otherwise included as an authorized service by a cost provider who provides rehabilitation services.

11b. Occupational therapy.

Services for individuals requiring occupational therapy are provided only as an element of hospital inpatient or outpatient service, skilled nursing home service, home health service, or when otherwise included as an authorized service by a cost provider who provides rehabilitation services.

11c. Services for individuals with speech, hearing, and language disorders (provided by or under the supervision of a speech pathologist or audiologist; see General section and subsections 11a and 11b of this section.)

These services are provided by or under the supervision of a speech pathologist or an audiologist only as an element of hospital inpatient or outpatient service, skilled nursing home service, home health service, or when otherwise included as an authorized service by a cost provider who provides rehabilitation services.

§ 12. Prescribed drugs, dentures, and prosthetic devices; and eyeglasses prescribed by a physician skilled in diseases of the eye or by an optometrist.

12a. Prescribed drugs.

1. Nonlegend drugs, except insulin, syringes, needles, diabetic test strips for clients under 21 years of age, and family planning supplies are not covered by Medicaid. This limitation does not apply to Medicaid recipients who are in skilled and intermediate care facilities.

2. Legend drugs, with the exception of anorexiant drugs prescribed for weight loss and transdermal drug delivery systems, are covered. Coverage of anorexiants for other than weight loss requires preauthorization.

3. The Program will not provide reimbursement for drugs determined by the Food and Drug Administration (FDA) to lack substantial evidence of effectiveness.

4. Notwithstanding the provisions of § 32.1-87 of the Code of Virginia, prescriptions for Medicaid recipients for specific multiple source drugs shall be filled with generic drug products listed in the Virginia Voluntary Formulary unless the physician or other practitioners so licensed and certified to prescribe drugs certifies in his own handwriting "brand necessary" for the prescription to be dispensed as written.

12b. Dentures.

Not provided.

12c. Prosthetic devices.

Not provided.

12d. Eyeglasses.

Eyeglasses shall be reimbursed for all recipients younger than 21 years of age according to medical necessity when provided by practitioners as licensed under the Code.

§ 13. Other diagnostic, screening, preventive, and rehabilitative services, i.e., other than those provided elsewhere in this plan.

13a. Diagnostic services.

Not provided.

13b. Screening services.

Not provided.

13c. Preventive services.

Not provided.

13d. Rehabilitative services.

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.

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.

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.

4. 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 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 be carried out under the continuing direct supervision of a physician with special training or experience in the field of rehabilitation.

§ 14. Services for individuals age 65 or older in institutions for mental diseases.

14a. Inpatient hospital services.

Provided, no limitations.

14b. Skilled nursing facility services.

Provided, no limitations.

14c. Intermediate care facility.

Provided, no limitations.

§ 15. Intermediate care services and intermediate care services for institutions for mental disease and mental retardation.

15a. Intermediate care facility services (other than such services in an institution for mental diseases) for persons determined, in accordance with § 1902 (a)(31)(A) of the Act, to be in need of such care.

Provided, no limitations.

15b. Including such services in a public institution (or distinct part thereof) for the mentally retarded or persons with related conditions.

Provided, no limitations.

§ 16. Inpatient psychiatric facility services for individuals under 22 years of age.

Not provided.

§ 17. Nurse-midwife services.

Covered services for the nurse midwife are defined as those services allowed under the licensure requirements of the state statute and as specified in the Code of Federal Regulations, i.e., maternity cycle.

§ 18. Hospice care (in accordance with § 1905 (o) of the Act).

Not provided.

§ 19. Extended services to pregnant women.

19a. Pregnancy-related and postpartum services for 60 days after the pregnancy ends.

The same limitations on all covered services apply to this group as to all other recipient groups.

19b. Services for any other medical conditions that may complicate pregnancy.

The same limitations on all covered services apply to this group as to all other recipient groups.

§ 20. Any other medical care and any other type of remedial care recognized under state law, specified by the Secretary of Health and Human Services.

20a. Transportation.

Nonemergency transportation is administered by local health department jurisdictions in accordance with reimbursement procedures established by the Program.

20b. Services of Christian Science nurses.

Not provided.

20c. Care and services provided in Christian Science sanitoria.

Provided, no limitations.

20d. Skilled nursing facility services for patients under 21 years of age.

Provided, no limitations.

20e. Emergency hospital services.

Provided, no limitations.

20f. Personal care services in recipient's home, prescribed in accordance with a plan of treatment and

provided by a qualified person under supervision of a registered nurse.

Not provided.

STATE WATER CONTROL BOARD

Title of Regulations: **VR 680-21-08. River Basin Section Tables - Water Quality Standards.**
VR 680-21-08.19. New River Basin.

Statutory Authority: § 62.1-44.15(3a) of the Code of Virginia.

Effective Date: August 30, 1989.

Background:

Water quality standards and criteria consist of narrative statements that describe water quality requirements in general terms and numerical limits for specific physical, chemical and biological characteristics of water. These statements and limits describe water quality necessary for reasonable, beneficial water uses such as swimming, propagation and growth of aquatic life, and domestic water supply.

Summary:

This amendment reclassifies Stony Creek, § 1d, New River Basin from natural trout water to put-and-take trout water. This amendment was adopted in response to recommendations from the Department of Game and Inland Fisheries. The final language added a phrase to the main section description to clarify the primary classification of Stony Creek.

VR 680-21-08. River Basin Section Tables - Water Quality Standards.

VR 680-21-08.19. New River Basin.

SEC.	SECTION DESCRIPTION	CLASS	SP.STDS.
1d	[Stony Creek and its tributaries , *unless otherwise designated,* from its confluence with the New River upstream to its headwaters, and Little Stony Creek and its tributaries from its confluence with the New River to its headwaters.]	IV	
	Put-and-Take Trout Waters in Section 1d	V	
	Stony Creek from its confluence with the New River to its headwaters. Stony Creek from its confluence with the New River 1.9 miles upstream (in the vicinity of Route 641). Stony Creek from 1.9 miles above its confluence with the New River 12.7 miles upstream.	***	
	Natural Trout Waters in Section 1d	VI	
	~~Stony Creek from its confluence with the New River to its headwaters.~~ ~~[Stony Creek from its confluence with the New River 1.9 miles upstream (in the vicinity of Route 641).]~~ ~~[Stony Creek from 1.9 miles above confluence with the New River 12.7 miles upstream.]~~	~~***~~ ~~vi**~~	

NOTE: The asterisks in the class column refer to the Department of Game and Inland Fisheries classification system for trout waters.

DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES (BOARD OF)

Title of Regulation: **VR 115-04-20. Rules and Regulations for the Enforcement of the Virginia Pesticide Control Act.**

Statutory Authority: § 3.1-249.30 of the Code of Virginia.

Effective Date: July 13, 1989, through July 12, 1990.

Preamble:

The Pesticide Control Board of the Department of Agriculture and Consumer Services has determined that it is necessary to adopt emergency regulations to establish fees for pesticide product registration and for certifying commercial pesticide applicators.

The newly-adopted Virginia Pesticide Control Act authorizes the Pesticide Control Board to promulgate regulations to establish fees and term dates for any pesticide product manufactured, distrubuted, sold, stored, recommended for use, or applied commercially; and to establish fees for certifying commercial pesticide applicators.

Nature of Emergency:

In adopting the Virginia Pesticide Control Act, the Legislature repealed, effective June 30, 1989, the Virginia Pesticide Law, and with it the current fee structure contained in that statute. Therefore, after that date, the Department of Agriculture and Consumer Services and the newly-created Pesticide Control Board will have no authority pursuant to that law to collect fees for pesticide product registration (contained in § 3.1-227 of the Code) and for commercial pesticide applicators (contained in § 3.1-249.4(B) of the Code).

Necessity for Action:

The collection of fees for the regulation of pesticide use is not new. The Department has collected fees for the pesticide product registration and commercial applicators since 1948. Sixty percent of the operating budget of the Office of Pesticide Management, including the three FTEs supported by these funds, comes from fees collected from pesticide product registration; and so the collection of these fees is vital to assure the continued functioning of this office, an office that will work closely with the newly-established Pesticide Control Board.

The new Pesticide Control Act authorizes the Pesticide Control Board to set and collect certain fees, including fees for pesticide product registration (§§ 3.1-249.30(7) and 3.1-249.40 of the Code) and fees for issuing certificates to commercial pesticide applicators (§§ 3.1-249.30(7), 3.1-249.52, and 3.1-249.55 of the Code).

These emergency regulations, if adopted, will permit the Pesticide Control Board to establish and collect fees for registering pesticide products, and for issuing certificates to commercial pesticide applicators. Should the Governor authorize their adoption, we anticipate their adoption on or about July 7, the anticipated first meeting date of the Virginia Pesticide Control Board, with an effective date of no later than July 17, 1989.

The fees that the emergency regulation would establish for product registration and the issuance of applicator certificates are in the same amounts as those prescribed by the soon-to-expire statute.

VR 115-04-20. Rules and Regulations for the Enforcement of the Virginia Pesticide Control Act.

§ 1. Pesticide product registration fee.

The registrant of any brand or grade of pesticide to be registered with the Commissioner of Agriculture and Consumer Services pursuant to § 3.1-249.40 of the Code of Virginia shall pay to the Department of Agriculture and Consumer Services an annual registration fee of ten dollars for each brand or grade to be offered for sale or use in the Commonwealth. All registrations shall expire on December 31 of each year, unless otherwise terminated, and are subject to renewal upon receipt of the annual registration fee.

§ 2. Commercial pesticide applicator certificate.

Any person applying for a certificate as a commercial applicator pursuant to §§ 3.1-249.52 or 3.1-249.55 of the Code of Virginia shall pay to the Department of Agriculture and Consumer Services an initial certificate fee of twenty-five dollars and an annual renewal fee of fifteen dollars thereafter. All certificates shall expire on December 31 of each year, unless otherwise terminated, and are subject to renewal upon receipt of annual fees.

§ 3. Petition for review.

The Pesticide Control Board of the Virginia Department of Agriculture and Consumer Services will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revisions of these emergency regulations.

/s/ S. Mason Carbaugh
Commissioner
Virginia Department of Agriculture and Consumer Services
Date: June 29, 1989

/s/ Curry A. Roberts
Secretary
Economic Development
Date June 29, 1989

/s/ Gerald L. Baliles
Governor

Emergency Regulation

Date: July 12, 1989

Filed:

/s/ Joan W. Smith
Registrar of Regulations
Date: July 13, 1989 - 9:28 a.m.

DEPARTMENT OF HEALTH (STATE BOARD OF)

Title of Regulation: **VR 355-30-01. Virginia Medical Care Facilities Certificate of Public Need Rules and Regulations.**

Statutory Authority: §§ 32.1-12 and 32.1-102.1 et seq. of the Code of Virginia.

Effective Date: July 5, 1989 through June 30, 1990.

Summary:

Nature of Emergency. On July 1, 1989, amendments to the Virginia Medical Care Facilities Certificate of Public Need Law will become effective. The amended law (i) deregulates certain medical care facility projects and new medical care facilities currently subject to review, (ii) imposes a moratorium on the addition of nursing home beds until January 1, 1991, (iii) eliminates review requirements for hospitals and specialized centers or clinics developed for the provision of outpatient or ambulatory surgery except with respect to the establishment of nursing home beds in general hospitals as of July 1, 1991, notwithstanding any law to the contrary and (iv) incorporates changes made to health planning law which impact the review of medical care facility projects. Additionally, the law provides for registration of and periodic reports on certain deregulated clinical health services and major medical equipment acquisitions with an exppenditure of $400,000 or more.

Purpose. To amend the existing Virginia Medical Care Facilities Certificate of Public Need Rules and Regulations so that compliance with the amended law is possible on July 1, 1989.

VR 355-30-01. Virginia Medical Care Facilities Certificate of Public Need Rules and Regulations.

PART I.
DEFINITIONS.

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

"Acquisition" ~~(medical care facility)~~ means an ~~capital~~ expenditure of *(i)* $700,000 or more that changes the ownership of a medical care facility *or (ii) $400,000 or more for the purchase of new major medical equipment .* It shall also include the donation or lease of a medical care facility *or new major medical equipment .* An acquisition *of a medical care facility shall not include a capital expenditure involving the purchase of stock.*

"Amendment" means any modification to an application which is made following the public hearing and prior to the issuance of a certificate and includes those factors that constitute a significant change as defined in these regulations. An amendment shall not include a modification to an application which serves to reduce the scope of a project.

"Applicant" means the owner of an existing medical care facility or the sponsor of a proposed medical care facility project submitting an application for a certificate of public need.

"Application" means a prescribed format for the presentation of data and information deemed necessary by the board to determine a public need for a medical care facility project.

"Board" means the State Board of Health.

"Capital expenditure" means any expenditure by or in behalf of a medical care facility which, under generally accepted accounting principles, is not properly chargeable as an expense of operation and maintenance. Capital expenditures need not be made by a medical care facility so long as they are made in behalf of a medical care facility by any person. *See definition of person.*

"Certificate of public need" means a document which legally authorizes a medical care facility project as defined herein and which is issued by the commissioner to the owner of such project.

"Clinical health service" means a single diagnostic, therapeutic, rehabilitative, preventive or palliative procedure or a series of such procedures that may be separately identified for billing and accounting purposed.

"Commissioner" means the State Health Commissioner who has authority to make a determination respecting the issuance or revocation of a certificate.

"Competing applications" means applications for the same or similar services and facilities which are proposed for the same planning district or medical service area and which are in the same review cycle. See ~~§§ 5.1 and 6.8.~~ *§§ 5.8 and 6.5*

"Construction" means the building of a new medical facility and/or the expansion, remodeling, or alteration of an existing medical care facility.

"Construction, initiation of" means project shall be considered under construction for the purpose of certificate extension determinations upon the presentation of evidence by the owner of: (i) a signed construction

contract; (ii) the completion of short term financing and a commitment for long term (permanent) financing when applicable; (iii) the completion of predevelopment site work; and (iv) the completion of building foundations.

"Date of issuance" means the date of the commissioner's decision awarding a certificate of public need.

"Department" means the State Department of Health.

"Ex parte" means any meeting which takes place between (i) any person acting in behalf of the applicant or holder of a certificate of public need or any person opposed to the issuance or in favor of the revocation of a certificate of public need and (ii) any person who has authority in the department to make a decision respecting the issuance or revocation of a certificate of public need for which the department has not provided 10 days written notification to opposing parties of the time and place of such meeting. An ex parte contact shall not include a meeting between the persons identified in (i) and staff of the department.

~~*"Formal evidentiary hearing"* means a hearing held pursuant to § 9-6.14:12 of the Code of Virginia.~~

~~*"Health maintenance organization (HMO)"* means a public or private organization established under § 38.1-863 et seq. of the Code of Virginia and which (i) is a qualified health maintenance organization under § 1310(d) of the U.S. Public Health Services Act or (ii) provides or otherwise makes available to enrollees health care services, including at least the following: usual physician services, hospitalization, laboratory, x-ray, emergency and preventive services, and out of area coverage, and (iii) is compensated (except for co-payments) for the provision of the basic health care services listed in item (2) of this definition to enrolled participants by a payment which is paid on a periodic basis without regard to the date the health care services are provided and which is fixed without regard to the frequency, extent, or kind of health services actually provided; and (iv) provides physicians' services primarily (a) directly through physicians who are either employees or partners of the organization, or (b) through arrangements with individual physicians or one or more groups of physicians (organized on a group practice or individual practice basis).~~

~~*"Health service area"* means a geographic area of the state designated by the Secretary of the United States Department of Health and Human Services pursuant to § 1511 of United States Public Law 93-641 or its successor.~~

"Health planning region" means a contiguous geographical area of the Commonwealth with a population base of at least 500,000 persons which is characterized by the availability of multiple levels of medical care servies, reasonable travel time for tertiary care, and congruence with planning districts.

~~*"Health systems agency"* means an entity organized, operated and designated as a health systems agency pursuant to Title XV of the United States Public Health Service Act or, in the absence of such an agency, a local, district or regional health planning body established under the laws of the Commonwealth.~~

~~*"Health systems plan"* means a regional health plan developed by a designated health systems agency in accordance with § 1513(b)(2) of United States Public Law 93-641, or its successor, which sets forth in detail the goals of a healthful environment and the health systems in the geographical area it serves.~~

"Informal, fact-finding conference" means a conference held pursuant to § 9-6.14:11 of the Code of Virginia.

"Inpatient beds" means accommodations within a medical care facility with continuous support services (such as food, laundry, housekeeping) and staff to provide health or health-related services to patients who generally remain in the medical care facility in excess of 24 hours. Such accommodations are known by varying nomenclatures including but not limited to: nursing beds, intensive care beds, minimal or self care beds, isolation beds, hospice beds, observation beds equipped and staffed for overnight use, and obstetric, medical, surgical, psychiatric , *substance abuse, medical rehabilitation* and pediatric beds, including pediatric bassinets and incubators. Bassinets and incubators in a maternity department and beds located in labor or birthing rooms, recovery rooms, emergency rooms, preparation or anesthesia inductor rooms, diagnostic or treatment procedures rooms, or on-call staff rooms are excluded from this definition.

"Medical care facilities" means any institution, place, building, or agency, whether or not licensed or required to be licensed by the board or the State Mental Health ~~and~~ , Mental Retardation *and Substance Abuse Services* Board, whether operated for profit or nonprofit and whether privately owned or operated or owned or operated by a local governmental unit, (i) by or in which facilities are maintained, furnished, conducted, operated, or offered for the prevention, diagnosis or treatment of human disease, pain, injury, deformity or physical condition, whether medical or surgical, of two or more nonrelated mentally or physically sick or injured persons, or for the care of two or more nonrelated persons requiring or receiving medical, surgical, or nursing attention or services as acute, chronic, convalescent, aged, physically disabled, or crippled or (ii) which is the recipient of reimbursements from third party health insurance programs or prepaid medical service plans. *For purposes of these regulations, only the following medical care facility classifications shall be subject to review:*

"Medical care facility classifications" means ~~that the term medical care facility includes, but is not limited to:~~ *the following:*

1. General hospitals.

~~2. Sanatoriums.~~

~~3.~~ *2.* Sanitariums.

~~4.~~ *3.* Nursing homes.

~~5.~~ *4.* Intermediate care facilities.

~~6.~~ *5.* Extended care facilities.

~~7.~~ *6.* Mental hospitals.

~~8.~~ *7.* Mental retardation facilities.

~~9.~~ *8.* Psychiatric hospitals and intermediate care facilities established primarily for the medical, psychiatric or psychological treatment and rehabilitation of alcoholics or drug addicts.

~~10.~~ *9.* Specialized centers or clinics developed for the provision of out-patient or ambulatory surgery ~~, renal dialysis therapy, radiation therapy, computerized tomography (CT) scanning or other medical or surgical treatments requiring the utilization of equipment not usually associated with the provision of primary health services.~~

~~11. Hospices.~~

10. Rehabilitation hospitals.

"Exclusions" means that the following shall not be included ~~in the definition of~~ *as* a medical care facility *classification subject to review* :

~~1. A physician's office except when equipment generally and customarily associated with the provision of health services in an inpatient setting and the cost of which exceeds $400,000 per unit of equipment, is purchased or leased by such physician.~~

~~2. A clinical laboratory, if the clinical laboratory is independent of a physician's office or a hospital and has been determined to meet the requirements of paragraphs (10) and (11) of § 1861 (s) of Title XVIII of the Social Security Act, as they existed on the effective date of the enactment of §§ 32.1-102.1 through 32.1-102.11 of the Code of Virginia.~~

~~3. A hospital that uses up to 10% of its beds as skilled nursing home beds for a maximum of 30 days for any one patient. Such activity must qualify for certification under § 1883 of Title XVIII and § 1913 of the Title XIX of the Social Security Act in order to receive reimbursement from Medicaid for the use of such beds.~~

1. Any facility of the Department of Mental Health, Mental Retardation and Substance Abuse Services.

2. Any nonhospital substance abuse residential treatment program operated by or contracted primarily for the use of a community services board under the Department of Mental Health, Mental Retardation and Substance Abuse Services Comprehensive Plan.

"Medical service area" means the geographic territory from which at least 75% of patients come or are expected to come to existing or proposed medical care facilities, the delineation of which is based on such factors as population characteristics, natural geographic boundaries, and transportation and trade patterns, and all parts of which are reasonably accessible to existing or proposed medical care facilities.

"Modernization" means the alteration, repair, remodeling, replacement or renovation of an existing medical care facility or any part thereto, including that which is incident to the initial and subsequent installation of equipment in a medical care facility. *See definition of "construction".*

"Operator" means any person having designated responsibility and legal authority from the owner to administer and manage a medical care facility. *See definition of "owner"*

"Operating expenditure" means any expenditure by or in behalf of a medical care facility which, under generally accepted accounting principles, is properly chargeable as an expense of operation and maintenance and is not a capital expenditure.

"Other plans" means any plan(s) which is formally adopted by an official state agency or ~~health systems agency~~ *regional health planning agency* and which provides for the orderly planning and development of medical care facilities and services and which is not otherwise defined in these regulations.

"Owner" means any person which has legal responsibility and authority to construct, renovate or equip or otherwise control a medical care facility as defined herein.

"Person" means an individual, corporation, partnership, association or any other legal entity, whether governmental or private. Such person may also include the applicant for a certificate of public need; the ~~health systems agency~~ *regional health planning agency* for the ~~health service area~~ *health planning region* in which the proposed project is to be located; any resident of the geographic area served or to be served by the applicant; any person who regularly uses health care facilities within the geographic area served or to be served by the applicant; any facility or health maintenance organization (HMO) *established under ~~§ 38.1-86.3~~ 38.2-4300 et seq.* which is located in the health ~~service area~~ *planning region* in which the project is proposed and which provides services similar to the services of the medical care facility project under review; third party payors who provide health care insurance or

prepaid coverage to 5% or more patients in the health ~~services area~~ *planning region* in which the project is proposed to be located; and any agency which reviews or establishes rates for health care facilities.

"Physician's office" means a place, owned or operated by a licensed physician or group of physicians practicing in any legal form whatsoever, which is designed and equipped solely for the provision of fundamental medical care whether diagnostic, therapeutic, rehabilitative, preventive or palliative to ambulatory patients and which does not participate in cost-based or facility reimbursement from third party health insurance programs or prepaid medical service plans excluding pharmaceuticals and other supplies administered in the office.

"Planning district" means a contiguous area within the boundaries established by the Department of Planning and Budget as set forth in § ~~15.1-14.02~~ *§15.1-1402* of the Code of Virginia.

"Pre development site work" means any preliminary activity directed towards preparation of the site prior to the completion of the building foundations. This includes, but is not limited to, soil testing, clearing, grading, extension of utilities and power lines to the site.

"Progress" means actions which are required in a given period of time to complete a project for which a certificate of public need has been issued. See § ~~8.3~~ *§ 7.3* on Progress.

"Project" means:

A. ~~A capital expenditure by or on behalf of a medical care facility, regardless of when made, including but not limited to any studies, surveys, designs, plans, working drawings and specifications, which, under generally accepted accounting principles, is not properly chargeable as an expense of operation and maintenance and which (i) exceeds $700,000 and does not involve the purchase of equipment identified in this provision of the regulation. Such expenditure shall also include a series of capital expenditures made during a 12-month period or an obligation or series of obligations made during a 12-month period of time by a medical care facility or sponsor of a medical care facility which exceed $700,000 and which would require review if made as a single expenditure; (ii) increases the total number of beds; or (iii) relocates 10 beds or 10% of the beds, whichever is less, from one physical facility to another in any two-year period.~~ *The establishment of a medical care facility; See definition of medical care facility.*

B. ~~The acquisition by a medical care facility, through donation or lease, of equipment or facilities which, if purchased by the medical care facility, would require an expenditure described in subsection A or subsection E of this provision of the regulations.~~ *An increase in the total number of beds in an existing medical care facility.*

C. ~~The acquisition by a medical care facility of equipment or facilities through a transfer at less than fair market value if the transfer at fair market value would require an expenditure described in subsection E of this provision of the regulations.~~ *Relocation of 10 beds or 10% of the beds, whichever is less, from one existing physical facility to another in any two-year period; however, a hospital shall not be required to obtain a certificate for the use of 10% of its beds as nursing home beds as provided in § 32.1-132 of the Code of Virginia.*

D. The introduction ~~by a medical care facility of a clinical health service which the facility has never provided or has not provided in the previous 12 months. See definition of "service (clinical health)."~~ *into any existing medical care facility of any new nursing home service, such as intermediate care facility services, extended care facility services or skilled nursing facility services, regardless of the type of medical care facility in which those services are provided; or*

E. The ~~acquisition, by purchase, lease, gift or bequest, by or on behalf of a medical care facility or, if the unit of equipment is generally and customarily associated with the provision of health services in an inpatient setting, by or on behalf of a physician's office, of equipment the fair market value of which, including the value of studies, surveys, designs, plans, working drawings, specifications and other activities essential to the acquisition of the equipment, exceeds $400,000 and which is used for the provision of medical and other health services.~~ *introduction into an existing medical care facility of any new open heart surgery, psychiatric, medical rehabilitation, or substance abuse treatment service which the facility has never provided or has not provided in the previous twelve months.*

"Public hearing" means a proceeding conducted by ~~the health systems agency~~ *a regional health planning agency* at which an applicant for a certificate of public need and members of the public may present oral or written testimony in support or opposition to the application which is the subject of the proceeding and for which a verbatim record is made. See subsection A of § ~~6.4~~ *§ 5.4* or subsection B of § 7.6.

"Regional health plan" means the regional plan adopted by the regional planning agency board.

"Regional health planning agency" means the regional agency, including the regional health planning board, its staff and any component thereof, designated by the Virginia Health Planning Board to perform health planning activities within a health planning region.

"Registration" means the filing of information by the owner on affected new clinical health services established and major medical equipment acquired with an expenditure or expenditure value of $400,000 or more on or after July 1, 1989 in a format prescribed by the Commissioner to satisfy the requirements of these

regulations. For purposes of registration, affected clinical health services and major medical equipment shall include only the following:

(1) radiation therapy;

(2) cardiac catheterization;

(3) obstetrical

(4) neonatal special care unit;

(5) lithotripsy;

(6) magnetic resonance imaging;

(7) position emission tomgraphy (PET) scanning;

(8) computed tomography (CT) scanning

(9) heart, lung and kidney transplants; and

(10) other specialized services or major medical equipment that evolves through changes in medical technology upon designation by the Commissioner.

"Schedule for completion" means a timetable which identifies the major activities required to complete a project as identified by the applicant and which is set forth on the certificate of public need. The timetable is used by the commissioner to evaluate the applicant's progress in completing an approved project.

~~*"Service"* (clinical health) means a single diagnostic, therapeutic, rehabilitative, preventive or palliative procedure or a series of such procedures that may be separately identified for billing and accounting purposes.~~

"Significant change" means any alteration, modification or adjustment to a *reviewable* project for which a certificate of public need has been issued or requested following the public hearing which:

A. Changes the site;

B. Increases the capital expenditure amount approved for the project by 10% or more;

C. Changes the number or type of beds including the reclassification of beds from one medical care facility classification to another such as acute care to long term care except when such reclassification is allowable as provided for in these regulations. See ~~exclusions under~~ definition of "medical care facility and project;"

D. Changes the service(s) proposed to be offered;

E. Extends the schedule for completion of the project for more than a 12-month period of time beyond that originally approved by the Commissioner. See § ~~3.5~~ *3.4* Mandatory requirements.

~~*"Statewide Health Coordinating Council"* means the council established pursuant to § 1514 of United States Public Law 93-641, and pursuant to § 32.1-118, of the Code of Virginia, and replaced by the Virginia Health Planning Board.~~

"State health plan" means *the document approved by the Virginia Health Planning Board which shall include, but not be limited to, analysis of priority health issues, policies, needs and methodologies for assessing statewide health care needs. The State Health Plan 1980-84 and all amendments thereto including all methodologies therein shall remain in force and effect until any such regulation is amended, modified or repealed by the Board of Health.*

"State medical facilities plan" means a ~~plan adopted by the Statewide Health Coordinating Council pursuant to § 32.1-120 of the Code of Virginia for use in the Virginia Medical Care Facilities Certificate of Public Need Program.~~ *the planning document adopted by the Board of Health which shall include, but not be limited to (i) methodologies for projecting need for medical care facility beds and services; (ii) statistical information on the availability of medical care facilities and services; and (iii) procedures, criteria and standards for review of applications for projects for medical care facilities and services. In developing the plan, the board shall take into consideration the policies and recommendations contained in the State Health Plan. The most recent applicable State Medical Facilities Plan shall remain in force until any such regulation is amended, modified or repealed by the board.*

~~*"Suspension of certificate"* means a written order which is issued to the owner of an approved project by the commissioner upon the department's receipt of a request for an administrative hearing or appeal of the decision on such project or the competing application(s). Such order serves as notification to the owner of an approved project to cease temporarily project development, relieves the owner of all performance requirements for development and terminates upon notification by the commissioner that the suspended certificate has been reinstated or revoked.~~

Virginia Health Planning Board" means the statewide health planning body established pursuant to § 32.1-122.02 of the Code of Virginia which serves as the analytical and technical resource to the Secretary of Health and Human Resources in matters requiring health analysis and planning.

PART II.
GENERAL INFORMATION.

§ 2.1. Authority for regulations.

The Virginia Medical Care Facilities Certificate of Public Need Law, which is codified as §§ 32.1-102.1 through 32.1-102.11 of the Code of Virginia, requires the owners or sponsors of medical care facility projects to secure a certificate of public need from the State Health

Commissioner prior to initiating such projects. Sections 32.1-102.2 and 32.1-12 of the Code of Virginia direct the Board of Health to promulgate and prescribe such rules and regulations as are deemed necessary to effectuate the purposes of this statute.

§ 2.2. Purpose of rules and regulations.

The board has promulgated these rules and regulations to set forth an orderly administrative process for making public need decisions.

§ 2.3. Administration of rules and regulations.

These rules and regulations are administered by the following:

A. State Board of Health.

The Board of Health is the governing body of the State Department of Health. The Board of Health has the authority to promulgate and prescribe such rules and regulations as it deems necessary to effectuate the purposes of the Act.

B. State Health Commissioner.

The State Health Commissioner is the executive officer of the State Department of Health. The commissioner is the designated decision maker in the process of determining public need under the Act.

§ 2.4. Public meetings and public hearings.

All meetings and hearings convened to consider any certificate of public need application shall be open to the public in accordance with the provisions of the Virginia Freedom of Information Act (§ 2.1-340 et seq.) of the Code of Virginia.

§ 2.5. Official records.

Written information including staff evaluations and reports and correspondence developed or utilized or received by the commissioner during the review of a medical care facility project shall become part of the official project record maintained by the Department of Health and shall be made available to the applicant, competing applicant and review bodies. Other persons may obtain a copy of the project record upon request. All records are subject to the Virginia Freedom of Information Act.

§ 2.6. Application of rules and regulations.

These rules and regulations have general applicability throughout the Commonwealth. The requirements of the Virginia Administrative Process Act (§ 9-6.14:1, et seq.) of the Code of Virginia apply to their promulgation.

§ 2.7. Effective date of rules and regulations.

These rules and regulations shall become effective ~~January 22, 1986~~ *July 1, 1989* .

§ 2.8. Powers and procedures of regulations not exclusive.

The commissioner and the board reserve the right to authorize any procedure for the enforcement of these regulations that is not inconsistent with the provisions set forth herein and the provisions of § 32.1-102.1 et seq. of the Code of Virginia.

§ 2.9. Annual report.

The department shall prepare and shall distribute upon request an annual report on all certificate of public need applications considered by the State Health Commissioner. Such report shall include a general statement of the findings made in the course of each review, the status of applications for which there is a pending initial determination, an analysis of the consistency of the decisions with the recommendation made by the ~~health systems agency and~~ *regional health planning agency* an analysis of the costs of authorized projects.

PART III.
MANDATORY REQUIREMENTS.

§ 3.1. Requirements for reviewable medical care ~~facilities providers~~ *facility projects* .

Prior to initiating a *reviewable medical care facility* project ~~as set forth in the definition section of these regulations~~ , the owner or sponsor ~~of a medical care facility~~ shall obtain a certificate of public need from the commissioner. In the case of an acquisition of an existing medical care facility, the notification requirement set forth in § ~~3.3~~ *§ 3.4* of these regulations shall be met.

§ 3.2. ~~Requirements for noninstitutional providers.~~

~~Any physician or group of physicians or physician practice, of whatever legal form, shall obtain a certificate of public need prior to the purchase or lease of a unit of equipment, the cost of which exceeds $400,000 or the establishment of a medical care facility. See definitions of "project" and "medical care facility."~~ *Requirements for registration of affected clinical health services and major medical equipment. Within 30 days following operation, the owner of a new clinical health service established or major medical equipment acquired with an expenditure or expenditure value of $400,000 or more acquired on or after July 1, 1989 that is not defined as a project under these regulations shall in writing register such service or equipment with the Commissioner and copy the regional health planning agency. The format for registration shall be prescribed by the Commissioner and shall include information concerning the owner and operator, description, site, capital, financing and lease costs, beginning date and hours of operation of clinical health service and major medical equipment. For purposes of registration, (i) owner shall include any person offering*

affected clinical health services and major medical equipment and (ii) affected clinical health services and major medical equipment shall include only the following;

(1) radiation therapy;

(2) cardiac catheterization;

(3) obstetrical;

(4) neonatal;

(5) lithotripsy;

(6) magnetic resonance imaging;

(7) positron emission tomography (PET) scanning;

(8) computed tomography (CT) scanning;

(9) heart, lung, and kidney transplants; and

(10) other specialized services or major medical equipment that evolves through changes in medical technology upon designation by the commissioner.

The commissioner shall acknowledge registration within 15 days of receipt.

§ 3.3. Requirement for notification of proposed acquisition of medical care facilities.

At least 30 days before any person is contractually obligated to acquire an existing medical care facility, the cost of which is $700,000 or more, that person shall provide written notification to the commissioner and the ~~health systems agency~~ *regional health planning agency* that serves the area in which the facility is located. Such notification shall identify the name of the medical care facility, the current and proposed owner, the cost of the acquisition, the services to be added or deleted, the number of beds to be added or deleted, and the projected impact that the cost of the acquisition will have upon the charges of the services to be provided in the medical care facility. The commissioner shall provide written notification to the person who plans to acquire the medical care facility within 30 days of receipt of the required notification. If the commissioner finds that a *reviewable* clinical health service or beds are to be added as a result of the acquisition, the commissioner may require the proposed new owner to obtain a certificate prior to the acquisition. If such certificate is required, an application will be considered under an appropriate review procedure which will be identified at the time of written notification by the commissioner to the applicant for such acquisition.

§ 3.4. Significant change limitation.

No significant change in a project for which a certificate of public need has been issued shall be made without prior written approval of the commissioner. Such request for a significant change shall be made in writing by the owner to the commissioner with a copy to the appropriate ~~health systems agency~~ *regional health planning agency* . The written request shall identify the nature and purpose of the change. The ~~health systems agency~~ *regional health planning agency* shall review the proposed change and notify the commissioner of its recommendation with respect to the change within 30 days from receipt of the request by both the department and the ~~health systems agency~~ *regional health planning agency* . Failure of the ~~health systems agency~~ *regional health planning agency* to notify the commissioner within the 30-day period shall constitute a recommendation of approval. The commissioner shall act on the significant change request within 35 days of receipt. A public hearing during the review of a proposed significant change request is not required unless determined necessary by the commissioner.

§ 3.5. Requirements for health maintenance organizations.

An HMO must obtain a certificate of public need prior to initiating a project. Such HMO must also adhere to the requirements for the acquisiton of medical care facilities if appropriate. See definition of "project" *and § 3.3.*

PART IV.
DETERMINATION OF PUBLIC NEED.
(REQUIRED CONSIDERATIONS).

§ 4.1. In determining whether a public need exists for a proposed project, the following factors shall be taken into account when applicable:

A. The recommendation and the reasons therefor of the appropriate ~~health systems agency~~ *regional health planning agency* .

B. The relationship of the project to the applicable health plans of the ~~health systems agency~~ *regional health planning agency,* and the ~~Statewide Health Coordinating Council~~ *Virginia Health Planning Board and the Board.*

C. The relationship of the project to the long-range development plan, if any, of the person applying for a certificate.

D. The need that the population served or to be served by the project has for the project.

E. The extent to which the project will be accessible to all residents of the area proposed to be served.

F. The area, population, topography, highway facilities and availablility of the services to be provided by the project in the particular part of the ~~health service area~~ *health planning region* in which the project is proposed.

G. Less costly or more effective alternate methods of reasonably meeting identified health service needs.

H. The immediate and long-term financial feasibility of the project.

I. The relationship of the project to the existing health care system of the area in which the project is proposed.

J. The availability of resources for the project.

K. The organizational relationship of the project to necessary ancillary and support services.

L. The relationship of the project to the clinical needs of health professional training programs in the area in which the project is proposed.

M. The special needs and circumstances of an applicant for a certificate, such as a medical school, hospital, multidisciplinary clinic, specialty center or regional health service provider, if a substantial portion of the applicant's services or resources or both is provided to individuals not residing in the health ~~services area~~ *planning region* in which the project is to be located.

N. The need and the availability in the health services area for osteopathic and allopathic services and facilities and the impact on existing and proposed institutional training programs for doctors of osteopathy and medicine at the student, internship, and residency training levels.

O. The special needs and circumstances of health maintenance organizations. When considering the special needs and circumstances of health maintenance organizations, the commissioner may grant a certificate for a project if the commissioner finds that the project is needed by the enrolled or reasonably anticipated new members of the health maintenance organizations or the beds or services to be provided are not available from providers which are not health maintenance organizations or from other maintenance organizations in a reasonable and cost effective manner.

P. The special needs and circumstances for biomedical and behavioral research projects which are designed to meet a national need and for which local conditions offer special advantages.

Q. The costs and benefits of the construction associated with proposed project.

R. The probable impact of the project on the costs of and charges for providing health services by the applicant for a certificate and on the costs and charges to the public for providing health services by other persons in the area.

S. Improvements or innovations in the financing and delivery of health services which foster competition and serve to promote quality assurance and cost effectiveness.

T. In the case of health services or facilities proposed to be provided, the efficiency and appropriateness of the use of existing services and facilities in the area similar to those proposed.

~~PART V.~~
~~PROCESS FOR EXEMPTING MEDICAL CARE FACILITY PROJECTS FROM REVIEW PROCEDURES.~~

~~§ 5.1. Applicability.~~

~~Projects of medical care facilities that satisfy the criteria set forth below as determined by the State Health Commissioner shall be exempt from certificate of public need review procedures and issued a certificate of public need.~~

~~A. New clinical health services of a medical care facility involving a capital expenditure of less than $700,000 and an annual operating expenditure of $300,000 or less during the first two years of operation except when such service is a medical care facility or is determined by the commissioner to be of a specialized nature such as CT scanning, open heart surgery, cardiac catheterization and radiation therapy that requires review under a procedure set forth in Part VI and VII of these regulations.~~

~~B. Capital expenditures that do not exceed $700,000 involving the purchase of replacement equipment unless such equipment will cause the introduction of a new clinical health service and such clinical health service has not otherwise been determined exempt from these regulations.~~

~~C. Capital expenditures that do not exceed $1.5 million involving the replacement or addition of equipment and technology for undertakings such as those associated with nurse call systems, materials handling and management information systems, heating and air conditioning systems and parking lots, provided such use does not constitute a clinical health service.~~

~~D. A capital expenditure in any amount involving an emergency which interrupts the immediate safe operation of a medical care facility or which poses an immediate threat to the health and safety of patients and staff and recognized as such in writing by the commissioner.~~

~~§ 5.2. Consideration of applications for exemptions.~~

~~The State Health Commissioner shall exempt any project which is determined to meet the criteria set forth in § 5.01 of the regulations and provide written notification to the applicant within 15 days of receipt of such written request by the department and the health systems agency. Such written request shall identify the name and the ownership by type of control and status of the medical care facility; the operator of the medical care facility; a brief description of the project; the capital and financing costs of the project; the method of financing, the impact of the project on charges; the projected revenue and expenses (direct and indirect) for the first two years of~~

~~project operation and a schedule for completion of the project. Such schedule should include the expected date to (i) initiate work, (ii) complete the financing, (iii) purchase equipment, (iv) initiate renovation or construction and (v) complete the project. If the commissioner determines that such request does not qualify for exemption from review procedures, the applicant shall be notified in writing of the reasons therefore in accordance with the aforementioned time frame including the legal remedies that are available to the applicant.~~

PART ~~VI.~~ *V.*
ADMINISTRATIVE REVIEW PROCESS.

§ ~~6.1.~~ *5.1.* Applicability.

The administrative review procedure shall be applicable to projects involving (i) a capital expenditure of $700,000 but not more than $3 million which does not change bed capacity or replace existing beds of relocate 10 beds or 10% of the beds whichever is less from one physical facility to another in any two year period or add a clinical health service unless such service is determined to be exempt from review procedures by the commissioner *or these regulations* , (ii) a capital expenditure of less than $700,000 and which does change bed capacity or replace existing beds or relocate 10 beds or 10% of the beds whichever is less from one physical facility to another in any two year period or add a new clinical health service unless such service is determined to be exempt from review procedures by the commissioner and these regulations, ~~and (iii) the establishment of a new end stage renal disease, or hospice service~~ .

§ ~~6.2.~~ *§ 5.2.* Preconsultation.

Each ~~health systems agency~~ *regional health planning agency* , in consultation with the department shall provide upon request, advice and assistance concerning community health resources needs to potential applicants submitting projects under the administrative review process. Such advice and assistance shall be advisory only and shall not be a commitment on behalf of the ~~health systems agency~~ *regional health planning agency* or the commissioner.

§ ~~6.3.~~ *§ 5.3.* Application forms.

A. Obtaining application forms.

Applications forms shall be available from the commissioner upon written request by the applicant. The request shall identify the owner, the type of project for which forms are requested and the proposed scope (size) and location of the proposed project. A copy of the request should also be submitted by the applicant to the appropriate ~~health systems agency~~ *regional health planning agency* . The department shall transmit application forms to the applicant within 15 days of receipt of request.

B. Filing application forms.

All applications including required data and information shall be prepared in triplicate; two copies to be submitted to the department; one copy to be submitted to the appropriate ~~health systems agency~~ *regional health planning agency* . No application shall be deemed to have been submitted until required copies have been received by the department and the appropriate ~~health systems agency~~ *regional health planning agency* .

§ ~~6.4.~~ *§ 5.4.* Review of application.

A. Review cycle.

The department shall notify applicant (s) upon receipt of an application by the department and the regional health planning agency of the review schedule including the date, time and place for any informal, fact-finding conference held. See §§ 5.9 and 6.6. The ~~health system agency~~ *regional health planning agency* shall within 30 days of receipt of the application and following the public hearing conducted in accordance with subsection B of § ~~7.6~~ *§ 6.6* of these regulations, notify the commissioner of its recommendation. Failure of the ~~health systems agency~~ *regional health planning agency* to notify the commissioner within the 30 day time period shall constitute a recommendation of approval. *The department shall transmit its report and the information transmitted to the Commissioner by the regional health planning agency to the applicant (s) by the 30th day of the review cycle.*

B. Ex parte contact.

After commencement of a public hearing and before a final decision is made there shall be no ex parte contacts between the State Health Commissioner and any person acting on behalf of the applicant or holder of a certificate or any person opposed to the issuance or in favor of revocation of a certificate of public need, unless written notification has been provided. *See definition of "ex parte" contact.*

§ ~~6.5.~~ *§ 5.5.* Participation by other persons.

Any person affected by a proposed project under review may directly submit written opinions, data and other information to the appropriate ~~health systems agency~~ *regional health planning agency* and the commissioner at appropriate times for consideration prior to their final action.

§ ~~6.6.~~ *§ 5.6.* Amendment to an application.

The applicant shall have the right to amend an application at any time. Any amendment which is made to an applicant following the public hearing specified in subsection A of § 6.4 and prior to the issuance of a certificate unless otherwise specified in these regulations shall constitute a new application and shall be subject to the review requirements set forth in Part VI of the regulations. If such amendment is made subsequent to the issuance of a certificate of public need, it shall be

reviewed in accordance with § 3.4 of these regulations.

§ ~~6.7.~~ *§ 5.7.* Withdrawal of an application.

The applicant shall have the right to withdraw an application from consideration at any time, without prejudice, by written notification to the commissioner.

§ ~~6.8.~~ *§ 5.8.* Consideration of applications.

All competing applications shall be considered at the same time by the ~~health systems agency~~ *regional health planning agency* and the commissioner. The commissioner shall determine if an application is competing and shall provide written notification to the competing applicants and appropriate ~~health systems agency~~ *regional health planning agency* .

§ ~~6.9.~~ *§ 5.9.* Action on an application.

A. Commissioner's responsibility.

Decisions as to approval or disapproval of applications or a portion thereof for certificate of public need shall be rendered by the commissioner. Any decision to issue or approve the issuance of a certificate shall be consistent with the most recent applicable provisions of the State Health Plan and the State Medical Facilities Plan; provided, however, if the commissioner finds, upon presentation of appropriate evidence, that the provisions of either such plan are inaccurate, outdated, inadequate or otherwise inapplicable, the commissioner, consistent with such finding, may issue or approve the issuance of a certificate and shall initiate procedures to make appropriate amendments to such plan.

B. Notification process-extension of review time.

The commissioner shall make ~~an initial~~ *final* determination on an application for a certificate of public need and provide written notification detailing the reasons for such determination to the applicant with a copy to the ~~health systems agency~~ *regional health planning agency* by the 35th day of the review cycle unless an extension is agreed to by the applicant *or an informal, fact-finding conference described in § 6.6 is held. When an informal, fact-finding conference is necessary, the review cycle shall automatically be extended to no more than 120-days or unless otherwise agreed to by the parties to the conference* . Such written notification shall reference the factors and bases considered in making a decision on the application and, if applicable, the remedies available for appeal of such decision and the progress reporting requirements. The commissioner may approve a portion of a project provided the portion to be approved is agreed to by the applicant following consultation, which may be subject to the ex parte provision of these regulations, between the commissioner and the applicant. *See definition of "ex parte."*

PART ~~VII~~ *VI* .
STANDARD REVIEW PROCESS.

§ ~~7.1.~~ *§ 6.1.* Preconsultation.

Each ~~health systems agency~~ *regional health planning agency* and the department shall provide upon request advice and assistance concerning community health resources needs to potential applicants. Such advice and assistance shall be advisory only and shall not be a commitment on behalf of the ~~health systems agency~~ *regional health planning agency* or the commissioner.

§ ~~7.2.~~ *§ 6.2.* Application forms.

A. Obtaining application forms.

Application forms shall be available from the commissioner upon written request by the applicant. The request shall identify the owner, the type of project for which forms are requested and the proposed scope (size) and location of the proposed project. Such letter must be directed to the commissioner prior to the submission of the application. A copy of the request should also be submitted by the applicant to the appropriate ~~health systems agency~~ *regional health planning agency* . The department shall transmit application forms to the applicant within 15 days of receipt of request.

B. Filing application forms.

All applications including required data and information shall be prepared in triplicate; two copies to be submitted to the department; one copy to be submitted to the appropriate ~~health systems agency~~ *regional health planning agency* . No application shall be deemed to have been submitted until required copies have been received by the department and the appropriate ~~health systems agency~~ *regional health planning agency* .

§ ~~7.3.~~ *6.3.* Review for completeness.

The applicant shall be notified by the department within 15 days following receipt of the application if additional information is required to complete the application or the application is complete as submitted. No application shall be reviewed until the department has determined that it is complete. To be complete, all questions on the application must be answered to the satisfaction of the commissioner and all requested documents supplied, when applicable. Additional information required to complete an application should be submitted to the department and the appropriate ~~health systems agency~~ *regional health planning agency* five days prior to the beginning of a review cycle in order to ensure review in the same review cycle. The review cycle for completed applications begins on the 10th day of each month or in the event that the 10th day falls on the weekend, the next work day. *See subsection A of § ~~7.6.~~ § 6.6.*

§ ~~7.4.~~ *§ 6.4.* One hundred twenty-day review cycle.

The review of a completed application for a certificate of public need shall be accomplished within 120 days of the beginning of the review cycle. *See subsection A of ~~§ 7.6.~~ § 6.6.*

~~§ 7.5.~~ *§ 6.5.* Consideration of applications.

All competing applications shall be considered at the same time by the ~~health systems agency~~ *regional health planning agency* and the commissioner. The commissioner shall determine if an application is competing and shall provide written notification to the competing applicants and appropriate ~~health systems agency~~ *regional health planning agency* .

~~§ 7.6.~~ *§ 6.6.* Review of complete application.

A. Review cycle.

At the close of the work day on the 10th day of the month, the department shall provide written notification to applicants specifying the acceptance date and review schedule of completed applications *including a proposed date for any informal, fact-finding conference that may be held* . The ~~health systems agency~~ *regional health planning agency* shall conduct no more than two meetings, one of which must be a public hearing conducted by the board of the ~~health systems agency~~ *regional health planning agency* or a subcommittee of the board and provide applicants with an opportunity, prior to the vote, to respond to any comments made about the project by the ~~health systems agency~~ *regional health planning agency* staff, any information in a staff report, or comments by those voting in completing its review and recommendation by the 60th day of the cycle. By the 70th day of the review cycle, the department shall *complete its review and recommendation of an application and transmit the same to the applicant (s) and other appropriate persons. Such notification shall also include the proposed date, time and place of any informal, fact-finding conference.* ~~advise of applicant(s) and other parties of the date, time and place of the informal, fact-finding conference.~~

An informal, fact-finding conference shall be held when (i) determined necessary by the department or (ii) requested by any person opposed to a project seeking to demonstrate good cause at the conference. Any person seeking to demonstrate good cause shall provide written notification to the Commissioner, applicant (s) and other competing applicants and regional health planning agency stating the grounds for good cause to be received seven days in advance of the proceeding.

For purposes of this section, good cause shall mean that (i) there is significant, relevant information not previously presented at and not available at the time of the public hearing, (ii) there have been significant changes in factors or circumstances relating to the application subsequent to the public hearing or (iii) there is a substantial material mistake of fact or law in the department staff's report on the application or in the report submitted by the regional health planning agency. See § 9-6.14:11 of the Code of Virginia.

The commissioner shall render ~~an initial~~ *final* determination by the 120th day of the review cycle. Unless agreed to by the applicant *and, when applicable, the parties to any informal, fact-finding conference held* , the review schedule shall not be extended.

B. ~~Health systems agency~~ *Regional health planning agency* required notifications.

Upon notification of the acceptance date of a complete application as set forth in *Subsection A* ~~§ 7.3~~ *§ 7.6* of these regulations, the ~~health systems agency~~ *regional health planning agency* shall provide written notification of its review schedule to the applicant. The ~~health systems agency~~ *regional health planning agency* shall notify health care providers and specifically indentifiable consumer groups who may be affected by the proposed project directly by mail and shall also give notice of the public hearing in a newspaper of general circulation in such county or city wherein a project is proposed or a contiguous county or city at least nine days prior to such public hearing. Such notification by the ~~health systems agency~~ *regional health planning agency* shall include: (i) the date and location of the public hearing which shall be conducted on the application except as otherwise provided in these rules and regulations, in the county or city wherein a project is proposed or a contiguous county or city and (ii) the date, time and place the final recommendation of the ~~health systems agency~~ *regional health planning agency* shall be made. The ~~health systems agency~~ *regional health planning agency* shall maintain a verbatim record which may be a tape recording of the public hearing. Such public hearing record shall be maintained for at least a one year time period following the final decision on a certificate of public need application. *See definition of "public hearing."*

C. Ex parte contact.

After commencement of a public hearing and before a final decision is made, there shall be no ex parte contacts between the State Health Commissioner and any person acting on behalf of the applicant or holder of a certificate or any person opposed to the issuance or in favor of revocation of a certificate of public need, unless written notification has been provided. See definition of "ex parte."

~~§ 7.7.~~ *§ 6.7.* Participation by other persons.

Any person affected by a proposed project under review may directly submit written opinions, data and other information to the appropriate ~~health systems~~ *regional health planning* agency and the commissioner for consideration prior to their final action.

~~§ 7.8.~~ *§ 6.8.* Amendment to an application.

The applicant shall have the right to amend an application at any time. Any amendment which is made to an application following the public hearing and prior to the issuance of a certificate unless otherwise specified in these regulations shall constitute a new application and shall be subject to the review requirements set forth in Part VII of the regulations. If such amendment is made subsequent to the issuance of a certificate of public need, it shall be reviewed in accordance with § 3.4 of the regulations.

§ ~~7.9.~~ *§ 6.9.* Withdrawal of an application.

The applicant shall have the right to withdraw an application from consideration at any time, without prejudice by written notification to the commissioner.

§ ~~7.10.~~ *§ 6.10.* Action on an application.

A. Commissioner's responsibility.

Decisions as to approval or disapproval of applications or a portion thereof for certificates of public need shall be rendered by the commissioner. Any decision to issue or approve the issuance of a certificate shall be consistent with the most recent applicable provisions of the State Health Plan and the State Medical Facilities Plan; provided, however, if the commissioner finds, upon presentation of appropriate evidence, that the provisions of either such plan are inaccurate, outdated, inadequate or otherwise inapplicable, the commissioner, consistent with such finding, may issue or approve the issuance of a certificate and shall initiate procedures to make appropriate amendments to such plan.

B. Notification process-extension of review time.

The commissioner shall make ~~an initial~~ *final* determination on an application for a certificate of public need and provide written notification detailing the reasons for such determination to the applicant with a copy to the ~~health systems agency~~ *regional health planning agency* by the 120th day of the review cycles unless an extension is agreed to by the applicant *and an informal, fact-finding conference described in § 6.6 is held. When an informal, fact-finding conference is held, the 120-day review cycle shall not be extended unless agreed to by the parties to the conference* . Such written notification shall also reference the factors and bases considered in making a decision on the application and, if applicable, the remedies available for appeal of such decision and the progress reporting requirements. The commissioner may approve a portion of a project provided the portion to be approved is agreed to by the applicant following consultation, which may be subject to the ex parte provision of these regulations, between the commissioner and the applicant.

PART ~~VIII~~ *VII* .
DURATION/EXTENSION/REVOCATION OF CERTIFICATES.

§ ~~8.1.~~ *§ 7.1.* Duration.

A certificate of public need shall be valid for a period of 12 months and shall not be transferrable from the certificate holder to any other legal entity regardless of the relationship, under any circumstances.

§ ~~8.2.~~ *§ 7.2.* Extension.

A certificate of public need is valid for a 12-month period and may be extended by the commissioner for additional time periods which shall be specified at the time of the extension.

A. Basis for certificate extension within 24 months.

An extension of a certificate of public need beyond the expiration date may be granted by the commissioner by submission of evidence to demonstrate that progress is being made towards the completion of the authorized project as defined in § ~~8.3~~ *§ 7.3* of the regulations. Such request shall be submitted to the commissioner in writing with a copy to the appropriate ~~health systems agency~~ *regional health planning agency* at least 30 days prior to the expiration date of the certificate or period of extension.

B. Basis for certificate extension beyond 24 months.

An extension of a certificate of public need beyond the two years following the date of issuance may be granted by the commissioner when substantial and continuing progress is being made towards the development of the authorized project. In making the determination, the commissioner shall consider whether: (i) delays in development of the project have been caused by events beyond the control of the owner; (ii) substantial delays in development of the project may not be attributed to the owner; and (iii) a revised schedule of completion has been provided and determined to be reasonable. Such request shall be submitted in writing with a copy to the appropriate ~~health systems agency~~ *regional health planning agency* at least 30 days prior to the expiration date of the certificate of period of extension.

C. Basis for indefinite extension.

A certificate shall be considered for an indefinite extension by the commissioner when satisfactory completion of a project has been demonstrated as set forth in subsection C of § ~~8.3.~~ *§ 7.3 and the definition of "Construction, initiation of".*

D. ~~Health systems agency review~~ *Regional Health Planning Agency Review* .

All requests for an extension of a certificate of public need shall be reviewed by the appropriate ~~health systems agency~~ *regional health planning agency* within 30 days of receipt by the department and the ~~health systems agency~~ *regional health planning agency* . The recommendations on

the request by that agency shall be forwarded to the commissioner who shall act upon the progress report within 35 days of receipt by the department and the ~~health systems agency~~ *regional health planning agency* . Failure of the ~~health systems agency~~ *regional health planning agency* to notify the commissioner within the time frame prescribed shall constitute a recommendation of approval by such ~~health systems agency~~ *regional health planning agency* .

E. Notification of decision.

Extension of a certificate of public need by the commissioner shall be made in the form of a letter from the commissioner with a copy to the appropriate ~~health systems agency~~ *regional health planning agency* and shall become part of the official project file.

§ ~~8.3.~~ *§ 7.3.* Demonstration of progress.

The applicant shall provide reports to demonstrate progress made towards the implementation of an authorized project *which is still reviewable* in accordance with the schedule of development which shall be included in the application. Such progress reports shall be filed in accordance with the following intervals and contain such evidence as prescribed at each interval:

A. Twelve months following issuance:

Documentation that shows: (i) proof of ownership or control of site; (ii) the site meets all zoning and land use requirements; (iii) architectural planning has been initiated; (iv) preliminary architectural drawings and working drawings have been submitted to appropriate state reviewing agencies and the State Fire Marshal; (v) construction financing has been completed or will be completed within two months and (vi) purchase orders of lease agreements exist for equipment and new service projects;

B. Twenty-four months following issuance:

Documentation that shows that (i) all required financing is completed; (ii) preconstruction site work has been initiated; (iii) construction bids have been advertised and the construction contractor has been selected; (iv) the construction contract has been awarded and (v) construction has been initiated.

C. Upon completion of a project.

Any documentation not previously provided which: (i) shows the final costs of the project, including the method(s) of financing; and (ii) shows that the project has been completed as proposed in accordance with the application originally submitted, including any subsequent approved changes.

§ ~~8.4.~~ *§ 7.4.* Revocation of certificate.

A. Lack of progress.

Failure of any project to meet the progress requirements stated in § ~~8.3~~ *§ 7.3* shall be cause for certificate revocation, unless the commissioner determines sufficient justification exists to permit variance, considering factors enumerated in subsection A and C of § ~~8.3~~ *§ 7.3* .

B. Failure to report progress.

Failure of an applicant to file progress reports on an approved project in accordance with § ~~8.3~~ *§ 7.3* of these regulations shall be cause for revocation, unless due to extenuating circumstances the commissioner, in his sole discretion, extends the certificate upon written request of the applicant.

C. Unapproved changes.

Exceeding a capital expenditure amount not authorized by the commissioner or not consistent with the schedule of completion. See definition of "significant change" and "schedule of completion." *See definition of significant change and schedule of completion.*

D. Failure to initiate construction.

Failure to initiate construcion of the project within two years following the date of issuance of the certificate of public need shall be cause for revocation, unless due to extenuating circumstances the commissioner extends the certificate, in accordance with subsection B of § ~~8.2~~ *§ 7.2.* of these regulations.

E. Misrepresentation.

Upon determination that an applicant has knowingly misrepresented or knowingly withheld relevant data or information prior to issuance of a certificate of public need, the commissioner may revoke said certificate.

F. Noncompliance with assurances.

Failure to comply with the assurances or intentions set forth in the application or written assurances provided at the time of issuance of a certificate of public need shall be cause for revocation.

PART ~~IX~~ *VIII* .
~~ADMINISTRATIVE HEARINGS AND~~ APPEALS.

§ ~~9.1. Reconsideration of initial determination.~~

~~A. Formal evidentiary hearing.~~

~~Formal proceedings provided for in § 9-6.14:12 of the Code of Virginia shall be held upon request when filed with the commissioner within 15 days after the initial determination by the applicant, or any third party payor providing health care insurance or prepaid coverage to 5% or more of the patients in the applicant's service area, the~~

~~health systems agency or any person showing good cause or, in the case of revocation, by the person whose certificate is being revoked. Such proceedings shall be public proceedings and commence within 30 days of the receipt of such request.~~

~~B. Good cause.~~

~~For purposes of this section, "good cause" shall mean that (i) there is significant, relevant information not previously considered, (ii) there have been significant changes in factors or circumstances relating to the application subsequent to the public hearing or (iii) there is a substantial material mistake of fact or law in the department staff's report on the application or in the report submitted by the health systems agency.~~

~~C. Notification and suspensions.~~

~~Upon receipt of a request for a formal evidentiary hearing, the department shall notify the applicant, health systems agency, competing applicant and other appropriate persons and suspend the certificate(s) of public need, if applicable.~~

~~D. Establishing time, date, place.~~

~~Within seven days following receipt of a request for a formal evidentiary hearing the commissioner shall set a time, date and place for a formal hearing which shall be held within 30 days of receipt of the request.~~

~~E. Notification of decision.~~

~~Not later than 30 days following completion of the hearing record, the commissioner shall set forth the final decision, in writing, including the reasons therefore, and shall provide copies of the decision to all parties.~~

§ ~~9.2.~~ *§ 8.1.* Court review.

A. Appeal to circuit court.

~~Any applicant aggrieved by a final administrative decision on its application for a certificate, any third party payor providing health care insurance or prepaid coverage to 5% or more of the patients in the applicant's service area, a health systems agency operating in the applicant's service area or any person showing good cause or any person issued a certificate aggrieved by a final administrative decision to revoke said certificate, within 30 days after the decision, may obtain a review, as provided in § 9-6.14:17 of the Code of Virginia by the circuit court of the county or city where the project is intended to be or was constructed, located or undertaken. Notwithstanding the provisions of § 9-6.14:16 of the Administrative Process Act, no other person may obtain such review.~~ *Appeals to a circuit court shall be governed by applicable provisions of Virginia's Administrative Process Act, § 9-6.14:15 et seq. of the Code.*

B. Designation of judge.

The judge of the court referred to in § ~~10.2~~ *§ 8.1* of these regulations shall be designated by the Chief Justice of the Supreme Court from a circuit other than the circuit where the project is or will be under construction, located or undertaken.

C. Court review procedures.

Within five days after the receipt of notice of appeal, the department shall transmit to the appropriate court all of the original papers pertaining to the matter to be reviewed. The matter shall thereupon be reviewed by the court as promptly as circumstances will reasonably permit. The court review shall be upon the record so transmitted. The court may request and receive such additional evidence as it deems necessary in order to make a proper disposition of the appeal. The court shall take due account of the presumption of official regularity and the experience and specialized competence of the commissioner. The court may enter such orders pending the completion of the proceedings as are deemed necessary or proper. Upon conclusion of review, the court may affirm, vacate or modify the final administrative decision.

D. *Further* appeal ~~to supreme court~~ .

Any party to the proceeding may appeal the decision of the circuit court in the same manner as appeals are taken and as provided by law.

PART ~~X~~ *IX* .
SANCTIONS.

§ ~~10.1.~~ *§ 9.1.* Violation of rules and regulations.

Commencing any project without a certificate required by this statute shall constitute grounds for refusing to issue a license for such project.

§ ~~10.2.~~ *§ 9.2.* Injunctive relief.

On petition of the commissioner, the board or the Attorney General, the circuit court of the county or city where a project is under construction or is intended to be constructed, located or undertaken shall have jurisdiction to enjoin any project which is constructed, undertaken or commenced without a certificate or to enjoin the admission of patients to the project or to enjoin the provision of services through the project.

PART ~~XI~~ *X* .
SEVERABILITY CLAUSE.

§ 10.1. If any clause, sentence, paragraph, subdivision, section or part of these rules and regulations, shall be adjudged by any court of competent jurisdiction to be invalid, the judgement shall not affect, impair, or invalidate the remainder thereof, but shall be confined in

its operation to the clause, sentence, paragraph, subdivision, section or part thereof directly involved in the controversy in which the judgement shall have been rendered.

PART XI.
OTHER.

§ 11.1. Certificate of public need moratorium.

Notwithstanding any law to the contrary, the Commissioner shall not approve, authorize or accept applications for the issurance of any certificate of public need pursuant to the regulations for a medical care facility project which would increase the number of nursing home beds from the effective date of the regulations through January 1, 1991. Exceptions to the moratorium are:

1. The renovation or replacement on site of a nursing home, intermediate care or extended care facility or any portion thereof when a capital expenditure is required to comply with life safety codes, licensure, certification or accreditation standards.

2. The conversion on site of existing licensed beds of a medical care facility other than a nursing home, extended care, or intermediate care facility to beds certified for skilled nursing services (SNF) when (i) the total number of beds to be converted does not exceed the lesser of 20 beds or 10% of the beds in the facility; (ii) the facility has demonstrated that the SNF beds are needed specifically to serve as specialty heavy care patient population, such as ventilator-dependent and AIDS patients and that such patients otherwise will not have reasonable access to such services in existing or approved facilities; and (iii) the facility further commits to admit such patients on a poverty basis once the SNF unit is certified and operational.

§ 11.2. Expiration of requirements for general hospitals and outpatient or ambulatory surgery centers or clinics.

Notwithstanding any law to the contrary, as of July 1, 1991, general hospitals and specialized centers or clinics developed for the provision of outpatient or ambulatory surgery shall no longer be medical care facilities subject to review pursuant to these Regulations except with respect to the establishment of nursing home beds in general hospitals.

Approved by:

/s/ Gerald L. Baliles
Governor
Date: June 30, 1989

Filed:

/s/ Joan W. Smith
Registrar of Regulations
Date: July 5, 1989 - 3:29 p.m.

COUNCIL ON HUMAN RIGHTS

Title of Regulation: **VR 402-01-01. Public Participation Guidelines for the Development and Promulgation of Regulations.**

Statutory Authority: §§ 2.1-720.6 and 9-6.14:7.1 of the Code of Virginia.

Effective Dates: June 30, 1989, through June 29, 1998.

VR 402-01-01. Public Participation Guidelines for the Development and Promulgation of Regulations.

PART I.
POLICY.

§ 1.1. Policy.

The Council on Human Rights shall solicit the input of interested parties in the formation and development or repeal of regulations and any revision thereto in accordance with these regulations. The procedures set forth in these regulations shall not only be utilized prior to the formation and drafting of regulations, but also shall be utilized during the entire formation, promulgation and final adoption process.

PART II.
PUBLIC PARTICIPATION PROCEUDRES.

§2.1. Regulation development list.

The Council shall establish and maintain a Regulation Development List consisting of parties expressing an interest in the adoption, amendment or repeal of regulations.

§ 2.2. Notice of Intended Regulatory Action.

A. The Council shall prepare a Notice of Intended Regulatory Action, which will include:

1. Subject of the proposed regulation;

2. Identification of the entities that will be affected;

3. Discussion of the need and purpose of the proposed regulation and the issues involved;

4. Listing of applicable laws or regulations, and location where these documents can be reviewed or obtained;

5. Timetable for reaching a decision;

6. Request for comments from interested parties;

7. Notification of time and place of public meeting;

8. Name, address and telephone number of staff person to be contacted for further information.

B. The Council will receive written comments for at least 30 days following publication of the Notice in the Virginia Register of Regulations. If the Director determines that it is feasible, a public meeting may be held.

C. The Notice of Intended Regulatory Action will be disseminated to the public via:

1. Distribution by mail to parties on the Regulation Development List;

2. Publication in the Virginia Register of Regulations;

3. Press release to the news media.

§ 2.3. Public Comment Period for Proposed Regulations.

A. A Notice of Public Comment, establishing a 60-day comment period, will be submitted to the Register of Regulations for publication in the Virginia Register of Regulations and in newspapers in other regions throughout the Commonwealth. The Notice will contain the following information:

1. The date, time and place of the hearing, if applicable;

2. The closing date for the receipt of written comments;

3. The subject, substance, issues, basis and purpose of the regulation;

4. The legal authority of the agency to act;

5. The name, address and telephone number of an individual to contact for further information.

B. A public hearing to receive public comments on the proposed regulation will be scheduled within 60 days of publication in the Virginia Register of Regulations. At a minimum, there shall be at least one hearing in the Richmond area; and additional hearings may be held throughout the Commonwealth as Council policy may dictate.

C. Copies of the Notice of Public Comment period and the proposed regulation will be distributed to all persons and organizations submitting comments and all parties listed in the Regulation Development List.

§ 2.4. Proposed Regulation.

A. The proposed regulation will be submitted to the Registrar for publication in the Virginia Register of Regulations along with the Notice of Public Comment. The submission will include the following:

1. Full text of the regulation;

2. Summary of the regulation;

3. Statement of basis, purpose and impact.

B. During the public comment period, the regulation may be reviewed by the following:

1. The public;

2. The Governor;

3. The Legislature;

4. Cabinet Secretary;

5. The Attorney General.

C. The remaining steps in the adoption process will be carried out in accordance with the provisions of the Administrative Process Act (§ 9-6.14:1 et seq. of the Code of Virginia).

Submitted by:

/s/ Lawrence J. Dark
Director
Date: June 1, 1989

Approved by:

/s/ Gerald L. Baliles
Governor
Date: June 29, 1989

Filed:

/s/ Joan W. Smith
Registrar of Regulations
Date: June 30, 1989 - 3:40 p.m.

* * * * * * * *

Title of Regulation: **VR 402-01-02. Emergency Regulations to Safeguard Virginian's Human Rights from Unlawful Discrimination.**

Statutory Authority: § 2.1-720.6 of the Code of Virginia.

Effective Dates: June 30, 1989 through June 29, 1990.

VR 402-01-02. Emergency Regulations to Safeguard Virginian's Human Rights from Unlawful Discrimination.

§ 1. Policy.

The purpose of these regulations is to supplement the Virginia Human Rights Act § 2.1-714 et seq. which

safeguards all individuals within the Commonwealth from unlawful discrimination.

§ 2. Definitions.

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

"Act" means the Virginia Human Rights Act, Chapter 43 § 2.1-714 et seq. of the Code of Virginia.

"Complaint" means a written statement by a person or by the Council alleging an act of discrimination prohibited by Chapter 43 § 2.1-716 of the Code of Virginia.

"Complainant" means a person who claims to have been injured by a discriminatory practice.

"Respondent" means a person against whom a complaint of violation of the Act is filed. Each reference to a "complainant" and "respondent" shall be deemed to refer, as appropriate, to the singular and plural.

§ 3. Complaints by or on behalf of persons claiming to be aggrieved.

A complaint on behalf of a person claiming to be aggrieved may be made by any person, agency, or organization. The written complaint need not identify by name the person on whose behalf it is made. The person making the complaint, however, shall provide the Council orally with the name, address and telephone number of the person on whose behalf the complaint is made. During the Council's investigation, the Director shall verify the complaint with the person on whose behalf the complaint is made. That person may request that the Council keep his identity confidential. However, a request for confidentiality shall not prevent the Council from revealing the identity to federal, state or local agencies that have agreed to keep such information confidential.

B. The complainant has the responsibility of providing the Council with notice of any change in address and with notice of any prolonged absence from his current address.

§ 4. Where to make a complaint.

A complaint may be made in person at 101 N. 14th Street, James Monroe Building, 17th Floor, Richmond, Virginia 23219; or by mail at P.O. Box 717, Richmond, Virginia 23206.

§ 5. Contents of complaint.

A. Each complaint should contain the following:

1. The full name, address, and telephone number of the person making the complaint;

2. The full name and address of the person against whom the complaint is made;

3. A clear concise statement of the facts, including pertinent dates, constituting the alleged unlawful discriminatory practices;

4. The date of filing and the name of the agency in cases where alleged unlawful discriminatory practices have been filed before a local, state or federal agency charged with the enforcement of discrimination laws.

B. Notwithstanding the provisions of paragraph A. of this section, a complaint shall be considered filed when the Council receives a written statement which identifies the parties and describes generally the action or practices complained of.

C. A complaint may be amended by the complainant or the Director at any time prior to a hearing.

D. When an amendment is filed, the Office of Human Rights shall serve a copy of the amendment upon the respondent within five working days of the amendment. The respondent shall, within 10 days after the service of the amendment, file an answer to the amendment.

§ 6. Filing referrals to state and federal agencies.

A. Complaints which are under the jurisdiction of another state agency are considered filed with that agency when received by the Council if the filing falls within the time limits for filing as required by that agency (§ 2.1-722 of the Code of Virginia).

B. The Council has established interagency agreements with the following state agencies:

1. Department of Commerce-Real Estate Board,

2. Department of Labor and Industry,

3. Department of Personnel and Training,

4. Department for Rights of the Disabled, and

5. Department of Employee Relations Counselors.

If the Director or his designee determines that the complaint is not within the Council's jurisdiction, but possibly in the jurisdiction of one of the interagency agreement agencies, the complaint shall be sent to the appropriate agency within 15 working days of determination. The complainant shall be notified of this action and a reason provided. Once the complaint has been forwarded and the complainant notified, the Council shall close the case.

C. Persons filing under Title VII of the Civil Rights Act of 1964, as amended, or the Fair Labor Standards Act shall be notified within 15 days that they should also file with the appropriate federal agency within the appropriate

time period if the statute of limitation has not already expired.

D. All charges shall be dated and time stamped upon receipt; a copy of the charge shall be transmitted by mail to the agency; and the complainant and the person filing a complaint on behalf of the complainant shall be notified, in writing, that the complaint has been forwarded to the appropriate state or federal agency or both.

E. Complaints shall be filed with the Council not later than 180 days from the day upon which the alleged discrimanatory practice occured.

§ 7. Notice of complaint.

Within 15 working days after the filing of a complaint, the Director shall notify the respondent of the complaint by mail.

§ 8. Investigations by the Director or his designee.

A. During the investigation of a complaint, the Director may utilize the information gathered by government agencies. The Director shall accept a statement of position or evidence submitted by the complainant, person making the complaint on behalf of complainant or the respondent. The Director may submit a request for information to the respondent which, in addition to specific questions, may request a response to the allegations contained in the complaint. The Director's or his designee's request for information shall be mailed within 20 working days of receipt of the complaint. A response to the request for information should be submitted within 20 working days from the date the request is postmarked.

B. The Director may require the complainant to provide such additional information as he deems necessary to conduct an investigation.

C. The Director may require a fact-finding conference with the parties prior to a determination of a complaint of discrimination. The conference is an investigative forum intended to define the issues, to determine the elements in dispute and to ascertain whether there is basis for a negotiated settlement of the complaint.

D. The Director's or his designee's authority to investigate a complaint is not limited to the procedure outlined in paragraphs A, B and C of this section.

§ 9. Dismissal; procedure and authority.

A. Where the Director determines that the complaint is not timely filed, or fails to state a claim under the Act, the Director shall dismiss the complaint.

B. Where the Director determines after investigation that there is not reasonable cause to believe that the Act has been violated, the Director shall dismiss the complaint. If the complainant disagrees with the Director's decision, the Council can be petitioned within 10 working days for a review of the decision.

C. Upon petition for review, the Council shall establish a panel of three members to hear such petitions. If it is determined within 30 working days after the petition for review of a dismissal of a complaint that there is not reasonable cause to believe the respondent has engaged in a discriminatory practice, the Council shall issue an order dismissing the complaint and furnish a copy of the order to all parties.

§ 10. Settlement.

A. When the Director determines that there is reasonable cause to believe that an unlawful discriminatory practice has occurred or is occurring, the Director shall endeavor to eliminate such practice by informal methods of conference, conciliation and negotiation.

B. When conciliation or negotiated settlement is successful, the terms of the agreement shall be reduced to writing and signed by the complainant, respondent and the Director within 10 working days of the agreement.

§ 11. Public hearing.

A. When conciliation efforts fail, or when the Director determines that the conciliation process will not be in the best interest of the complainant or the Commonwealth, the Director shall set the matter of public hearing or refer the complaint to the appropriate federal agency.

B. Notice of the time and place of the hearing shall be mailed to the parties at least 20 working days before the date of the hearing.

C. All hearings shall be open to the public.

D. A case will be heard by a hearing officer appointed by the Council.

E. The hearing officer shall not be bound by statutory rules of evidence or technical rules of procedure.

F. Both the complainant and the respondent shall appear and be heard in person, but may be assisted by counsel, or by an authorized representative.

G. All testimony shall be given under oath or affirmation.

H. The order of presentation shall be established by the hearing officer with the burden of going forward being placed on the complainant.

I. Any party who fails to appear at a hearing or to respond to a request for information by a specified date, in the absence of good cause shown, shall be deemed to have waived all further rights to appear, present evidence,

or petition for rehearing or reconsideration.

J. Irrelevant, immaterial and unduly repetitious evidence shall at the discretion of the hearing officer be excluded. The rules of privilege shall be given effect.

K. The hearing officer may accept relevant documents or other evidence into the record as exhibits. Documents to be submitted at the hearing by a party must be distributed to the Council and the other party no later than five working days prior to the hearing. Documents not submitted in accordance with this rule will only be admitted when the presiding body or hearing officer determines that just cause exists for failure to follow this rule.

L. Before the hearing is closed, the parties shall be given an opportunity to present an oral argument of their case.

M. The hearing shall be recorded by an official reporter and one transcript will be purchased by the Council. The Council's copy will be made available for review within a reasonable time after request at the Office of Human Rights during regular business hours.

§ 12. Findings and recommendations.

A. The hearing officer of the Council shall state findings of fact and conclusions of law in writing. The findings of the hearing officer shall be filed with the Council within 30 working days of the date of completion of the hearing.

B. If the Council votes to accept the hearing officer's findings that the respondent has not engaged in a discriminatory practice, it shall issue an order dismissing the complaint. A copy of the order shall be furnished to the complainant and the respondent.

C. If the Council votes to accept the hearing officer's findings that the respondent has committed an unlawful discriminatory practice, it shall state its findings and may issue recommendations to eliminate the discriminatory practice, including, but not limited to:

1. Hiring, reinstating, promoting or upgrading the position of the complainant, with or without back pay, and providing such fringe benefits as the complainant has been denied;

2. Restoring or admitting the complainant to membership in a labor organization, a training program, guidance program or other occupational training program, using the objective criteria for admission of persons to such programs;

3. Leasing, renting or selling property at issue to the complainant;

4. Extending to the complainant the full and equal enjoyment of the goods, services, facilities, privileges or accommodations of the respondent;

5. Admitting the complainant to a public accommodation or educational institution;

6. Reporting as to the manner of compliance;

7. Posting notices in a conspicuous place setting forth requirements for compliance with this chapter or other information that the Council deems necessary to explain the Act; and

8. Revising personnel policies and procedures, including the undertaking of affirmative efforts.

D. If the Council votes not to accept the hearing officer's findings, it will return the findings to the hearing officer for further consideration.

§ 13. General.

A. If the Council fails to act by dates specified herein, neither the rights of the complainant nor the respondent will be prejudiced.

B. If the complainant or the respondent fails to comply with the provisions stated herein, except where good cause is shown, the failure may be deemed a waiver of any rights provided herein.

Submitted by:

/s/ Lawrence J. Dark
Director
Date: June 1, 1989

Approved by:

/s/ Gerald L. Baliles
Governor
Date: June 29, 1989

Filed:

/s/ Joan W. Smith
Registrar of Regulations
Date: June 30, 1989 - 3:40 p.m.

DEPARTMENT OF SOCIAL SERVICES (BOARD OF)

Title of Regulation: **VR 615-45-3. Child Protective Services Sharing of Information with Family Advocacy Representatives of the United States Armed Forces.**

Statutory Authority: §§ 2.1-386 and 63.1-248.6 of the Code of Virginia.

Effective Dates: July 6, 1989, through July 5, 1990.

SUMMARY

1. REQUEST: The Governor's approval is hereby requested to adopt the emergency regulation entitled "Child Protective Services Release of Information to Family Advocacy Program Representatives of the United States Armed Forces" pursuant to Senate Bill 567 passed by the 1989 session of the General Assembly and incorporated into §§ 2.1-286 and 63.1-348.6 of the Code of Virginia.

2. PURPOSE OF THE REQUEST: Sections 2.1-386 and 63.1-248.6, as amended by the 1989 session of the General Assembly, will become effective July 1, 1989. Local departments of social services will be responsible for sharing information pursuant to this section of the Code. Local departments do not have policy to guide them in disclosing the information.

   The purpose of this request to take emergency adoption action is to expedite the policy and guidelines necessary for local departments of social services to meet the intent of the cited Code revisions.

3. PERSONS AFFECTED BY THIS REGULATION: All local departments of social services in the Commonwealth are affected in that they are responsible for determining when information is to be shared and the extent of the information that is shared. The regulation also affects active duty military personnel and members of their households when they are either the alleged abuser/neglector or when a child member of the household is the victim of abuse/neglect.

4. BACKGROUND: In the Commonwealth of Virginia, there is a large number of active duty military personnel and their dependents. These families, in part, due to the circumstances imposed on them by the fact of their military employ, come in contact with the child protective services units of local departments of social services. Until recently, very few, if any resources were available through the military to provide services to families with child protection problems. In recent years, the military has come to recognize the need for providing such services. Due to confidentiality constraints and legal prohibitions, local departments have been limited in their ability to share critical information with the family advocacy representatives which would enable them to provide necessary services to these families.

5. AUTHORITY TO ACT: This child protective services regulation has been developed pursuant to the enactment of legislation by the 1989 General Assembly. That legislation, Senate Bill 567, which in part amended § 63.1-248.6, stipulates that the Board of Social Services promulgate regulations to implement the legislation.

6. FISCAL IMPACT: None.

7. FUTURE DEPARTMENT ACTION: The Department of Social Services has developed this emergency regulation with the assistance of Colonel Frederick Moss who represented the Military Affairs Committee, the Attorney General's Office and representatives of the local departments of social services.

   Immediately after this emergency regulation is approved and published in the Virginia Register, the Department of Social Services will initiate the procedure for the development of the regulation using the regular (nonemergency) procedure. Public comment will be solicited through a sixty-day public comment period.

   Copies of the proposed regulation will be sent to persons/organizations who are identified as interested persons.

PREFACE

It is necessary for the proposed procedures to be published as emergency regulations due to the July 1, 1989, change to the Code of Virginia, specifically to amend §§ 2.1-386 and 63.1-248.6. The changes enable local departments of social services to transmit information regarding child protective services reports, complaints or investigations of active duty military personnel or household members to the family advocacy representatives of the United States Armed Forces. The Code amendment to § 63.1-248.6 requires the State Board of Social Services to promulgate regulations which address the release of information. Due to the effective date of the change and the desire to coordinate further development of regulations with the military, the attached regulations are being submitted as emergency regulations to be in effect until they can be submitted and approved through the regular Administrative Process Act process.

VR 615-45-3. Child Protective Services Sharing of Information with Family Advocacy Representatives of the United States Armed Forces.

PART I.
DEFINITIONS.

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

"Alleged abuser/neglector" means any person who is the subject of a complaint and is suspected of or is found to have committed the abuse or neglect of a child pursuant to § 63.1-248 et seq. of the Code of Virginia.

"Child protective services" means the identification, receipt and immediate investigation of complaints and reports of child abuse and neglect for children under 18 years of age. It also includes documenting, arranging for, and providing social casework and other services for the child, his family, and the alleged abuser/neglector.

"Complaint" means a valid report of suspected child abuse/neglect which must be investigated by the local department of social services.

"Family Advocacy Program representative" means the professional employed by the United States Armed Forces who has responsibility for the program which is designed to address prevention, identification, evaluation, treatment, rehabilitation, follow-up and reporting of family violence.

"Investigation" means the formal fact-finding process utilized by the local department of social services in determining whether or not abuse/neglect has occurred. This process is employed for each valid complaint received by the local department.

"Reports" means any information transmitted to the local department of social services relating the suspicion of possible abuse/neglect of a child pursuant to § 63.1-248 et seq. of the Code of Virginia.

PART II.
POLICY.

§ 2.1. Release of information to Family Advocacy Program representatives of the United States Armed Forces.

Information regarding child protective services reports, complaints, investigations and related services and follow-up may be shared with the appropriate Family Advocacy Program representative of the United States Armed Forces when the local agency determines such release to be in the best interest of the child. Provision of information as addressed in this regulation shall apply to instances where the alleged abuser/neglector is a member (or the spouse of a member) of the United States Armed Forces. In these situations coordination between child protective services and the Family Advocacy Program is intended to facilitate identification, treatment and service provision to the military family.

/s/ Larry D. Jackson
Commissioner
Date: June 19, 1989

/s/ Gerald L. Baliles
Governor
Date: July 3, 1989

/s/ Joan W. Smith
Registrar
Date: July 6, 1989 - 2:59 p.m.

COMMONWEALTH OF VIRGINIA

STATE CORPORATION COMMISSION

AT RICHMOND, July 6, 1989

COMMONWEALTH OF VIRGINIA

CASE NO. PUE890052

STATE CORPORATION COMMISSION

Ex Parte: In the matter of adopting gas pipeline safety standards and reporting procedures for public service corporations providing gas service under Commission jurisdiction through transmission and distribution facilities located and operated within the Commonwealth of Virginia and granting other authorizations pertaining to the Gas Pipeline Safety Program

ORDER VACATING PREVIOUS ORDER AND ADOPTING STANDARD REGULATIONS AND PROCEDURES PERTAINING TO GAS PIPELINE SAFETY IN VIRGINIA

On November 21, 1988, the Research and Special Programs Administration, Department of Transportation ("DOT"), adopted a final rule governing the control of drug use in natural gas, liquefied natural gas, and hazardous liquid pipeline operations, codified as Part 199 of Title 49 of the Code of Federal Regulations. Control of drug use in natural gas, liquefied natural gas, and hazardous liquid pipeline operations, RSPA Docket No. PS-1-2, RIN 2137-AB54, 53 Fed. Reg. 47084 (Nov. 21, 1988). The DOT stated in its rule that it expected Part 199 to be adopted by states participating in federal-state relationships prescribed in the Natural Gas Pipleine Safety Act of 1968 and the Hazardous Liquid Pipeline Safety Act of 1979. See 53 Fed. Reg. 47084, 47096. Virginia and the Virginia State Corporation Commission are the State and the Department of that State. which are involved in such a relationship. In fact, by its Order dated February 21, 1967, in Case No. 18151, this Commission adopted a uniform code of rules and regulations relating to the design, construction, operation and maintenance of transmission and distribution facilities of natural gas companies located and operated in Virginia.

By subsequent orders dated April 20, 1967, April 9, 1970, January 8, 1971, and June 4, 1981, the Commission amended, modified and cancelled portions of its original order dealing with the design, construction, operation and maintenance of these facilities. By its October 16, 1981 Order entered in Case No. PUE810046, it cancelled previous orders and adopted standard regulations and procedures pertaining to gas safety in Virginia.

NOW THE COMMISSION finds that its October 16, 1981 Order entered in Case No. PUE810046 should be vacated and that 49 C.F.R. 199 should be adopted as well as Parts 191, 192, and 193 of Title 49, Code of Federal Regulations, which were previously adopted, all of which serves as the minimum gas pipeline safety code which the Commission enforces in Virginia. The directives set forth in the October 16, 1981 Order shall remain in effect in all other respects.

Accordingly,

IT IS ORDERED:

(1) That this matter is hereby docketed and assigned Case No. PUE890052;

(2) That our October 16, 1989 Order entered in Case No. PUE810046 is hereby vacated, and Part 199 shall be adopted, along with Parts 191, 192, and 193 of Title 49, Code of Federal Regulations, previously adopted. All amendments, past and future, to these four parts shall remain in force as the minimum pipeline safety code in the Commonwealth of Virginia;

(3) That telephone reports regarding incidents as listed in Part 191.5(a) of Title 49 of the Code of Federal Regulations shall be made by all natural gas companies subject to the Commission's jurisdiction at the earliest practical moment to the Commission's Division of Energy Regulation during the Division's duty hours or, at other times, to the home of one the Commission Staff Engineers, who enforce the safety code;

(4) That the required written reports mentioned under Part 191, Sections 191.9, 191.11, 191.13. 191.15, and 191.17 of Title 49 shall be made in duplicate to the Commission, unless the jurisdictional natural gas company states that it has already forwarded a copy of said reports to the Information Resources Manager, Office of Pipeline Safety, Department of Transportation, Washington, D.C. 20590;

(5) That every significant interruption of service shall be reported to this Commission within twenty-four hours after such interruption occurs, together with the cause thereof, so far as ascertainable;

(6) That natural gas companies subject to the Commission's jurisdiction shall maintain their operation and maintenance plans, up to date with Pipeline safety requirements, within their own facilities subject to inspection by Commission Gas Pipeline Safety Inspectors;

(7) That the Commission Staff member supervising and administering the gas pipeline safety program in Virginia shall be empowered to submit and sign on behalf of the Commission, such forms and applications as necessary to assure participation in natural gas pipeline safety programs, as deemed advisable by the Commission to assure an effective safety program in Virginia, but that the Commission Comptroller shall be empowered to sign on behalf of the Commission those applications and forms pertaining to grants or reimbursement or expenses incurred by the Commission in conducting the gas pipeline safety program in Virginia; and

(8) That there being nothing further to be done herein, the same is hereby dismissed;

AN ATTESTED COPY hereby shall be sent by the Clerk of the Commission to: the natural gas companies subject to the Commission's jurisdiction, the Commission Comptroller, and the Commission's Division of Energy Regulation.

* * * * * * * *

June 21, 1989

TO ALL INVESTOR-OWNED UTILITIES OPERATING IN VIRGINIA

Enclosed are four instruction circulars regarding the filing of securities and/or affiliates applications and applications involving the transfer of assets with the Commission. Each circular is designed to provide information we need to process your application as efficiently as possible. Please note changes in Circular No. 3.

Circular No. 1 - General Instructions for Filing Securities and/or Affiliates and/or Asset Transfer Transactions. These general instructions will be modified with changes in Commission policy.

Circular No. 2 - Annual Financing Plan. Each investor-owned utility with revenues over $1,000,000 should file a prospective financing plan each year by January 31.

- Review of Variable Rate Long-Term Debt and Preferred Stock. Each utility filing an Annual Financing Plan should file a Review of Variable Rate Long-Term Debt and Preferred Stock each year by January 31.

Circular No. 3 - Financing Summary. A Financing Summary should be filed with each Chapter 3 application and is designed to outline the essential components of each application.

Circular No. 4 - Separation of Combined Securities and Affiliates Applications.

This letter supersedes the letters dated January 30, 1985, October 8, 1985, December 19, 1985, and March 6, 1987 (all previous Finance Circulars). The circulars will become effective as of the date of this correspondence and will remain in effect until such time as changes in Commission policy occur.

If you have any questions or if you would like to schedule a session with our Staff to discuss the type of information needed in the Financing Summary portion of securities applications or any other matter relating to filings covered by this letter, please call Robert C. Dalton (804) 786-4958.

/s/ Ronald A. Gibson
Director

Finance Circular #1

General Instructions for Filing Securities, Affiliates, and/or Utility Transfers Applications

A) Applications must be filed with the Document Control Center. Mailing address:

Document Control Center
Jefferson Building - B1
P.O. Box 2118
Richmond, Virginia 23216

B) Pursuant to Virginia Code Section 56-75, appropriate filing fees must accompany Chapter 3 and joint applications involving Chapter 3 of Title 56 of the Virginia Code and also must be filed with the Document Control Center. Applications which do not have appropriate filing fees will not be regarded as filed for the purposes of Virginia Code Section 56-61, and no further processing of this application will occur. Checks for such fees should be made payable to "State Corporation Commission".

C) Document Control Center must have an original application and four (4) copies. Additional copies of the application must be provided if requested.

D) Each securities application, including joint applications involving Chapter 3, should contain a Financing Summary, as described in Finance Circular #3. Securities applications and applications involving Chapter 3 which do not contain a Financing Summary or which are accompanied by a Financing Summary that is not fully completed or not entirely responsive to Financing Summary items will not be regarded as filed for the purposes of Virginia Code Section 56-61. In that case, no further processing of the application will occur.

E) Securities applications filed by companies which have not filed an Annual Financing Plan as required in Finance Circular #2 will not be processed until the required financing plan has been filed.

F) If an application involving Chapter 3 fails in any respect to be complete, (as described in (B), (D), and (E) above), the application will not be processed and will not be regarded as filed. The application will be returned, accompanied by a letter describing what is needed before the application is considered filed. The Commission's Accounting and Finance Staff will review applications as to completeness.

G) When joint applications are filed involving Chapter 3, the Accounting and Finance Staff may separate the Chapter 3 portion of the application and process that portion of the application in accordance with the time for the decision- making process specified by Virginia Code Section 56-61. For example, if an application for approval of a stock issuance and service agreement is

filed jointly, the Staff will process the stock issuance within the 25 day framework set out in Section 56-61, subject to the applicable continuances specified therein, and may process the service agreement within a 45 day framework. In the event the application involves issuance of a security to an affiliate, the Staff will again apply the timetable for decision specified in Section 56-61.

H) All applications involving Chapter 3 of Title 56 should be filed so as to allow 25 days before a decision is needed. Amendments to these applications will restart the 25 day time period in which the Commission may render its decision. In the event a joint application involving Chapter 3 is filed, the portion of the application relating to Chapter 3 may be separated from the joint application and processed separately from the remainder of the joint application.

I) All affiliates applications and applications involving Chapter 5 should be filed so as to allow 45 days before a decision is needed.

Finance Circular #2

Annual Financing Plan

(to be filed with Director of Accounting and Finance)

In an effort to understand the financing needs of the major electric, gas, water and telephone utilities better, we request that you provide us each year by January 31, a proposed financing plan for that calendar year currently underway.

The plan should include:

(a) A description of the proposed mix of securities that will be raised externally for the company operating the Virginia jurisdictional business;

(b) A list of the purposes for which the funds will be raised both internally and externally (capital outlays should be segregated by major projects);

(c) A pro forma balance sheet for the end of the upcoming calendar year;

(d) A statement of cash requirements and sources of cash for the upcoming calendar year; and

(e) A brief narrative describing the logic that led your company to suggest the proposed financing mix. This should include Company's target capital structure, if applicable.

Review of Variable Rate Long-Term Debt and Preferred Stock (to be filed with Director of Accounting and Finance)

In an effort to monitor the cost of variable rate long-term debt and preferred stock incurred by the major electric, gas, water, and telephone utilities, we request that you provide us each year by January 31, a review of variable rate debt and preferred stock issues outstanding for the preceding year. The review should include:

(a) A description of all variable rate long-term debt and preferred stock issues outstanding during the preceding year; i.e., First Mortgage Bonds, Series E, etc.;

(b) Amount outstanding at year end;

(c) Average interest or dividend rate for each month as well as the high and low rates for each month;

(d) Date of Commission approval for the issue; and

(e) Case Number in which issue was approved.

Finance Circular #3

Financing Summary to Accompany Application to Issue Securities Under the Public Utilities Securities Law

With each application to issue securities under the Public Utilities Securities Law, we request that you submit a "Financing Summary" related to the proposed transaction. The Financing Summary should follow a standardized format covering the questions posed and following the instructions in the attached sample copy.

A more detailed explanation of the financing issue along with any supporting documents would be contained in the application itself. Schedules supporting the responses to Item 5 of the Financing Summary should be attached to the Summary. While it isn't necessary to standardize the contents of the application, we hope, as a minimum, the application would expand upon each of the items listed in the Financing Summary and contain updated financial statements. It would also be helpful if the application made references to the proposed financing plan submitted previously to the Commission by January 31 of each year.

As before, after the securities transaction has been completed, the company must file information about the actual terms, costs of issuance, and effects on the Company.

We believe that the standardized Financing Summary will enable us to process your request for approval of securities transactions more efficiently.

APPLICATION FOR AUTHORITY TO ISSUE SECURITIES UNDER PUBLIC UTILITIES SECURITIES LAW FINANCING SUMMARY

Item 1: Brief Description of Issue:

(1) Type of security.

(2) Proposed amount.

(3) Proposed date(s) of issue.

Item 2: Purpose(s) of Issue:

(1) Proposed use of proceeds.

(2) Specific uses of proceeds and estimated amounts.

Item 3: Terms of Issue:

Debt and/or Preferred Stock Financing

(1) Estimated Interest or Dividend Rate.

(2) Specify any minimum or maximum rates.

(3) Timing of payments, e.q., monthly, quarterly, annually, etc.

(4) Fixed or Variable rates.

(5) Terms of any rate adjustment-Include frequency of adjustment, basis for adjustment (any particular index involved).

(6) Current security rating.

(7) Proposed maturity.

(8) The following should be discussed:

- Call provisions

- Sinking fund provisions

- Conversion privileges

- Warrants

- Assets pledged

- Restrictive convenants

- Indenture requirements.

(9) If a parent/subsidiary intercompany financing arrangement, summarize any other relevant characteristics.

Equity Financing

(1) Number of shares currently authorized and issued.

(2) Number of shares to be issued, issue price estimate and how determined.

(3) Preemptive rights.

(4) Voting rights.

(5) Warrants.

(6) If a capital transfer from parent company, summarize any other characteristics.

Item 4: Nature of Issuance and Expense Estimate:

(1) Public offering, private placement, or intercompany financing arrangement.

(2) Underwriter(s).

(3) Special distribution e.g., equity via dividend reinvestment, employee plan, etc.

(4) Estimate of underwriting costs.

(5) Estimate of other costs related to issuance (attach list).

Item 5: Impact on Company:

(1) Change in capital structure due to issue:

- Show actual and pro forma capital structure amounts and weights (provide financial statements to support actual amounts).

- The capital structure should consist of permanent capital only and should include financing applications pending and financings authorized but not yet issued only when such financings are expected to take place between the financial statement date used in the application and the expected date of the proposed issuance.

- Permanent capital should include all items recorded in the capitalization section of the company's balance sheet and long-term debt due and preferred stock redeemable within one year.

- The amount of short-term debt should be shown separately.

- Actual capital structure should be for the most recent statement date available.

- Pro forma capital structure should be the actual capital structure adjusted for changes due solely to the proposed financing (changes due to other factors should not be included).

- Explanations of changes as well as any assumptions used should be given. The Commission Staff should be able to trace figures from actual to pro forma.

- If a parent/subsidiary relationship exists, show capital structure for the entity raising capital and the consolidated company.

- The following example can be used:

Entity Raising Capital
Capital Structure
as of Month/Date/Year

	Actual		Adjustment (provide explanations)	Pro Forma	
	Amount	%		Amount	%
Long-term Debt					
Preferred Stock					
Common Equity					
Total		100%			100%
Short-term debt					

Consolidated Company

	Actual		Adjustment (provide explanations)	Pro Forma	
	Amount	%		Amount	%
Long-term Debt					
Preferred Stock					
Common Equity					
Total		100%			100%
Short-term debt					

(2) Change in revenue requirements due to issue:

- Show the current capital structure and cost of capital using capital structure methodology approved by the Commission in the last rate case. A schedule should be provided to support capital structure amounts and cost rates (i.e., amounts outstanding, interest rates, maturities). The capital structure should include financing applications pending and financings authorized but not yet issued only when such financings are expected to take place between the financial statement date used in the application and the date of proposed issuance.

- Show the current capital structure and cost of capital adjusted for changes due solely to proposed financing (changes due to other factors should not be included).

- Show change in weighted cost of capital.

- Show current rate base as approved in last rate case.

- Show before-tax revenue requirements due to change in cost of capital.

- Show change in income taxes due to change in interest deduction.

- Show effect of taxes.

- Show change in revenue requirements.

- Explanation of changes as well as any assumptions used should be given. The Commission Staff should be able to trace figures from actual to pro forma.

- The following example can be used:

Virginia Utility Change in Revenue Requirements Due to Issue

(a) Change in cost of capital due to issue (attach supporting schedules showing actual and pro forma capitalization and cost of capital).

(b) Current rate base as of Month/Date/Year.

(c) Before-tax revenue requirements due to change in cost of capital = (a) x (b).

(d) Change in income taxes due to change in interest deduction.

(e) Before-tax revenue requirements = (c) + (d).

(f) Adjustment for taxes (conversion factor).

(g) Change in revenue requirements (e)/(f).

(3) Change in return on equity due to issue:

- Show actual earnings available for common, common equity, and return on equity as of a recent statement date (same as in (1) and (2) - provide financial statements to support actual amounts). Actual figures should reflect the effect of financing applications pending and financings authorized but not yet issued only when such financings are expected to take place between the financial statement date used in the application and the date of proposed issuance.

- Show pro forma earnings available for common, common equity, and return on equity. Pro forma figures should be actual figures adjusted for changes due solely to the proposed financing (changes due to other factors should not be included).

- An explanation of all adjustments should be given as well as all assumptions used.

- If a parent/subsidiary relationship exists, show calculations for the entity raising capital and the consolidated company.

- The following example can be used:

Entity Raising Capital Return on Equity As of Month/Date/Year

	Actual	Adjustment (provide explanations)	Pro Forma
Balance for common			
Common equity (Average or year end- Specify)			
Return on equity (Balance for common/ Common equity)			

Consolidated Company

	Actual	Adjustments (provide explanations)	Pro Forma
Balance for common			
Common equity (Average or year end- Specify)			
Return on equity (Balance for common/ Common equity)			

(4) Change in interest coverage due to issue:

- Show actual pre-tax interest coverage as of a recent statement date (same as (1), (2), and (3) - provide financial statements to support actual amounts). Actual figures should reflect the effect of financing applications pending and financings authorized but not yet issued only when such financings are expected to take place between the financial statement date used in the application and the date of the proposed issuance.

- Show pro forma pre-tax interest coverage. Pro forma coverage should be actual coverage adjusted for changes due solely to proposed financing (changes due to other factors should not be included).

- An explanation of all adjustments should be given as well as all assumptions used.

- If a parent/subsidiary relationship exists, show calculation for the entity raising capital and the consolidated company.

- Pre-tax interest coverage = Earnings before interest and taxes/Interest.

- Earnings before interest and taxes = Net income + Income taxes + Total interest.

- Interest = Total interest and includes amortization of discount, expense and premium on debt without deducting an allowance for borrowed funds.

- Income taxes = Federal income taxes + State income taxes.

- The following example can be used:

Entity Raising Capital Interest Coverage for the 12 Months Ended Month/Date/Year

	Actual	Adjustments (provide explanations)	Pro Forma
Net income			
Income taxes			
Federal			
State			
Net income before taxes			
Interest on long-term debt			
Other interest			
Total interest charges			
Income before interest and taxes			

Consolidated Company Interest Coverage for the 12 Months Ended Month/Date/Year

	Actual	Adjustments (provide explanations)	Pro Forma
Net income			
Income taxes			
Federal			
State			
Net income before taxes			
Interest on long-term debt			
Other interest			
Total interest charges			
Income before interest and taxes			

(5) Change in net cash flow/permanent capital due to issue.

- Show actual net cash flow/permanent capital as of a recent statement date (same as (1), (2), (3), and (4) - provide financial statements to support actual amounts). Actual figures should reflect the effect of financing applications pending and financings authorized but not yet issued only when such financings are expected to take place between the financial statement date used in the application and the expected date of the proposed issuance.

- Show pro forma net cash flow/permanent capital. Pro forma ratio should be actual adjusted for changes due solely to proposed financing (changes due to other factors should not be included).

- Net cash flow = Cash flow - Common dividends - Preferred dividends.

- Cash flow = Net income + Amortization + Depreciation + Change in deferred taxes + Change in investment tax credits- AFUDC.

Item 6: Brief Discussion of Reasonableness of Issue/Financing Strategy:

(1) How does the issue fit in with the Company's financing plan submitted to the Commission at the beginning of the year? With the Company's target capital structure?

(2) If debt, compare the interest rate with that of recent issues of similar quality and terms in the capital markets.

(3) If equity, show market/book ratio, price earnings ratio, and any other relevant comparisons.

(4) If a leasing arrangement or other form of indebtedness, summarize the economic justification for choosing this alternative (e.g., leasing versus ownership), such summary to include any analysis performed.

(5) If the purpose of the proposed financing is the refunding of obligations, provide a description of the obligations including the principal amounts, discount or premium applicable, the date of issue and maturity. Also, provide an analysis showing the break-even refund rate. The analysis should include all costs of refunding and should show the rate at which it would not be beneficial to issue securities for the purpose of refunding the obligations in question.

Item 7: Amendments to previously Authorized Financing Proposals: (If Applicable)

(1) Trace the history of amendments made since the original proposal.

(2) Summarize cost and other justification for the amendment.

Finance Circular #4

Separation of Combined Securities and Affiliates Applications

The State Corporation Commission will no longer process combined securities and affiliates applications, except for public service applications requesting authority to issue securities to an affiliate.

Any utility simultaneously filing a securities and an affiliates application except as noted above must submit two separate applications.

It is our belief that separation will enable us to process your request for approval of securities and affiliate transactions more efficiently.

* * * * * * * *

AT RICHMOND, JUNE 23, 1989

COMMONWEALTH OF VIRGINIA

At the relation of the

STATE CORPORATION COMMISSION

CASE NO. INS890340

Ex Parte: In the matter of adopting
Rules Governing Minimum Standards for Medicare Supplement Policies

ORDER SETTING HEARING

WHEREAS, Virginia Code § 12.1-13 provides that the Commission shall have the power to promulgate rules and regulations in the enforcement and administration of all laws within its jurisdiction and Virginia Code §§ 38.2-3516 through 38.2-3520, 38.2-3600 through 38.2-3607, 38.2-4214 provide that the Commission is authorized to issue reasonable rules and regulations necessary to provide for minimum standards for medicare supplement policies;

WHEREAS, the Bureau of Insurance has submitted to the Commission a proposed regulation entitled "Rules Governing Minimum Standards for Medicare Supplement Policies";

WHEREAS, said regulation concerns a subject appropriate for Commission regulation; and

WHEREAS, the Commission is of the opinion that a hearing should be held on the proposed regulation, at which hearing all persons in interest may appear and be heard,

IT IS ORDERED:

(1) That the proposed regulation entitled "Rules Governing Minimum Standards for Medicare Supplement Policies" be appended hereto and made a part hereof, filed and made a part of the record herein;

(2) That this matter be docketed and assigned Case No. INS890340, and that a hearing be held before the Commission's Hearing Examiner, who is hereby appointed to conduct a hearing on behalf of the Commission pursuant to the authority granted the Commission in Virginia Code § 12.1-31, in the Commission's 13th Floor Courtroom, Jefferson Building, Bank and Governor Streets, Richmond, Virginia at 10:00 a.m. on July 25, 1989, for the purpose of considering the adoption of the proposed regulation, at which time and place all interested persons may appear and be heard with respect to the proposed regulation;

(3) That, in accordance with § 12.1-31 of the Code of Virginia, a Hearing Examiner shall conduct all further proceedings in this matter on behalf of the Commission, concluding with the filing of the Examiner's final report to the Commission. In the discharge of such duties, the Hearing Examiner shall exercise all the inquisitorial powers possessed by the Commission, including, but not limited to, the power to administer oaths, require the appearance of witnesses and parties and the production of documents, schedule and conduct prehearing conferences, admit or exclude evidence, grant or deny continuances, and rule on motions, matters of law, and procedural questions. Any party objecting to any ruling or action of said Examiner shall make known its objection with reasonable certainty at the time of the ruling, and may argue such objections to the Commission as part of its comments to the final report of said Examiner; provided, however, if any ruling by the Examiner denies further participation by any party in interest in a proceeding not thereby concluded, such party shall have the right to file a written motion with the Examiner for his immediate certification of such ruling to the Commission for its consideration. Pending resolution by the Commission of any ruling so certified, the Examiner shall retain procedural control of the proceeding;

(4) That the Hearing Examiner hereinbefore appointed shall cause the testimony taken at such hearing to be reduced to writing and promptly deliver his written findings and recommendations together with the transcript of the hearing to the Commission for its consideration and judgment;

(5) That an attested copy together with a copy of the proposed regulation be sent by the Clerk of the Commission to the Bureau of Insurance in care of Deputy Commissioner Gerald A. Milsky who shall forthwith give further notice of the proposed regulation and hearing by mailing a copy of this order together with a copy of the proposed regulations to every insurance company licensed to sell medicare supplement insurance in the Commonwealth of Virginia; and

(6) That the Bureau of Insurance shall file with the Clerk of the Commission an affidavit of compliance with the notice requirements of paragraph (5) above.

Section 1. Authority.

This Regulation is issued pursuant to the authority vested in the Commission under §§ ~~38.1-362.10 through 38.1-362.16, 38.1-362.17, 38.1-818, 38.1-818.1 and 38.1-52.13~~ *§§ 38.2-3516 through 38.2-3520, 38.2-3600 through 38.2-3607, 38.2-4214, 38.2-4215, and 38.2-514* of the Code of Virginia.

Section 2. Purpose.

The purpose of this Regulation is to implement §§ ~~38.1-362.10 through 38.1- 362.16, 38.1-362.17, 38.1-818 and 38.1-818.1~~ *§§ 38.2-3516 through 38.2-3520, 38.2-3600 through 38.2-3607, 38.2-4214, and 38.2-4215* of the Code of Virginia with respect to Medicare supplement policies.

This Regulation is designed to:

(a) provide reasonable standardization and simplification of terms and coverages of Medicare supplement policies;

(b) facilitate public understanding and comparison;

(c) eliminate provisions contained in Medicare supplement policies which may be misleading or unreasonably confusing in connection either with the purchase of such coverages or with the settlement of claims; and

(d) provide for full disclosure in the sale of Medicare supplement coverages.

Section 3. Effective Date.

A. This Regulation shall be effective on ~~February 1, 1981~~ *September 1, 1989.*

B. No new policy form shall be approved on or after ~~May 1, 1981~~ *September 1, 1989,* unless it complies with this Regulation.

C. No policy form shall be delivered or issued for delivery in this ~~State~~ *Commonwealth* on or after ~~January 1, 1982~~ *September 1, 1989,* unless it complies with this Regulation.

~~D. This Regulation shall become effective on July 1, 1982 with respect to Medicare supplement subscriber contracts of hospital, medical or surgical plans delivered or issued for delivery in this State on and after July 1, 1982.~~

Section 4. Scope.

This Regulation shall apply to all Medicare supplement policies delivered or issued for delivery in this ~~State.~~ *Commonwealth.*

For purposes of this Regulation:

A. A "Medicare supplement policy" (hereinafter referred to as "Medicare supplement policy" or "policy") is an individual or group policy of accident and sickness insurance or an individual or group subscriber contract of ~~hospital, medical or surgical~~ *health services* plans, or a certificate issued under a group policy or group subscriber contract, offered to individuals who are entitled to have payment made under Medicare, which is designed primarily to supplement Medicare by providing benefits for payment of hospital, medical or surgical expenses, or is advertised, marketed or otherwise purported to be a supplement to Medicare. Such term shall not include:

(1) A policy or contract of one or more employers or labor organizations, or of the trustees of a fund established by one or more employers or labor organizations, or combination thereof, for employees or former employees, or combination thereof, or for members or former members, or combination thereof, of the labor organizations; or

(2) A policy or contract of any professional, trade or occupational association for its members or former or retired members, or combination thereof, if such association:

(a) is composed of individuals all of whom are actively engaged in the same profession, trade or occupation;

(b) has been maintained in good faith for purposes other than obtaining insurance; and

(c) has been in existence for at least two (2) years prior to the date of its initial offering of such policy or plan to its members.

B. "Applicant" means:

(1) in the case of an individual Medicare supplement policy or subscriber contract, the person who seeks to contract for insurance benefits, and

(2) in the case of a group Medicare supplement policy or subscriber contract, the proposed certificate holder.

C. "Certificate" means any certificate issued under a group Medicare supplement policy, which policy has been delivered or issued for delivery in this ~~State.~~ *Commonwealth.* Except as otherwise provided, nothing contained in this Regulation shall be construed to relieve an insurer of complying with the statutory requirements set forth in Title ~~38.1~~ *38.2* of the Code of Virginia.

Section 5. Policy Definitions.

Except as provided hereafter, no Medicare supplement policy delivered or issued for delivery to any person in this ~~State~~ *Commonwealth* shall contain definitions respecting the matters set forth below unless such definitions comply with the requirements of this section.

A. "Benefit Period" shall not be defined as more restrictive than as that defined in the Medicare program.

B. "Hospital" may be defined in relation to its status, facilities and available services or to reflect its accreditation by the Joint Commission on Accreditation of Hospitals.

(1) The definition of the term "hospital" shall not be more restrictive than one requiring that the hospital:

(a) be an institution operated pursuant to law;

(b) be primarily and continuously engaged in providing or operating, either on its premises or in facilities available to the hospital on a prearranged basis and under the supervision of a staff of duly licensed physicians, medical, diagnostic and major surgical facilities for the medical care and treatment of sick or injured persons on an inpatient basis for which a charge is made; and

(c) provide 24 hour nursing service by or under the supervision of registered graduate professional nurses (R.N.'s).

(2) The definition of the term "hospital" may state that such term shall not include:

(a) convalescent homes, convalescent, rest, nursing facilities;

(b) facilities primarily affording custodial, educational or rehabilitory care;

(c) facilities for the aged, drug addicts or alcoholics subject to the requirements of § ~~38.1-348.7~~ *§ 38.2-3412* of the Code of Virginia;

(d) facilities affording long term care with an average length of stay per patient in excess of thirty (30) calendar days, or

(e) any military or veterans hospital or soldiers home or any hospital contracted for or operated by any national government or agency thereof for the treatment of members or ex-members of the armed forces, except for services rendered on an emergency basis where a legal liability exists for charges made to the individual for such services.

C. "Convalescent Nursing Home," "Extended Care Facility," or "Skilled Nursing Facility" shall be defined in relation to its status, facilities, and available services.

(1) A definition of such home or facility shall not be more restrictive than one requiring that it:

(a) be operated pursuant to law;

(b) be approved for payment of Medicare benefits or be qualified to receive such approval, if so requested;

(c) be primarily engaged in providing, in addition to room and board accommodations, skilled nursing care under the supervision of a duly licensed physician;

(d) provide continuous 24 hours a day nursing service by or under the supervision of a registered graduate professional nurse (R.N.); and

(e) maintain a daily medical record of each patient.

(2) The definition of such home or facility may provide that such term shall not include:

(a) any home, facility or part thereof used primarily for rest;

(b) a home or facility for the aged or for the care of drug addicts or alcoholics; or

(c) a home or facility primarily used for the care and treatment of mental diseases, or disorders, or custodial or educational care.

D. "Accident," "Accidental Injury," or "Accidental Means" shall be defined to employ "result" language and shall not include words which establish an accidental means test or use words such as "external, violent, visible wounds" or similar words of description or characterization. The definition shall not be more restrictive than the following:Injury or injuries, for which benefits are provided, means accidental bodily injury sustained by the insured perso" which are the direct result of an accident, independent of disease or bodily infirmity or any other cause, and which occur while the insurance is in force. Such definition may provide that injuries shall not include ~

~~(1)~~ injuries for which benefits are provided under any workmen's compensation, employer's liability or similar law, *or* motor vehicle no-fault plan, unless prohibited by law ~ ~~or.~~

~~(2) injuries occuring while the insured person is engaged in any~~ activity pertaining to any trade, business, employment, or occupation for wage or profit.

E. "Sickness" shall not be defined to be more restrictive than the following: Sickness means sickness or disease of an insured person which manifests itself after the effective date of insurance and while the insurance is in force. The definition may be modified to exclude sickness or disease for which benefits are provided under any workmen's compensation, occupational disease, employer's liability or similar law.

F. "Physician" may be defined by including words such as "duly qualified physician" or "duly licensed physician ~" *" and shall include providers included in §§ 38.2-3408 and 38.2-4221.*

G. "Nurses" may be defined so that the description of nurse is restricted to a type of nurse, such as registered graduate professional nurse (R.N.), a licensed practical nurse (L.P.N.), or a licensed vocational nurse (L.V.N.). If the words "nurse," "trained nurse" or "registered nurse" are used without specific description as to type, then the use of such terms requires the insurer to recognize the services of any individual who qualifies under such terminology in accordance with the applicable statutes or administrative rules of the licensing or registry board of the state.

H. "Medicare" shall be defined in the policy. Medicare may be substantially defined as "The Health Insurance for the Aged Act, Title XVIII of the Social Security Amendments of 1965 as Then Constituted or Later Amended," or "Title I, Part I of the Public Laws 89-97, as Enacted by the Eighty- Ninth Congress of the United States of America and popularly known as the Health Insurance for the Aged Act," as then constituted and any later amendments or substitutes thereof, or words of similar import.

I. "Mental or Nervous Disorders" shall not be defined more restrictively than a definition including neurosis, psychoneurosis, psychopathy, psychosis, or mental or emotional disease or disorder of any kind including physiological and psychological dependence on alcohol and

drugs subject to § ~~38.1-348.7~~ *§ 38.2-3412* of the Code of Virginia.

J. "Non-Cancellable", or "Non-Cancellable and Guaranteed Renewable", as used in a renewability provision, shall not be defined more restrictively than one providing the insured the right to continue the policy in force by the timely payment of premiums as set forth in the policy. While the policy is in force the insurer has no right to make unilaterally any change in any provision of the policy.

K. "Guaranteed Renewable," as used in a renewability provision, shall not be defined more restrictively than one providing the insured the right to continue the policy in force by the timely payment of premiums as set forth in the policy. While the policy is in force the insurer has no right to make unilaterally any change in any provision of the policy except that the insurer may make changes in premium rates by class. Class should be defined by age, sex, occupation, or other broad categories in order to eliminate any possibilities of individual discrimination.

L. "Medical necessity," or words of similar meaning, shall not be defined more restrictively than all services rendered to an insured that are required by his medical condition in accordance with generally accepted principles of good medical practice, which are performed in the least costly setting and not only for the convenience of the patient or his physician.

Section 6. General Policy Requirements.

A. The term "Medicare benefit period" shall mean the unit of time used in the Medicare program to measure the use of services and availability of benefits under Part A, Medicare hospital insurance.

B. The term "Medicare eligible expenses" shall mean health care expenses of the kinds covered by Medicare, to the extent recognized as reasonable by Medicare. Payment of benefits by insurers for Medicare eligible expenses may be conditioned upon the same or less restrictive payment conditions, including determinations of medical necessity as are applicable to Medicare claims.

C. Coverage shall not indemnify against losses resulting from sickness on a different basis than losses resulting from accidents.

D. Coverage shall provide that benefits designed to cover cost sharing amounts under Medicare will be changed automatically to coincide with any changes in the applicable Medicare deductible amount and copayment percentage factors. Premiums may be changed to correspond with such changes, subject to § ~~38.1-362.7 through~~ § ~~38.1-362.9~~ *§§ 38.2-3501 and 38.2-3600 through 38.2-3603* of the Code of Virginia and with any rules adopted pursuant thereto.

E. A "noncancellable," "guaranteed renewable," or "non-cancellable and guaranteed renewable" policy shall not:(a) provide for termination of coverage of the spouse solely because of the occurrence of an event specified for termination of coverage of the insured, other than nonpayment of premium; or (b) be cancelled or nonrenewed by the insurer solely on the grounds of deterioration of health. The policy shall provide that in the event of the insured's death, the spouse of the insured, if covered under the policy, shall become the insured.

F. The terms "noncancellable," "guaranteed renewable" or "noncancellable and guaranteed renewable" shall not be used without further explanatory language in accordance with the disclosure requirements of Section ~~9A(1)~~ *11A(1)* .

G. Termination of the policy shall be without prejudice to any continuous loss which commenced while the policy was in force, but the extension of benefits beyond the period the policy was in force may be predicated upon the continuous total disability of the insured, limited to the duration of the policy benefit period, if any, or payment of the maximum benefits.

Section 7. Prohibited Policy Provisions.

A. No policy or rider for additional coverage may be issued as a dividend unless an equivalent cash payment is offered to the policyholder as an alternative to such dividend policy or rider. No such dividend policy or rider shall be issued for an initial term of less than six (6) months. The initial renewal subsequent to the issuance of any policy or rider as a dividend shall clearly disclose that the policyholder is renewing the coverage that was provided as a dividend for the previous term and that such renewal is optional with the policyholder.

B. No policy, regardless of whether such policy is issued on the basis of a detailed application form, a simplified application form or an enrollment form, shall exclude coverage for a loss due to a preexisting condition for a period greater than six (6) months following policy issue. The policy may not define a preexisting condition more restrictively than a condition for which medical advice was given or treatment was recommended by or received from a physician within six (6) months before the effective date of coverage.

C. No policy shall limit or exclude coverage by type of illness, accident, treatment or medical condition, except as follows:

(1) preexisting conditions or diseases subject to the requirements of Section 7B;

(2) mental or emotional disorders, alcoholism and drug ~~addition,~~ *addiction,* subject to § ~~38.1-348.7;~~ *§ 38.2-3412;*

(3) illness, treatment or medical condition arising out of:

(a) war or act of war (whether declared or undeclared); participation in a felony, riot or insurrections; service in the armed forces or unitsauxiliarythereto;

(b) suicide (sane or insane), attempted suicide or intentionally self- inflictedinjury;

(c) aviation;

(4) cosmetic surgery, except that "cosmetic surgery" shall not include reconstructive surgery when such service is incidental to or follows surgery resulting from trauma, infection or other diseases of the involved part;

(5) foot care in connection with corns, calluses, flat feet, fallen arches, weak feet, chronic foot strain, or symptomatic complaints of the feet;

(6) care in connection with the detection and correction by manual or mechanical means of structural imbalance, distortion, or subluxation in the human body for purposes of removing nerve interference and the effects thereof, where such interference is the result of or related to distortion, misalignment or subluxation of, or in the vertebral column;

(7) treatment provided in a government hospital; benefits provided under Medicare or other governmental program (except Medicaid), any state or federal workmen's compensation, employer's liability or occupational disease law, or any motor vehicle no-fault law; services rendered by employees of hospitals, laboratories, or other institutions; services performed by a member of the covered person's immediate family and services for which no ~~coverage~~ *charge* is normally made in the absence of insurance;

(8) dental care or treatment;

(9) eye glasses, hearing aids and examination for the prescription or fittingthereof;

(10) rest cures, custodial care, transportation and routine physical examinations ; ;

(11) territorial limitations ; *outside the United States;*

(12) services or care not medically necessary. Policies, however, may not contain when issued, limitations or exclusions of the type enumerated in items (5), (6), (10), (11) or (12) above that are more restrictive than those of Medicare. Policies may exclude coverage for any expenses to the extent of any benefit available to the insured under Medicare.

D. Waivers to exclude, limit or reduce coverage or benefits for specifically named or described preexisting diseases or physical conditions shall not be used.

E. Policy provisions precluded in this section shall not be construed as a limitation on the authority of the Commission to disapprove other policy provisions in accordance with § ~~38.1-362.13B~~ *§ 38.2-3518.B* which, in the opinion of the Commission, are unjust, unfair, or unfairly discriminatory to the policyholder, beneficiary, or any person insured under the policy.

F. No Medicare supplement insurance policy, contract, or certificate in force in the Commonwealth shall contain benefits which duplicate benefits provided by Medicare.

Section 8. Medicare Supplement Minimum Benefit Standards.

No policy shall be *advertised, solicited,* delivered or issued for delivery in this ~~State~~ *Commonwealth* as a Medicare supplement policy which does not meet the following minimum benefit standards. No policy may be marketed or labeled as a Medicare supplement policy nor may the terms "Medicare supplement," "Medigap" and words of similar import be used unless the policy meets the minimum benefit standards required by this Regulation. These are minimum benefit standards and do not preclude the inclusion of other benefits which are not inconsistent with these standards.

~~Minimum Benefit Standards~~

~~All Medicare supplement policies must fit into one of three categories:~~

~~Medicare Supplement 1~~

~~Medicare Supplement 2~~

~~Medicare Supplement 3~~

~~Medicare Supplement 1 is the minimum benefit standard required by this Regulation.~~

~~(1) A policy designated as MEDICARE SUPPLEMENT 1 must at least include the following minimum benefits:~~

~~(a) Coverage of Part A Medicare eligible expenses for hospitalization to the extent not covered by Medicare from the 61st day through the 90th day in any Medicare benefit period;~~

~~(b) Coverage of Part A Medicare eligible expenses incurred as daily hospital charges during use of Medicare's lifetime hospital inpatient reserve days;~~

~~(c) Upon exhaustion of all Medicare hospital inpatient coverage, including the lifetime reserve days, coverage of 90% of all Medicare Part A eligible expenses for hospitalization not covered by Medicare subject to a lifetime maximum benefit of an additional 365 days;~~

~~(d) Coverage of 20% of the amount of Medicare eligible expenses under Part~~

~~B regardless of hospital confinement, subject to a maximum calendar year out-of-pocket deductible of $200 of such expenses and to a maximum benefit of at least $5,000 per calendar year.~~

~~(2) A policy designated as MEDICARE SUPPLEMENT 2 must at least include the following minimum benefits:~~

~~(a) Coverage of Part A Medicare deductible;~~

~~(b) Coverage of Part A Medicare eligible expenses for hospitalization to the extent not covered by Medicare from the 61st day through the 90th day in any Medicare benefit period;~~

~~(c) Coverage of Part A Medicare eligible expenses incurred as daily hospital charges during use of Medicare's life-time hospital inpatient reserve days;~~

~~(d) Upon exhaustion of all Medicare hospital inpatient coverage, including the lifetime reserve days, coverage of 90% of all Medicare Part A eligible expenses for hospitalization not covered by Medicare subject to a lifetime maximum benefit of an additional 365 days;~~

~~(e) Coverage of Part A Medicare eligible expenses for extended care services in a skilled nursing facility during the first 100 days to the extent not covered by Medicare;~~

~~(f) Coverage of 20% of the amount of Medicare eligible expenses under Part~~

~~B regardless of hospital confinement, subject to a maximum calendar year out-of-pocket deductible of $100 of such expenses and to a maximum benefit of at least $10,000 per calendar year.~~

~~(3) A policy designated as MEDICARE SUPPLEMENT 3 must at least include the following minimum benefits:~~

~~(a) Coverage of the Part A Medicare deductible;~~

~~(b) Coverage of Part A Medicare eligible expenses for hospitalization to the extent not covered by Medicare from the 61st day through the 90th day in any Medicare benefit period;~~

~~(c) Coverage of Part A Medicare eligible expenses incurred as daily hospital charges during use of Medicare's lifetime hospital inpatient reserve days;~~

~~(d) Upon exhaustion of all Medicare hospital inpatient coverage, including the lifetime reserve days, coverage of 90% of all Medicare Part A eligible expenses for hospitalization not covered by Medicare subject to a lifetime maximum benefit of an additional 365 days;~~

~~(e) Coverage of Part A Medicare eligible expenses for extended care services in a skilled nursing facility during the first 100 days to the extent not covered by Medicare;~~

~~(f) Coverage of 20% of the amount of Medicare eligible expenses under Part B regardless of hospital confinement, less the Medicare Part B deductible;~~

~~(g) Coverage for at least 80% of prescription drug expenses subject to a maximum calendar year deductible of $100;~~

(1) Coverage for either all or none of the Medicare Part A inpatient hospital deductible amount.

(2) Coverage for the daily copayment amount of Medicare Part A eligible expenses for the first eight (8) days per calendar year incurred for skilled nursing facility care.

(3) Coverage for the reasonable cost of the first three (3) pints of blood or equivalent quantities of packed red blood cells as defined under federal regulations under Medicare Part A unless replaced in accordance with federal regulations.

(4) (a) Until January 1, 1990, coverage for twenty percent of the amount of Medicare eligible expenses under Part B regardless of hospital confinement, subject to a maximum calendar year out-of-pocket deductible of $200 of such expenses and to a maximum benefit of at least $5,000 per calendar year.

(b) Effective January 1, 1990, coverage for the copayment amount (20 percent) of Medicare eligible expenses excluding outpatient prescription drugs under Medicare Part B regardless of hospital confinement up to the maximum out-of-pocket amount for Medicare Part B after the Medicare deductible amount.

(5) Effective January 1, 1990, coverage under Medicare Part B for the reasonable cost of the first three (3) pints of blood (or equivalent quantities of packed red blood cells, as defined under federal regulations), unless replaced in accordance with federal regulations.

(6) Effective January 1, 1990, coverage for the copayment amount (20 percent) of Medicare eligible expenses for covered home intravenous (IV) therapy drugs (as determined by the Secretary of Health and Human Services) subject to the Medicare outpatient prescription drug deductible amount, if applicable.

(7) Effective January 1, 1990, coverage for the

copayment amount of Medicare eligible expenses for outpatient drugs used in immunosuppressive therapy subject to the Medicare outpatient prescription drug deductible, if applicable.

Section 9. Standards for Claims Payment.

(A) Every entity providing Medicare supplement policies or contracts shall comply with all provisions of Section 4081 of the Omnibus Budget Reconciliation Act of 1987 (P.L. 100-203).

(B) Compliance with the requirements set forth in subsection A above must be certified on the Medicare supplement insurance experience reporting form.

Section 10. Loss Ratio Standards.

Medicare supplement policies shall return to policyholders in the form of aggregate benefits under the policy, for the entire period for which rates are computed to provide coverage, on the basis of incurred claims experience and earned premiums for such period and in accordance with accepted actuarial principles and practices:

A. At least 75 percent of the aggregate amount of premiums earned in the case of group policies, and

B. At least 60 percent of the aggregate amount of premiums earned in the case of individual policies. All filings of rates and rating schedules shall demonstrate that actual and expected losses in relation to premiums comply with the requirements of this section.

C. Every entity providing Medicare supplement policies in this Commonwealth shall file annually its rates, rating schedule and supporting documentation including ratios of incurred losses to earned premiums by number of years of policy duration demonstrating that it is in compliance with the foregoing applicable loss ratio standards and that the period for which the policy is rated is reasonable in accordance with accepted actuarial principles and experience. For the purposes of this section as well as Rules Governing the Filing of Rates for Individual and Certain Group Accident and Sickness Policy Forms, a rate filing must be made whenever premiums are changed. Premiums may not be changed to correspond with changes in Medicare coverage without demonstrating that the loss ratio standards in subsections A and B of this section are being met.

D. As soon as practicable, but no later than sixty (60) days prior to the effective date of Medicare benefit changes required by the Medicare Catastrophic Coverage Act of 1988, every insurer, health services plan or other entity providing Medicare supplement insurance or contracts in this Commonwealth (except employers subject to the requirements of Section 421 of the Medicare Catastrophic Coverage Act of 1988), shall file with the Commission in accordance with the applicable filing procedures of this Commonwealth:

(1) Appropriate premium adjustments necessary to produce loss ratios as originally anticipated for the applicable policies or contracts. Such supporting documents as necessary to justify the adjustment shall accompany the filing. Every insurer, health services plan or other entity providing Medicare supplement insurance or benefits to a resident of this Commonwealth pursuant to Chapter 36 shall make such premium adjustments as are necessary to produce an expected loss ratio under such policy or contract as will conform with minimum loss ratio standards for Medicare supplement policies and which are expected to result in a loss ratio at least as great as that originally anticipated in the rates used to produce current premiums by the insurer, health services plan or other entity for such Medicare supplement insurance policies or contracts. No premium adjustment which would modify the loss ratio experience under the policy other than the adjustments described herein shall be made with respect to a policy at any time other than upon its renewal date or anniversary date. Premium adjustments shall be in the form of refunds or premium credits and shall be made no later than upon renewal if a credit is given, or within sixty (60) days of the renewal date or anniversary date if a refund is provided to the premium payer. Premium adjustments shall be calculated for the period commencing with Medicare benefit changes.

(2) Any appropriate riders, endorsements or policy forms needed to accomplish the Medicare supplement insurance modifications necessary to eliminate benefit duplications with Medicare. Any such riders, endorsements or policy forms shall provide a clear description of the Medicare supplement benefits provided by the policy or contract.

Section ~~9~~ 11. Required Disclosure Provisions.

A. General Rules for All Policies:

(1) Each policy shall include a renewal, continuation or nonrenewal provision. The language or specifications of such provision must be consistent with the type of contract to be issued. Such provision shall be appropriately captioned, shall appear on the first page of the policy, and shall clearly state the duration, where limited, of renewability and the duration of the term of coverage for which the policy is issued and for which it may be renewed.

(2) Except for riders or endorsements by which the insurer fulfills a request made in writing by the policyholder or exercises a specifically reserved right under the policy ; *or is required to reduce or eliminate benefits to avoid duplication of Medicare benefits;* all riders or endorsements added to a policy after date of issue or at reinstatement or renewal

which reduce or eliminate benefits or coverage in the policy shall require signed acceptance by the policyholder. After date of policy issue, any rider or endorsement which increases benefits or coverage with an accompanying increase in premium during the policy term must be agreed to in writing signed by the insured, ~~except~~ *unless the benefits are required by the minimum standards for Medicare supplement insurance policies or* if the increased benefit or coverage is required by law or regulation.

(3) Where a separate additional premium is charged for benefits provided in connection with riders or endorsements, such premium charge shall be set forth in the policy *and the accompanying outline of coverage.*

(4) A policy which provides for the payment of benefits based on standards described as "usual and customary," "reasonable and customary," or words of similar import shall include an explanation of such terms.

(5) If a policy contains any limitations with respect to preexisting conditions such limitations must appear as a separate paragraph of the policy and be labeled as "Preexisting Condition Limitations."

(6) If a policy contains a conversion privilege, it shall comply, in substance, with the following:

(a) the caption of the provision shall be "Conversion Privilege," or words of similar import;

(b) the provision shall indicate the persons eligible for conversion, the circumstances applicable to the conversion privilege, including any limitations on the conversion, and the person by whom the conversion privilege may be exercised;

(c) the provision shall specify the benefits to be provided on conversion or may state that the converted coverage will be as provided on a policy form then being used by the insurer for that purpose.

(7) Insurers issuing accident and sickness policies, certificates or subscriber contracts, which provide hospital or medical expense coverage on an expense incurred or indemnity basis other than incidentally, to persons eligible for Medicare by reason of age, shall provide a Medicare supplement buyer's guide as required by this section. ~~Until the Commission prescribes an alternative form, the~~ *The* buyer's guide will be in the form of the *most current* pamphlet developed jointly by the National Association of Insurance Commissioners and the Health Care Financing Administration and entitled "Guide to Health Insurance for People with Medicare." Delivery of the buyer's guide shall be made whether or not such policy, certificate, or subscriber contract meets the minimum standards as set forth in this Regulation, or whether or not such policy, certificate or subscriber contract is advertised, solicited or issued as a Medicare supplement policy as defined in this Regulation. Except in the case of direct response insurers, delivery of the buyer's guide shall be made at the time of application and acknowledgement *of receipt of certification of delivery* of the buyer's guide shall be provided to the insurer. Direct response insurers shall deliver the buyer's guide not later than at the time the policy, certificate or subscriber contract is delivered.

~~(8) Insurers issuing Medicare supplement policies shall provide the Medicare supplement buyer's guide subject to the requirements in (7) above.~~

B. Notice Requirements.

(1) As soon as practicable, but no later than thirty (30) days prior to the annual effective date of any Medicare benefit changes, every insurer, health services plan or other entity providing Medicare supplement insurance or benefits to a resident of this Commonwealth shall notify its policyholders, contract holders and certificate holders of modifications it has made to Medicare supplement insurance policies or contracts in a format acceptable to the Commission. For the years 1989 and 1990 and if prescription drugs are covered in 1991, such notice shall be in a format prescribed by the Commission or in the format prescribed in Appendices A, B and C if no other format is prescribed by the Commission. In addition, such notice shall:

(a) Include a description of revisions to the Medicare program and a description of each modification made to the coverage provided under the Medicare supplement insurance policy or contract, and

(b) Inform each covered person as to when any premium adjustment is to be made due to changes in Medicare.

(2) The notice of benefit modifications and any premium adjustments shall be in outline form and in clear and simple terms so as to facilitate comprehension.

(3) Such notices shall not contain or be accompanied by any solicitation.

~~B~~ *C* . ~~Specified Rules for Policies Which Comply with Section~~ 8 ~~Policy Labeling:~~

~~(1) Each policy shall be labeled with the proper designation as prescribed in Section 8.~~

~~(2) Each shall contain the following caption: The Virginia Bureau of Insurance has established three~~

~~categories of Medicare supplement insurance and minimum benefit standards for each. They are Medicare Supplement 1 (the least comprehensive), Medicare Supplement 2 (more comprehensive) and Medicare Supplement 3 (the most comprehensive). Review the outline of coverage or other information provided you for an explanation of the differences between this policy and policies in the other categories.~~

~~(3)~~ *Every Medicare supplement policy must be clearly labeled as a Medicare Supplement Policy.* The ~~caption and the appropriate designation~~ *label* must appear on the first page of the policy. The ~~designation may be printed, clearly stamped or printed on gum labels. The designation shall be printed in capitals in clear, contrasting ink in 18-point type of a style in general use, and the caption~~ *label* shall be printed in a clear contrasting ink in ~~12~~ *18* -point type of a style in general use.

~~C~~ *D.* Notice Regarding Policies or Subscriber Contracts Which Are Not Medicare Supplement Policies.

Any accident and sickness insurance policy or subscriber contract other than a Medicare supplement policy or subscriber contract; basic hospital expense policy or subscriber contract; basic medical-surgical expense policy or subscriber contract; major medical expense policy or subscriber contract; disability income protection policy *; income replacement policy* or subscriber contract; or single premium nonrenewable policy or subscriber contract issued for delivery in this state to persons eligible for Medicare by reason of age shall notify insureds under the policy or subscriber contract that the policy or subscriber contract is not a Medicare supplement policy. Such notice shall either be printed or attached to the first page of the outline of coverage delivered to insureds under the policy or subscriber contract; or if no outline of coverage is delivered, to the first page of the policy, certificate or subscriber contract delivered to insureds. Such notice shall be in not less than twelve (12) point type and shall contain the following language:

"THIS (POLICY, CERTIFICATE OR SUBSCRIBER CONTRACT) IS NOT A MEDICARE SUPPLEMENT (POLICY OR CERTIFICATE). If you are eligible for Medicare review the Medicare Supplement Buyer's Guide available from the company."

~~D~~ *E.* Outline of Coverage Requirements for All Medicare Supplement Policies:

(1) Insurers issuing Medicare supplement policies subject to this Regulation shall deliver an outline of coverage to the applicant at the time application is made and, except for a direct response policy, acknowledgement of receipt or certification of delivery of such outline of coverage shall be provided to the insurer; and

(2) If an outline of coverage was delivered at the time of application and the individual policy or contract is issued on a basis which would require revision of the outline, a sub~~"~~itute outline of coverage properly describing the policy or contract must accompany such policy or contract when it is delivered and contain the following statement, in no less than twelve (12) point type, immediately above the company name: "NOTICE: Read this outline of coverage carefully. It is not identical to the outline of coverage provided upon application and the coverage originally applied for has not been issued."

~~E~~ *F.* Outline of Coverage for All Medicare Supplement Policies:

An outline of coverage shall be issued in substantially the following form as prescribed below: The term "certificate" should be substituted for the word "policy" throughout the outline of coverage where appropriate. The items included in the outline of coverage must appear in the sequence prescribed:

(COMPANY NAME)

OUTLINE OF MEDICARE

SUPPLEMENT COVERAGE

(1) Read your Policy Carefully - This outline of coverage provides a very brief description of the important features of your policy. This is not the insurance contract and only the actual policy provisions will control. The policy itself sets forth in detail the rights and obligations of both you and your insurance company. It is, therefore, important that you READ YOUR POLICY CAREFULLY!

(2) Medicare Supplement Coverage - Policies of this category are designed to supplement Medicare by covering some hospital, medical, and surgical services which are partially covered by Medicare. Coverage is provided for hospital inpatient charges and some physician charges, subject to any deductibles and copayment provisions which may be in addition to those provided by Medicare, and subject to other limitations which may be set forth in the policy. The policy does not provide benefits for custodial care such as help in walking, getting in and out of bed, eating, dressing, bathing and taking medicine (delete if such coverage is provided).

(3) (a) (for agents:)
Neither (insert company's name) nor its agents are connected with Medicare.

(b) (for direct response:)
(insert company's name) is not connected with Medicare.

(4) (A brief summary of the major benefit gaps in

Medicare Parts A and B with a parallel description of supplemental benefits, including dollar amounts, *and indexed copayments or deductibles, as appropriate,* provided by the Medicare supplement coverage in the following order:)

SERVICE	BENEFIT	MEDICARE PAYS	THIS POLICY PAYS	YOU PAY
HOSPITALIZATION: Semiprivate room and board, general nursing and miscellaneous hospital services and supplies Includes meals, special care units, drugs, lab tests, diagnostic x-rays, medical supplies, operating and recovery room, anesthesia and rehabilitation services.	First 60 days	All but ($180)		
	61st to 90th day	All but ($45) a day		
	91st to 150th day	All but ($90) a day		
	Beyond 150 days	Nothing		
POSTHOSPITAL SKILLED NURSING CARE: In a facility approved by Medicare, you must have been in a hospital for at least three days and enter the facility within 14 days after hospital discharge.	First 20 days	100% of costs		
	Additional 80 days	All but ($22.50) a day		
	Beyond 100 days	Nothing		
MEDICAL EXPENSE	Physician's services, inpatient and outpatient medical services and supplies at a hospital, physical and speech therapy and ambulance.	80% of reasonable charge [after ($60) deductible]		

DESCRIPTION	THIS POLICY PAYS	YOU PAY
SERVICE		
PART A		
INPATIENT HOSPITAL SERVICES:		
Semi-Private Room & Board		
Miscellaneous Hospital Services & Supplies, such as Drugs, X-Rays, Lab Tests & Operating Room		
SKILLED NURSING FACILITY CARE		
BLOOD		
PARTS A & B		
Home Health Services		
PART B		
MEDICAL EXPENSE:		
Services of a Physician/Outpatient Services		
Medical Supplies other than Prescribed Drugs		
BLOOD		
MAMMOGRAPHY SCREENING		
OUT-OF-POCKET MAXIMUM		
PRESCRIPTION DRUGS		
MISCELLANEOUS		
Home IV-Drug Therapy		
Immunosuppressive Drugs		
Respite Care Benefits		

IN ADDITION TO THIS OUTLINE OF COVERAGE, [INSURANCE COMPANY NAME] WILL SEND AN ANNUAL NOTICE TO YOU 30 DAYS PRIOR TO THE EFFECTIVE DATE OF MEDICARE CHANGES WHICH WILL DESCRIBE THESE CHANGES AND THE CHANGES IN YOUR MEDICARE SUPPLEMENT COVERAGE.

[This chart contains all new language.]

(5) The following charts shall accompany the outline of coverage:

Part A
MEDICARE BENEFITS IN

Service	1988	1989	1990	1991
PART A				
Inpatient Hospital Services:	All but $540 for first 60 days/benefit period	All but $560 deductible for an unlimited number of days/calendar year	All but Part A deductible for an unlimited number of days/calendar year	All but Part A deductible for an unlimited number days/calendar year
Semi-Private Room & Board	All but $135 a day for 61st-90th days/benefit period			
Miscellaneous Hospital Services & Supplies, such as Drugs, X-Rays, Lab Tests & Operating Room	All but $270 a day for 91st-150th days (if the individual chooses to use 60 nonrenewable lifetime reserve days)			
	Nothing beyond 150 days			
Skilled Nursing Facility Care	100% of costs for 1st 20 days (after a 3 day prior hospital confinement)	80% of Medicare reasonable costs for 1st 8 days per calendar year w/out prior hospitalization requirement	80% for 1st 8 days/ calendar year	80% for 1st 8 days/ calendar year
	All but $67.50 a day for 1st-100th days			
	Nothing beyond 100 days	100% of costs thereafter up to 150 days/calendar year	100% for 9th-150th day/calendar year	100% for 9th-150th day/calendar year
Blood	Pays all costs except nonreplacement fees (blood deductible) for first 3 pints in each benefit period	Pays all costs except payment of deductible (equal to costs for 1st 3 pints) each calendar year. Part A blood deductible reduced to the extent paid under Part B	All but blood deductible (equal to costs for 1st 3 pints)	All but blood deductible (equal to costs for 1st 3 pints)
Parts A & B				
Home Health Services	Intermittent skilled nursing care and other services in the home (daily skilled nursing care for up to 21 days or longer in some cases)--100% of covered services and 80% of durable medical equipment under both Parts A & B	Same as '88	Intermittent skilled nursing care for up to 7 days a week for up to 38 days allowing for continuation of services under unusual circumstances; other services,--100% of covered services and 80% of durable medical equipment under both Parts A & B	Same as '90

[This chart contains all new language.]

Part B
MEDICARE BENEFITS IN

Service	1988	1989	1990	1991
PART B				
Medical Expense: Services of a Physician/Outpatient Services Medical Supplies Other than Prescribed Drugs	80% of reasonable charges after an annual $75 deductible	80% after annual $75 deductible	80% of reasonable charges after $75 annual deductible until out-of-pocket maximum is reached. 100% of reasonable charges are covered for remainder of calendar year	Same as '90
Blood	80% of costs except non-replacement fees (blood deductible) for 1st 3 pints in each benefit period after $75 deductible	Pays 80% of all costs except payment of deductible (equal to costs for 1st 3 pints) each calendar year	Same as '89	Same as '89
Mammography Screening			80% of approved charge for elderly & disabled Medicare beneficiaries •exams available every other year for women 65 & over	Same as '90
Out-of-Pocket Maximum			$1,370 consisting of Part B $75 deductible, Part B blood deductible and 20% co-insurance	$1,370 will be adjusted annually by Secretary of Health and Human Services
Outpatient Prescription Drugs			There is a $550 total deductible applicable to home IV drug and immunosuppressive drug therapies as noted below	Covered after $600 deductible subject to 50% co-insurance
Home IV-Drug Therapy			80% of IV therapy drugs subject to $550 deductible (deductible waived if home therapy is a continuation of therapy initiated in a hospital	80% of IV therapy drugs subject to standard drug deductible (deductible waived if home therapy is a continuation of therapy drugs initiated in a hospital
Immunosuppressive Drug Therapy	80% of costs during 1st year following a covered organ transplant (no special drug deductible; only the regular Part B deductible)	Same as '88	Same as '88 for 1st year following covered transplant; 50% of costs during 2nd and following years (subject to $550 deductible)	Same as '90 (subject to $600 deductible)
Respite Care Benefit			In-home care for chronically dependent individual covered for up to 80 hours after either the out-of-pocket limit or the outpatient drug deductible has been met	Same as '90

[This chart contains all new language.]

~~(5)~~ *(6)* (Statement that the policy does or does not cover the following:)

(a) Private duty nursing.

(b) Skilled nursing home care costs (beyond what is covered by Medicare).

(c) Custodial nursing home care costs.

(d) Intermediate nursing home care costs.

(e) Home health care (above number of visits covered by Medicare).

(f) Physicians charges (above Medicare's reasonable charge).

(g) Drugs (other than prescription drugs furnished during a hospital or skilled nursing facility stay).

(h) Care received outside of U.S.A.

(i) Dental care or dentures, checkups, routine immunizations, cosmetic surgery, routine foot care, examinations for the cost of eyeglasses or hearing aids.

~~(6)~~ *(7)* (A description of any policy provision which excludes, eliminates, resists, reduces, limits, delays, or in any other manner operates to qualify payment of the benefits described in (4) above, including conspicuous statements:)

(a) (That the chart summarizing Medicare benefits only briefly describes such benefits.)

(b) (That the Health Care Financing Administration or its Medicare publications should be consulted for further details and limitations.)

~~(7)~~ *(8)* (A description of policy provisions respecting renewability or continuation of coverage, including any reservation of right to change premium.)

~~(8)~~ *(9)* (The amount of premium for this policy.)

~~(9) (Companies have the option of including the following disclosure information in The Outline of Coverage or using a supplementary form.)~~

~~MEDICARE SUPPLEMENT CATEGORIES~~

~~All individual Medicare supplement policies sold in Virginia must fit into one of three categories: Medicare Supplement 1 (the least comprehensive), Medicare Supplement 2 (more comprehensive) and Medicare Supplement 3 (the most comprehensive).~~

~~These categories were set up as a guide for you. Select the category that provides the range of benefits that you~~

~~want. Shop around and compare benefits and premium costs for policies in that category. Then choose the policy that best suits your needs and budget.~~

~~The following chart explains the coverages provided by each category:~~

CAUTION: This chart outlines required minimum benefits for each category. It does not show the actual benefits provided in your policy. Review the Outline of Coverage for additional policy benefits.

	Medicare Supplement 1	Medicare Supplement 2	Medicare Supplement 3
PART A HOSPITALIZATION—			
Initial Deductible ($180*)	No	Yes	Yes
61st - 90th day ($45/day*)	Yes	Yes	Yes
91st - 150th day ($90/day*)	Yes	Yes	Yes
Beyond 150 days (90% of Part A hospital expenses - 365 day lifetime maximum)	Yes	Yes	Yes
POSTHOSPITAL SKILLED NURSING CARE—			
21st - 100th day ($22.50/day*)	No	Yes	Yes
Beyond 100th day	No	No	No
PART B MEDICAL EXPENSES—			
20% of all eligible expenses	Yes (Subject to maximum CY out-of-pocket deductible of $200) Maximum CY benefit of at least $5,000	Yes (Subject to maximum CY out-of-pocket deductible of $100) Maximum CY benefit of at least $10,000	Yes (Subject to maximum CY out-of-pocket deductible of $60) No maximum CY benefit
Prescription Drugs	No	No	Yes (80% of cost after $100 maximum CY deductible)

* These figures are for 1980 and are subject to change. Medicare supplement policy benefits which are designed to cover cost sharing amounts under Medicare will be changed automatically to coincide with any increases in applicable Medicare deductible and co-payment charges. Premiums may be changed to correspond with such changes.

CY = Calendar Year

SECTION ~~10~~ *12.* Requirements for Replacement.

A. Application forms shall include a question designed to elicit information as to whether the insurance to be issued is intended to replace any other accident and sickness insurance presently in force.

B. Upon determining that a sale will involve replacement, an insurer, other than a direct response insurer, or its agent shall furnish the applicant, prior to issuance or delivery of the policy, the notice described in (C) below. An insurer may satisfy this requirement by printing the required replacement notice on the application. One (1) copy of such notice or section of the application containing such notice shall be retained by the applicant and an additional copy signed by the applicant shall be retained by the insurer. A direct response insurer shall deliver to the applicant upon issuance of the policy, the notice described in (D) below.

C. The notice required by (B) above for an insurer, other than a direct response insurer, shall provide, in substantially the following form:

NOTICE TO APPLICANT REGARDING
REPLACEMENT OF ACCIDENT AND SICKNESS
INSURANCE

According to your application, you intend to lapse or otherwise terminate existing accident and sickness insurance and replace it with a policy to be issued by (insert Company Name) Insurance Company. *Your new policy provides 30 days within which you may decide without cost whether you desire to keep the policy.* For your own information and protection, you should be aware of and seriously consider certain factors which may affect the insurance protection available to you under the new policy.

(1) Health conditions which you may presently have, (pre-existing conditions) may not be immediately or fully covered under the new policy. This could result in denial or delay of a claim for benefits under the new policy, whereas a similar claim might have been payable under your present policy.

(2) You may wish to secure the advice of your present insurer or its agent regarding the proposed replacement of your present policy. This is not only your right, but it is also in your best interests to make sure you understand all the relevant factors involved in replacing your present coverage.

(3) If, after due consideration, you still wish to terminate your present policy and replace it with new coverage, be certain to truthfully and completely answer all questions on the application concerning your medical/health history. Failure to include all material medical information on an application may provide a basis for the company to deny any future claims and to refund your premium as though your policy had never been in force. After the application has been completed and before you sign it, re-read it carefully to be certain that all information has been properly recorded. The above "Notice to Applicant" was delivered to me on:

(Date)

(Applicant's Signature)

D. The notice required by (B) above for a direct response insurer shall be as follows:

NOTICE TO APPLICANT REGARDING
REPLACEMENT OF ACCIDENT AND SICKNESS
INSURANCE

According to your application, you intend to lapse or otherwise terminate existing accident and sickness insurance and replace it with the policy delivered herewith issued by (insert Company Name) Insurance Company. Your new policy provides 30 days within which you may decide without cost whether you desire to keep the policy. For your own information and protection you should be aware of and seriously consider certain factors which may affect the insurance protection available to you under the new policy.

(1) Health conditions which you may presently have, (pre-existing conditions) may not be immediately or fully covered under the new policy. This could result in denial or delay of a claim for benefits under the new policy, whereas a similar claim might have been payable under your present policy.

(2) You may wish to secure the advice of your present insurer or its agent regarding the proposed replacement of your present policy. This is not only your right, but it is also in your best interests to make sure you understand all the relevant factors involved in replacing your present coverage.

(3) (To be included only if the application is attached to the policy.) If, after due consideration, you still wish to terminate your present policy and replace it with new coverage, read the copy of the application attached to your new policy and be sure that all questions are answered fully and correctly. Omissions or misstatements in the application could cause an otherwise valid claim to be denied. Carefully check the application and write to (insert Company Name and Address) within 10 days if any information is not correct and complete, or if any past medical history has been left out of the application.

(Company Name)

Section 13. Filing Requirements for Advertising.

Every insurer, health services plan or health maintenance organization providing Medicare supplement

insurance or benefits in this Commonwealth shall file with the Commission a copy of any medicare supplement advertisement intended for use in this Commonwealth whether through written, radio or television medium.

Section ~~11~~ *14.* Severability.

If any provision of this Regulation or the application thereof to any person or circumstance is for any reason held to be invalid, the remainder of the Regulation and the application of such provisions to other persons or circumstances shall not be affected thereby.

APPENDIX A

[COMPANY NAME]

NOTICE OF CHANGES IN MEDICARE AND YOUR MEDICARE SUPPLEMENT INSURANCE - 1989

YOUR HEALTH CARE BENEFITS PROVIDED BY THE FEDERAL MEDICARE PROGRAM WILL CHANGE BEGINNING JANUARY 1, 1989. ADDITIONAL CHANGES WILL OCCUR ON MEDICAL BENEFITS IN FOLLOWING YEARS. THE MAJOR CHANGES ARE SUMMARIZED BELOW. THESE CHANGES WILL AFFECT HOSPITAL, MEDICAL AND OTHER SERVICES AND SUPPLIES PROVIDED UNDER MEDICARE. BECAUSE OF THESE CHANGES, YOUR MEDICARE SUPPLEMENT COVERAGE PROVIDED BY [COMPANY NAME] WILL CHANGE, ALSO. THE FOLLOWING OUTLINE BRIEFLY DESCRIBES THE MODIFICATIONS IN MEDICARE AND IN YOUR MEDICARE SUPPLEMENT COVERAGE. PLEASE READ CAREFULLY!

[A BRIEF DESCRIPTION OF THE REVISIONS TO MEDICARE PARTS A & B WITH A PARALLEL DESCRIP. OF SUPPLEMENTAL BENEFITS WITH SUBSEQUENT CHANGES, INCLUDING DOLLAR AMOUNTS, PROVIDI BY THE MEDICARE SUPPLEMENT COVERAGE IN SUBSTANTIALLY THE FOLLOWING FORMAT.]

SERVICES	MEDICARE BENEFITS		YOUR MEDICARE SUPPLEMENT COVEI	
	Medicare Now Pays Per Benefit Period	Effective January 1, 1989 Medicare Will Pay Per Calendar Year	Your 1988 Coverage Per Benefit Period	Effective January 1, Your Coverage Will Per Calendar Year
MEDICARE PART A SERVICES AND SUPPLIES	First 60 days - All but $540	Unlimited number of hospital days after $[560] deductible		
	61st to 90 day - All but $135 a day			
	91st to 150 day - All but $270 a day (if individual chooses to use 60 nonrenewable lifetime reserve days)			
	Beyond 150 days - Nothing			
SKILLED NURSING FACILITY CARE	Requires a 3 day prior stay and enter the facility generally within 30 days after hospital discharge	There is no prior confinement requirement for this benefit		
	First 20 days - 100% of costs	First 8 days - All but $[22.00] a day		
	21st through 100th day All but $67.50 a day	9th through 150th day 100% of costs		
	Beyond 100 days - Nothing	Beyond 150 days - Nothing		

SERVICES	MEDICARE BENEFITS		YOUR MEDICARE SUPPLEMENT COVERAGE	
	Medicare Now Pays Per Calendar Year	In 1989 Medicare Part B Pays the Same as in 1988	Your Policy Now Pays	Effective January 1 ---- Your Policy Will P:
MEDICARE PART B SERVICES AND SUPPLIES	80% of allowable charges (after $75 deductible)	NOTE: Medicare benefits change on January 1, 1990 as follows: 80% of allowable charges (after $[75] deductible) until an annual Medicare Catastrophic Limit is met. 100% of allowable charges for the remainder of the calendar year. The limit in 1990 is $1370* and will be adjusted on an annual basis.		
PRESCRIPTION DRUGS	Inpatient prescription drugs only.	In 1989 Medicare covers inpatient prescription drugs only. Effective January 1, 1990 Per Calendar Year 80% of allowable charges for home intravenous (IV) therapy drugs and 50% of allowable charges for immunosuppressive drugs after ($550 in 1990) calendar year deductible is met. Effective January 1, 1991 Per Calendar Year inpatient prescription drugs: 50% of allowable charges for all other outpatient prescription drugs after a $600 calendar year deductible is met (the deductible will change). Coverage will increase to 60% of allowable charges in 1992 and to 80% of allowable charges from 1993 on.		

*Expenses that count toward the Part B Medicare Catastrophic Limit include: the Part B deductible and copayment charges and the Part B blood deductible charges.

[ANY ADDITIONAL BENEFITS]

[Describe any coverage provisions changing due to Medicare modifications.]

[Include information about premium adjustments that may be necessary due to changes in Medicare benefits, or when premium changes, information will be sent.]

THIS CHART SUMMARIZING THE CHANGES IN YOUR MEDICARE BENEFITS AND IN YOUR MEDICARE SUPPLEMENT PROVIDED BY [COMPANY] ONLY BRIEFLY DESCRIBES SUCH BENEFITS. FOR INFORMATION ON YOUR MEDICARE BENEFITS CONTACT YOUR SOCIAL SECURITY OFFICE OR THE HEALTH CARE FINANCING ADMINISTRATION. FOR INFORMATION ON YOUR MEDICARE SUPPLEMENT [Policy] CONTACT:

[COMPANY OR FOR AN INDIVIDUAL POLICY - NAME OF AGENT] [ADDRESS/PHONE NUMBER]

[This Appendix contains all new language.]

APPENDIX B

[COMPANY NAME]

NOTICE OF CHANGES IN MEDICARE AND YOUR MEDICARE SUPPLEMENT INSURANCE - 1990

YOUR HEALTH CARE BENEFITS PROVIDED BY THE FEDERAL MEDICARE PROGRAM WILL CHANGE BEGINNING JANUARY 1, 1990. ADDITIONAL CHANGES WILL OCCUR IN MEDICAL BENEFITS IN FOLLOWING YEARS. THE MAJOR CHANGES ARE SUMMARIZED BELOW. THESE CHANGES WILL AFFECT HOSPITAL, MEDICAL AND OTHER SERVICES AND SUPPLIES PROVIDED UNDER MEDICARE. BECAUSE OF THESE CHANGES, YOUR MEDICARE SUPPLEMENT COVERAGE PROVIDED BY [COMPANY NAME] WILL CHANGE, ALSO. THE FOLLOWING OUTLINE BRIEFLY DESCRIBES THE MODIFICATIONS IN MEDICARE AND IN YOUR MEDICARE SUPPLEMENT COVERAGE. PLEASE READ THIS CAREFULLY!

[A BRIEF DESCRIPTION OF THE REVISIONS TO MEDICARE PARTS A & B WITH A PARALLEL DESCRIPTION OF SUPPLEMENTAL BENEFITS WITH SUBSEQUENT CHANGES, INCLUDING DOLLAR AMOUNTS, PROVIDED BY THE MEDICARE SUPPLEMENT COVERAGE IN SUBSTANTIALLY THE FOLLOWING FORMAT.]

SERVICES	MEDICARE BENEFITS		YOUR MEDICARE SUPPLEMENT COVERAGE	
	Medicare Now Pays Per Calendar Year	Effective January 1, 1990 Medicare Will Pay Per Calendar Year	Your Coverage Now Pays Per Calendar Year	Effective January 1, 1990 Your Coverage Will Pay Per Calendar Year
MEDICARE PART A SERVICES AND SUPPLIES	Unlimited number of hospital days after $[560] deductible			
SKILLED NURSING FACILITY CARE	There is no prior confinement requirement for this benefit First 8 days - All but $[ ] a day 9th through 150 day - 100% of costs Beyond 150 days - Nothing			

SERVICES	MEDICARE BENEFITS		YOUR MEDICARE SUPPLEMENT COVERAGE	
	Medicare Now Pays Per Calendar Year	Effective January 1, 1990 Medicare Will Pay Per Calendar Year	Your Coverage Now Pays Per Calendar Year	Effective January 1, 1990 Your Coverage Will Pay Per Calendar Year
MEDICARE PART B SERVICES AND SUPPLIES	80% of allowable charges (after $75 deductible)	80% of allowable charges (after $75 deductible) until an annual Medicare Catastrophic Limit* is met. 100% of allowable charges for the remainder of the calendar year. The limit in 1990 is $1370 and will be adjusted on an annual basis.		

APPENDIX C

[COMPANY NAME]

NOTICE OF CHANGES IN MEDICARE AND YOUR MEDICARE SUPPLEMENT INSURANCE - 1991

YOUR HEALTH CARE BENEFITS PROVIDED BY THE FEDERAL MEDICARE PROGRAM WILL CHANGE BEGINNING JANUARY 1, 1991. ADDITIONAL CHANGES WILL OCCUR IN MEDICAL BENEFITS IN FOLL YEARS. THE MAJOR CHANGES ARE SUMMARIZED BELOW. THESE CHANGES WILL AFFECT HOSPIT MEDICAL AND OTHER SERVICES AND SUPPLIES PROVIDED UNDER MEDICARE. BECAUSE OF THES CHANGES YOUR MEDICARE SUPPLEMENT COVERAGE PROVIDED BY [COMPANY NAME] WILL CHAN ALSO. THE FOLLOWING OUTLINE BRIEFLY DESCRIBES THE MODIFICATIONS IN MEDICARE AND IN YOUR MEDICARE SUPPLEMENT COVERAGE. PLEASE READ THIS CAREFULLY!

[A BRIEF DESCRIPTION OF THE REVISIONS TO MEDICARE PARTS A & B WITH A PARALLEL DESCRI OF SUPPLEMENTAL BENEFITS WITH SUBSEQUENT CHANGES, INCLUDING DOLLAR AMOUNTS, PROVI BY THE MEDICARE SUPPLEMENT COVERAGE IN SUBSTANTIALLY THE FOLLOWING FORMAT.]

SERVICES	MEDICARE BENEFITS		YOUR MEDICARE SUPPLEMENT COVERAGE	
	Medicare Now Pays Per Calendar Year	Effective January 1, 1991 Medicare Will Pay Per Calendar Year	Your Coverage Now Pays Per Calendar Year	Effective January 1, 1991 Your Coverage Will Pay Per Calendar Year
MEDICARE PART A SERVICES AND SUPPLIES	Unlimited number of hospital days after $[ ] deductible			
SKILLED NURSING FACILITY CARE	There is no prior confinement requirement for this benefit First 8 days - All but $[ ] a day 9th through 150 day - 100% of costs Beyond 150 days - Nothing			

SERVICES	MEDICARE BENEFITS		YOUR MEDICARE SUPPLEMENT COVERAGE	
	Medicare Now Pays Per Calendar Year	Effective January 1, 1991 Medicare Will Pay Per Calendar Year	Your Coverage Now Pays Per Calendar Year	Effective January 1, 199 Your Coverage Will Pay Per Calendar Year
MEDICARE PART B SERVICES AND SUPPLIES	80% of allowable charges (after $75 deductible) until an annual Medicare Catastrophic Limit is met. 100% of allowable charges for the remainder of the calendar year. The Limit in 1990 is $[ ] and will be adjusted on an annual basis.	80% of allowable charges (after $75 deductible) until an annual Medicare Catastrophic Limit* is met. 100% of allowable charges for the remainder of the calendar year. The limit in 1991 is $[ ] and will be adjusted on an annual basis.		

SERVICES	MEDICARE BENEFITS		YOUR MEDICARE SUPPLEMENT COVERAGE	
	Medicare Now Pays Per Calendar Year	Effective January 1, 1991 Medicare Will Pay Per Calendar Year	Your Coverage Now Pays Per Calendar Year	Effective January 1, 1991 Your Coverage Will Pay Per Calendar Year
PRESCRIPTION DRUGS	Inpatient prescription drugs.	Inpatient prescription drugs. 80% of allowable charges for home intravenous (IV) therapy drugs and 50% of allowable charges for immunosuppressive drugs after ($550 in 1990) calendar year deductible is met.		

*Expenses that count toward the Part B Medicare Catastrophic Limit include: the Part B deductible and copayment charges and the Part B blood deductible charges.

[ANY ADDITIONAL BENEFITS]

[Describe any coverage provisions changing due to Medicare modifications.]

[Include information about premium adjustments that may be necessary due to changes in Medicare benefits, or when premium changes, information will be sent.]

THIS CHART SUMMARIZING THE CHANGES IN YOUR MEDICARE BENEFITS AND IN YOUR MEDICARE SUPPLEMENT PROVIDED BY [COMPANY] ONLY BRIEFLY DESCRIBES SUCH BENEFITS. FOR INFORMATION ON YOUR MEDICARE BENEFITS CONTACT YOUR SOCIAL SECURITY OFFICE OR THE HEALTH CARE FINANCING ADMINISTRATION. FOR INFORMATION ON YOUR MEDICARE SUPPLEMENT [Policy] CONTACT:

[COMPANY OR FOR AN INDIVIDUAL POLICY - NAME OF AGENT] [ADDRESS/PHONE NUMBER]

[This Appendix contains all new language.]

SERVICES	MEDICARE BENEFITS		YOUR MEDICARE SUPPLEMENT COVERAGE	
	Medicare Now Pays Per Calendar Year	Effective January 1, 1991 Medicare Will Pay Per Calendar Year	Your Coverage Now Pays Per Calendar Year	Effective January 1, 1991 Your Coverage Will Pay Per Calendar Year
PRESCRIPTION DRUGS	Inpatient prescription drugs. 80% of allowable charges for home IV therapy drugs and 50% of allowable charges for immunosuppressive drugs after a $550 calendar year deductible is met.	Same as 1990 and 50% of allowable charges for all other outpatient prescription drugs after $600 calendar year deductible is met.		

*Expenses that count toward the Part B Medicare Catastrophic Limit include: the Part B deductible and copayment charges and the Part B blood deductible charges.

[ANY ADDITIONAL BENEFITS]

[Describe any coverage provisions changing due to Medicare modifications.]

[Include information about premium adjustments that may be necessary due to changes in Medicare benefits, or when premium changes, information will be sent.]

THIS CHART SUMMARIZING THE CHANGES IN YOUR MEDICARE BENEFITS AND IN YOUR MEDICARE SUPPLEMENT PROVIDED BY [COMPANY] ONLY BRIEFLY DESCRIBES SUCH BENEFITS. FOR INFORMATION ON YOUR MEDICARE BENEFITS CONTACT YOUR SOCIAL SECURITY OFFICE OR THE HEALTH CARE FINANCING ADMINISTRATION. FOR INFORMATION ON YOUR MEDICARE SUPPLEMENT [Policy] CONTACT:

[COMPANY OR FOR AN INDIVIDUAL POLICY - NAME OF AGENT] [ADDRESS/PHONE NUMBER]

[This Appendix contains all new language.]

EXECUTIVE ORDER NUMBER SIXTY-NINE (89)

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 § 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 as continued by Executive Order Number 60 (88); and

Executive Order Number 55 (87), Declaration of State of Emergency Due to Landslides in Clifton Forge, Virginia as continued by Executive Order Number 60 (88).

This Executive Order also rescinds Executive Order Number Thirty (82), Authority and Responsibility of Certain Agencies and Individuals Governing Certain State-Owned Vehicles, issued by Governor Charles S. Robb on December 19, 1982, since its purposes have been met by Chapter 479, 1989 Acts of the Assembly.

This Executive Order will become effective July 1, 1989, and will 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, 1989.

/s/ Gerald L. Baliles
Governor

Attested:

/s/ Sandra D. Bowen
Secretary of the Commonwealth

EXECUTIVE ORDER NUMBER SEVENTY (89)

CREATING THE COMMISSION FOR THE CELEBRATION AND COMMEMORATION IN 1993 OF THE TERCENTENARY OF THE COLLEGE OF WILLIAM AND MARY IN VIRGINIA

By virtue of the authority vested in me as Governor by § 2.1-51.36 and as Chief Planning and Budget Officer of the Commonwealth by § 2.1-387 of the Code of Virginia, § 4-11.00 of Chapter 668, 1989 Acts of the Assembly and subject to my continuing and ultimate authority and responsibility to act in such matters and to reserve powers, I hereby create the Commission for the Celebration and Commemoration in 1993 of the Tercentenary of the College of William and Mary in Virginia.

Following the commemoration in 1988 and 1989 of the 300th anniversary of the ascension of William and Mary to the throne of England, this commission is established to insure that appropriate plans and arrangements are made for the commemoration in 1993 of the 300th anniversary of the granting of the royal charter by Their Majesties King William III and Queen Mary II founding thereby the College of William and Mary in Virginia, the second oldest college in America.

This commission is further charged to advise the Governor as may be required on the planning for the Tercentenary Hall as provided in § 2-17, item C-98.4, Chapter 668 of the 1989 Acts of the Assembly.

Members of the Commission shall be appointed by the Governor and shall serve at his pleasure. The Commission shall consist of not more than 40 members, including all living former Governors of Virginia, the Ambassador of the United Kingdom to the United States, the Ambassador of the Netherlands to the United States, the Chancellor of the College, the Rector of the College, the President of the Society of the Alumni, the Mayor of the City of Williamsburg, the President of the Colonial Williamsburg Foundation, the Speaker of the Student Association Council, the President of the Senior Class, and a representative of the Parents' Association.

The Governor shall appoint from the members a Chairman and Vice Chairman and may also designate an honorary chairman. The Commission shall meet at the call of the Chairman.

Members of the Commission shall serve without compensation and shall not receive any reimbursement from public funds for expenses incurred in the discharge of their duties. Such funding as is necessary for the fulfillment of the Commission's responsibilities during the term of its existence shall be provided from such sources, both public and private, authorized by § 2.1-51.37 of the Code of Virginia. Total expenditures for the Commission's work are estimated to be no more than $8,000.

Such staff support as is necessary for the conduct of the Commission's business during the term of its existence shall be furnished by The College of William and Mary and such other executive branch agencies and institutions as the Governor may from time to time designate. An estimated 450 hours of staff support will be required to assist the Commission.

The Commission is classified as an advisory commission, as defined in § 9-6.25 of the Code of Virginia.

This Executive Order will become effective July 1, 1989, and will remain in full force and effect until January 12, 1990, unless amended or rescinded by further executive

order.

Given under my hand and under the Seal of the Commonwealth of Virginia this 28th day of June 1989.

/s/ Gerald L. Baliles
Governor

Attested:

/s/ Sandra D. Bowen
Secretary of the Commonwealth

GOVERNOR'S COMMENTS ON PROPOSED REGULATIONS

(Required by § 9-6.12:9.1 of the Code of Virginia)

DEPARTMENT OF HEALTH (STATE BOARD OF)

Title of Regulation: **VR 355-33-02. Regulations Governing Licensure of Home Health Agencies and Hospices.**

Governor's Comment:

I concur with the form and content of this proposal. My final assessment will be contingent upon a review of the public's comments.

/s/ Gerald L. Baliles
Date: June 26, 1989

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES (BOARD OF)

Title of Regulation: **VR 460-02-4.191. State Plan for Medical Assistance Relating to Reimbursement for Nonenrolled Providers: Methods and Standards for Establishing Payment Rates Inpatient Hospital Care.**

Governor's Comment:

I concur with the form and content of this proposal. My final assessment will be contingent upon a review of the public's comments.

/s/ Gerald L. Baliles
Date: June 26, 1989

DEPARTMENT OF SOCIAL SERVICES (BOARD OF)

Title of Regulation: **VR 615-46-01. Adult Protective Services.**

Governor's Comment:

I concur with the content of this proposal. My final assessment will be contingent upon the Board's consideration of Department of Planning and Budget's recommendations for improvements in the form of this proposal and a review of the public's comments.

/s/ Gerald L. Baliles
Date: June 26, 1989

STATE WATER CONTROL BOARD

Title of Regulation: **VR 680-21-08. River Basin Section Tables.**

Governor's Comment:

The promulgation of this regulation is intended to accurately designate waterways while protecting trout populations in Virginia's waters. Pending public comment, I recommend approval of these regulations.

/s/ Gerald L. Baliles
Date: July 6, 1989

Symbol Key †
† Indicates entries since last publication of the Virginia Register

STATE AIR POLLUTION CONTROL BOARD

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the State Air Pollution Control Board intends to consider amending regulations entitled: **VR 120-01. Regulations for the Control and Abatement of Air Pollution.** The purpose of the proposed action is to require the owner to limit source emissions of noncriteria pollutants to a level that will not produce ambient air concentrations that may cause, or contribute to, the endangerment of public health.

A public meeting will be held on September 20, 1989, at 10 a.m. in House Committee Room 1, State Capitol Building, Richmond, Virginia to receive input on the development of the proposed regulations.

Statutory Authority: § 10.1-1308 of the Code of Virginia.

Written comments may be submitted until September 20, 1989, to Director of Program Development, Department of Air Pollution Control, P.O. Box 10089, Richmond, Virginia 23240.

Contact: Nancy S. Saylor, Policy and Program Analyst, Division of Program Development, Department of Air Pollution Control, P.O. Box 10089, Richmond, VA 23240, telephone (804) 786-1249 or SCATS 786-1249

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the State Air Pollution Control Board intends to consider amending regulations entitled: **VR 120-01. Regulations for the Control and Abatement of Air Pollution.** The purpose of the proposed regulation is to enhance the Department of Air Pollution Control's ability to ensure compliance with emission standards by requiring a permit to operate.

A public meeting will be held on September 27, 1989, at 10 a.m. in House Committee Room 1, State Capitol Building, Richmond, Virginia to receive input on the development of the proposed regulation.

Statutory Authority: § 10.1-1308 of the Code of Virginia.

Written comments may be submitted until September 27, 1989, to Director of Program Development, Department of Air Pollution Control, P.O. Box 10089, Richmond, VA 23240.

Contact: Nancy S. Saylor, Policy and Program Analyst, Division of Program Development, Department of Air Pollution Control, P.O. Box 10089, Richmond, VA 23240, telephone (804) 786-1249 or SCATS 786-1249

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the State Air Pollution Control Board intends to consider amending regulations entitled: **VR 120-01. Regulations for the Control and Abatement of Air Pollution.** The purpose of the proposed action is to reduce ozone producing evaporative volatile organic compound (VOC) emissions, by limiting gasoline volatility during the ozone season (June through September), for the protection of public health and welfare.

A public meeting will be held on August 16, 1989, at 10 a.m., in House Committee Room 1, State Capitol, Capitol Square, Richmond, Virginia, to receive input on the development of the proposed regulation.

Statutory Authority: § 10.1-1308 of the Code of Virginia.

Written comments may be submitted until August 16, 1989.

Contact: Ellen P. Snyder, Policy and Program Analyst, Division of Program Development, Department of Air Pollution Control, P.O. Box 10089, Richmond, VA 23240, telephone (804) 786-0177 or SCATS 786-0177

CHILD DAY-CARE COUNCIL

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Child Day-Care Council intends to consider amending regulations entitled: **VR 175-02-01. Minimum Standards for Licensed Child Care Centers.** The purpose of the proposed action is to (i) revise regulation to incorporate requirements for occasional child care and care for children who are mildly ill; (ii) determine appropriate activity space and group size requirements after reviewing public comment; and (iii) make other revisions for improvement in clarity and content.

Statutory Authority: § 63.1-202 of the Code of Virginia.

Written comments may be submitted until August 1, 1989.

Contact: Diana Thomason, 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

DEPARTMENT OF CONSERVATION AND RECREATION

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Department of Conservation and Recreation intends to consider promulgating regulations entitled: **VR 215-02-00. Stormwater Management Regulations.** The purpose of the proposed action is to implement the Stormwater Management Law, Chapter 467 and Chapter 499 of the 1989 Virginia Acts of Assembly (Fomerly SB 722 and HB 1848) to provide the minimum state requirements whereby local governments may adopt comprehensive Stormwater Management Programs at their option. All state agency projects involving land clearing, soil movement or construction activity involving soil movement or land development will be governed by these regulations.

Note: This replaces notice published in 5:19 VA.R. 2722 June 19, 1989.

Statutory Authority: §§ 10.1-104 and 10.1-603.4 of the Code of Virginia.

Written comments may be submitted until August 30, 1989, to Leon E. App, Executive Assistant, Department of Conservation and Recreation, 203 Governor Street, Suite 302, Richmond, Virginia 23219.

Contact: John R. Poland, Urban Programs Supervisor, Department of Conservation and Recreation, Division of Soil and Water Conservation, 203 Governor St., Suite 206, Richmond, VA 23219, telephone (804) 371-7483 or SCATS 371-7483

BOARD OF CORRECTIONS

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board of Corrections intends to repeal regulations entitled: **VR 230-01-002. Rules and Regulations for the Purchase of Services for Clients.** The purpose of the proposed action is to provide instructions for the purchase of services from public or private vendors when such needed services are not available within the Department of Corrections.

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

Written comments may be submitted until August 2, 1989.

Contact: Ben Hawkins, Agency Regulatory Coordinator, Planning and Development Unit, P.O. Box 26963, Richmond, VA 23261, telephone (804) 674-3262 or SCATS 674-3262

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board of Corrections intends to consider promulgating regulations entitled: **VR 230-01-003. Rules and Regulations Governing the Certification Process.** The purpose of the proposed action is to provide regulations governing the process and procedures utilized by the Board of Corrections to monitor and certify correctional programs.

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

Written comments may be submitted until August 21, 1989.

Contact: John T. Britton, Certification Unit Manager, Department of Corrections, P.O. Box 26963, Richmond, VA 23261, telephone (804) 674-3237 or SCATS 634-3237

DEPARTMENT OF EDUCATION (STATE BOARD OF)

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the State Board of Education intends to consider promulgating regulations entitled: **Regulations Governing Electronic Classroom/Distance Learning.** The purpose of this action is to specify the services provided by the electronic classroom/distance learning program provided by the Department of Education.

Statutory Authority: § 22.1-212.2 of the Code of Virginia.

Written comments may be submitted until August 1, 1989.

Contact: Dr. Ida J. Hill, Assistant Superintendant for Education Technology, State Department of Education, P.O. Box 6-Q, Richmond, VA 23216, telephone (804) 225-2757

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the State Board of Education intends to consider promulgating regulations entitled: **Regulations Governing Film, Videotape, and Audiotape Circulation from Department of Education Library.** The purpose of this proposed action is to set forth those agencies which are eligible to participate in the sharing of resources and dissemination of audiovisual materials. Also included will be regulations specifying those agencies not eligible to participate.

Statutory Authority: § 22.1-16 of the Code of Virginia and HJR 114.

Written comments may be submitted until August 1, 1989.

Contact: Dr. Ida J. Hill, Assistant Superintendant for Education Technology, State Department of Education, P.O. Box 6-Q, Richmond, VA 23216, telephone (804) 225-2757

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the State Board of Education intends to consider promulgating regulations entitled: **Regulations Governing the Relationship of the Board of Education and the Virginia Council for Private Education.** ;The purpose of this regulatin is to set forth the working relationship of the Board of Education and the Virginia Council for Private Education, including the frequency of advisory committee meetings.

Statutory Authority: §§ 22.1-16 and 22.1-19 of the Code of Virginia.

Written comments may be submitted until August 1, 1989.

Contact: Dr. Margaret Roberts, Director, Community Relations, State Department of Education, P.O. Box 6-Q, Richmond, VA 23216, telephone (804) 225-2540

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the State Board of Education intends to consider amending regulations entitled: **Regulations Governing Driver Education.** The purpose of the proposed regulation is to more clearly define the regulations for public, nonpublic and commercial schools related to driver education requirements.

Statutory Authority: §§ 22.1-205, 46.1-357, 46.1-368 and 54.1-1003 of the Code of Virginia.

Written comments may be submitted until September 1, 1989.

Contact: Claude A. Sandy, Director, Department of Education, Division of Sciences and Elementary Administration, P.O. Box 6Z, Richmond, VA 23216, telephone (804) 225-2865 or SCATS 225-2865

BOARD OF HEALTH

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board of Health intends to consider amending regulations entitled: **Virginia Medical Care Facilities Certificate of Public Need Rules and Regulations.** The purpose of the proposed action is to amend the existing Virginia Medical Care Facilities Certificate of Public Need Rules and Regulations (Regulations) so that the regulations are consistent with the amended law.

Statutory Authority: §§ 32.1-1-12 and 32.1-102.1 et seq. of the Code of Virginia.

Written comments may be submitted until August 8, 1989.

Contact: Marilyn H. West, Director, Division of Resources Development, Department of Health, James Madison Bldg., 109 Governor St., Room 1005, Richmond, VA 23219, telephone (804) 786-7463 or SCATS 786-7463

STATE LOTTERY DEPARTMENT

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the State Lottery Department intends to consider amending regulations entitled: **VR 447-01-2. Administration Regulations.** The purpose of the proposed action is to amend certain portions of the Administration Regulations which deal with ineligible players, Operations Special Reserve Fund, procedures for small purchases and vendor background check.

Statutory Authority: § 58.1-4007 of the Code of Virginia.

Written comments may be submitted until August 14, 1989.

Contact: Barbara L. Robertson, Lottery Staff Officer, 2201 W. Broad St., Richmond, VA 23220, telephone (804) 367-9433 or SCATS 367-9433

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the State Lottery Department intends to consider amending regulations entitled: **VR 447-02-1. Instant Game Regulations.** The purpose of the proposed action is to amend certain portions of the Regulations in order to conform to the State Lottery Law and to refine sections of the Instant Game Regulations which deal with the retailer application procedure, ticket price, retailer's compensation, retailer's conduct, settlement of accounts, prize payment procedures and the elimination of claim form under certain circumstances.

Statutory Authority: § 58.1-4007 of the Code of Virginia.

Written comments may be submitted until August 14, 1989.

Contact: Barbara L. Robertson, Lottery Staff Officer, 2201 W. Broad St., Richmond, VA 23220, telephone (804) 367-9433 or SCATS 367-9433

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the State Lottery Department intends to consider promulgating regulations entitled: **VR 447-02-2. On-Line Game Regulations.** The purpose of the proposed regulation is to set out general parameters for the on-line game. This includes setting standards and requirements for licensing of on-line lottery retailers, ticket validation, setting the framework for the operations of on-line lottery games and the payment of prizes.

Statutory Authority: § 58.1-4007 of the Code of Virginia.

Written comments may be submitted until August 14, 1989.

Contact: Barbara L. Robertson, Lottery Staff Officer, 2201 W. Broad St., Richmond, VA 23220, telephone (804) 367-9433 or SCATS 367-9433

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: **Amount, Duration and Scope of Services: Coverage of Prosthetics Services and Expansion of Dental under EPSDT.** The purpose of the proposed action is to modify the State Plan Section for the Amount, Duration and Scope of Services concerning limited coverage of prosthetics and expanded dental services under EPSDT.

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

Written comments may be submitted until 4:30 p.m., August 15, 1989, to Stephen B. Riggs, Director, Division of Health Services Review, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, Virginia 23219.

Contact: Victoria P. Simmons, Regulatory Coordinator, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 786-7933

† 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: **Eligibility for Children, to age 2, at 100% of Poverty.** The purpose of the proposed action is to provide Medicaid eligibility for children, up to the age of two years, whose families' incomes are at 100% of the federal poverty guidelines.

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

Written comments may be submited until 4:30 p.m., August 15, 1989, to Marsha Vandervall, Manager, Eligibility and Appeals, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, Virginia 23219.

Contact: Victoria P. Simmons, Regulatory Coordinator, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 786-7933

† 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 promulgating regulations entitled: **Safeguarding of Client Information.** The purpose of the proposed regulation is to establish regulations by which DMAS guarantees the confidential handling of client information.

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

Written comments may be submited until 4:30 p.m., August 15, 1989, to Angie Chambliss, Eligibility and Appeals, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, Virginia 23219.

Contact: Victoria P. Simmons, Regulatory Coordinator, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 786-7933

† 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: **State/Local Hospitalization.** The purpose of the proposed action is to establish regulations by which DMAS will administer the State/Local Hospitalization Program.

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

Written comments may be submitted until 4:30 p.m., August 15, 1989, to David Coronado, Director, Indigent Health Programs, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, Virginia 23219.

Contact: Victoria P. Simmons, Regulatory Coordinator, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 786-7933

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 465-02-01. Practice of Medicine, Osteopathy, Podiatry, Chiropractic, Clinical Psychology and Acupuncture.** The purpose of the proposed action is to amend Part III Examinations, Sections 3.1 A to identify the parts of the FLEX examination; 3.1 B, add all examinations which if failed would require additional training to be eligible for additional attempts to sit for the examination; 3.1 C, regulation renumbered, to change; and 3.2 A, provides for a combination of examinations acceptable for licensure to practice Medicine or Osteopathy in Virginia.

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

Written comments may be submitted until August 2, 1989.

Contact: Eugenia K. Dorson, Board Administrator, Board of Medicine, 1601 Rolling Hills Dr., Richmond, VA 23229-5005, telephone (804) 662-9923

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 promulgating regulations entitled: **VR 465-08-01. Regulations Governing the Certification of Occupational Therapy.** The purpose of the proposed action is to regulate the Certification and practice of Occupational Therapy pursuant to §§ 54.1-2956.1 through 54.1-2956.5 of the Code of Virginia effective July 1, 1989.

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

Written comments may be submitted until July 31, 1989.

Contact: Eugenia K. Dorson, Board Administrator, Board of Medicine, 1601 Rolling Hills Dr., Surry Bldg., 2nd Floor, Richmond, VA 23229-5005, telephone (804) 662-9923 or SCATS 662-9923

DEPARTMENT OF MINORITY BUSINESS ENTERPRISE

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Department of Minority Business Enterprise intends to consider promulgating regulations entitled: **VR 486-01-01. Public Participation Guidelines.** The purpose of the proposed action is to seek public participation from interested parties prior to formation and during drafting, promulgation and final adoption of regulations.

Statutory Authority: §§ 2.1-64-34 and 2.1-64-35 of the Code of Virginia.

Written comments may be submitted until August 2, 1989.

Contact: Garland W. Curtis, Deputy Director, Department of Minority Business Enterprise, 200-202 N. 9th St., Richmond, VA 23219, telephone (804) 786-5560, toll-free 1-800-223-0671 or SCATS 786-5560

BOARD OF NURSING

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board of Nursing intends to consider amending regulations entitled: **VR 495-01-1. Board of Nursing Regulations.** The purpose of the proposed action is to establish standards for approval of nursing education programs, licensure and practice of registered and licensed practical nurses, disciplinary provisions and to replace emergency regulations for certified nurse aides. Existing regulations will be reviewed for effectiveness, efficiency, necessity, clarity, and cost of compliance.

A public hearing to receive oral comments will be held on August 24, 1989, at 1:30 p.m. in the General Assembly Building, Capitol Square, House Room C, Richmond, Virginia.

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

Written comments may be submitted until October 1, 1989.

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

DEPARTMENT OF SOCIAL SERVICES

Division of Benefit Programs

† 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 in policy that gives 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 the receipt of a lump sum. The revision will remove any implication that the client does not have the right to appeal agency decisions.

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

Written comments may be submitted until August 31, 1989, to I. Guy Lusk, Director, Division of Benefit Programs, Department of Social Services, 8007 Discovery Drive,

Richmond, Virginia 23229-8699.

Contact: Peggy Friedenberg, Agency Regulatory Coordinator, Division of Planning and Program Review, Department of Social Services, 8007 Discovery Dr., Richmond, VA 23229-8699, telephone (804) 662-9217 or SCATS 662-9217

VIRGINIA SOIL AND WATER CONSERVATION BOARD

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Virginia Soil and Water Conservation Board intends to consider promulgating regulations entitled: **VR 625-02-00. Erosion and Sediment Control Regulations;** and repeal regulations entitled: **VR 625-01-01. The Virginia Erosion and Sediment Control Handbook, including standards, criteria and guidelines.** The purpose of the proposed action is to implement the Erosion and Sediment Control Law, as amended, for the effective control of soil erosion, sediment deposition and nonagricultural runoff which must be met in any local control program to prevent unreasonable degradation of properties, stream channels and other natural resources.

Note: This replaces notice published in 5:19 VA.R. 2722 June 19, 1989.

Statutory Authority: §§ 10.1-502 and 10.1-561 of the Code of Virginia.

Written comments may be submitted until August 30, 1989, to Leon E. App, Executive Assistant, Department of Conservation and Recreation, 203 Governor Street, Suite 302, Richmond, Virginia 23219.

Contact: John R. Poland, Urban Program Supervisor, Department of Conservation and Recreation, Division of Soil and Water Conservation, 203 Governor St., Suite 206, Richmond, VA 23219, telephone (804) 371-7483 or SCATS 371-7483

GENERAL NOTICES

DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

Legal Notice

Take notice that a referendum will be conducted by mail ballot among Virginia corn producers regardless of age, and as otherwise defined in § 1035, Title 3.1 of the Code of Virginia, who sold corn, except sugar corn, popcorn, and ornamental corn during two of the past three years preceding September 1, 1989.

The purpose of the referendum is to allow Virginia farmers producing corn to vote to determine whether they want to increase the corn assessment from 1/4 cent to 1 cent per bushel sold. The increased assessment shall be used by the Virginia Corn Board to provide programs for additional research, education, publicity and promotion of the sale and use of corn.

The processor, dealer, shipper, exporter or any other business entity who purchases corn from the producer shall deduct the assessment from payments made to the producer for corn. The levy thereon shall be remitted to the Virginia State Tax Commissioner.

Producers must establish their eligibility to vote in this referendum by properly completing a certification form and returning the form to the Virginia Department of Agriculture and Consumer Services no later than July 31, 1989.

Eligible voters will be mailed a ballot and a return envelope. Each eligible voter must return the ballot, and the ballot must be received by the Director, Division of Marketing, Virginia Department of Agriculture and Consumer Services on or before 5 p.m. September 1, 1989.

Producers may obtain eligibility certification forms from the following sources: County Extension Offices; Virginia Corn Growers Association, 10806 Trade Road, Richmond, Virginia 23236; Virginia Department of Agriculture and Consumer Services Office, Division of Marketing, P.O. Box 1163, Richmond, Virginia 23209.

DEPARTMENT OF LABOR AND INDUSTRY

† Notice to the Public and Opportunity for Informal Comment

Notice is hereby given that the Commissioner of the Virginia Department of Labor and Industry is developing internal procedures to be followed by department staff in investigating and recommending criminal charges to local Commonwealth's Attorneys in certain cases involving workplace fatalities.

These internal procedures are not subject to the formal notice and comment procedures required under the Virginia Administrative Process Act. They are published in DRAFT form solely for the purpose of providing the public an opportunity for informal comment on the procedures prior to finalization.

All comments should be sent to the address listed below and must be received no later than August 15, 1989, at 5 p.m.:

Carol Amato
Commissioner
Department of Labor and Industry
P.O. Box 12064
Richmond, Virginia 23241

Any questions should be directed to:

Elizabeth Scott
Lead Agency Management Analyst
(804) 786-6760

AGENCY POLICY STATEMENT NO. .....

Subject: Manslaughter Charges as a Result of Workplace Fatalities

Effective Date: .....

I. Purpose:

The purpose of this policy statement is to establish a uniform policy for determining when a charge of manslaughter as a result of a workplace fatality is appropriate, how such cases shall be investigated, and how the investigation shall be coordinated with the appropriate Commonwealth's Attorney.

II. Background:

A. Statutory Law

Virginia Code § 40.1-49.4 (K) provides for misdemeanor sanctions against any "employer" who willfully violates provisions of the Occupational Safety and Health laws and regulations, when the violation results in the death of an employee. There may be cases, however, where a person's conduct is so egregious that a more stringent criminal penalty is warranted. In those cases, the department may recommend that the appropriate Commonwealth's Attorney bring a charge of manslaughter against a violator.

A recent Supreme Court ruling has defined "willful" violations in a civil context to include those situations where the employer exhibits a conscious disregard for the provisions of the Act or a plain indifference to the Act's requirements. McLaughin v. Richland Shoe Company, 56 USLW 4433, 4436 (1988).

When an employer willfully violates safety and health laws or regulations, and an employee is killed as a result, the employer can be cited by the department for a civil willful violation. In those cases which meet the criteria of Chapter IV of the VOSH Field Operations Manual (F.O.M.) (attached), the employer may also be charged with a criminal misdemeanor by the Commonwealth's Attorney under § 40.1-49.4(K).

B. Common Law

The criminal laws of Virginia provide for felony sanctions where the conduct resulting in death is:

> so flagrant, culpable, and wanton as to show utter disregard of the safety of other under circumstances likely to cause injury.

King v. Commonwealth, 217 Va. 601, 606, 231 S.E.2d 312, 316 (1977). Where the death is an unintentional result of such flagrant, culpable, or wanton conduct, a charge of involuntary manslaughter is appropriate.

Under the common law, a person who involuntarily takes the life of another in the "performance of an unlawful but not felonious act," or in the "improper performance of a lawful act," can be charged with involuntary manslaughter.

Where the charge is the "improper performance of a lawful act," the act must be more than mere negligence. The negligent conduct must be "performed in a manner so gross, wanton, and culpable as to show a reckless disregard for human life." Gooden v. Commonwealth, 226 Va. 565, 571, 311 S.E.2d 780, 784 (1984). See also Davis v. Commonwealth, 230 Va. 201, 206, 335 S.E.2d 375, 378 (1985).

Virginia courts have found such a "callous disregard for human life" where the defendant has violated a safety statute and that violation was the proximate cause of the fatal accident. In the case of Beck v. Commonwealth, 216 Va. 1, 216 S.E.2d 8 (1975), the defendant was driving while intoxicated and killed two pedestrians.

However, in a later case, King v. Commonwealth, 217 Va. 601, 231 S.E.2d 312 (1977), the Commonwealth was unsuccessful in arguing that the defendant's driving at night without headlights (as required by statute) was criminal negligence. The Court stated that not every "statutory violation that proximately caused death constitutes involuntary manslaughter." Id. at 605, 231 S.E.2d at 316. The violation of a statute falls within the common law definition of involuntary manslaughter where it is:

> so flagrant, culpable, and wanton as to show utter disregard of the safety of others under circumstances likely to cause injury ... Inadvertent acts of negligence, without recklessness, while giving rise to civil liability, will not suffice to impose criminal responsibility ... Intentional, willful, and wanton violations of safety statutes, resulting in death, however, will justify conviction of involuntary manslaughter.

Id. at 606, 231 S.E.2d at 316. See also Darnell v. Commonwealth, 6 Va. App. 485, 489, 370 S.E.2d 717, 719 (1988).

III. Statement of Policy

A. General:

It shall be the policy of the department to recommend felony prosecution for manslaughter of any natural

person whose flagrant, culpable, or wanton violation of the Occupational Safety and Health laws and regulations results in the death of an employee.

Because these charges are criminal, it shall further be the policy of the department to coordinate investigation of such fatalities with the local police or sheriff's office, and with the Commonwealth's Attorney. The Commonwealth's Attorney shall make the final decision whether to pursue a manslaughter charge.

Misdemeanor charges for criminal willful violations of the VOSH law under § 40.1-49.4(K) will only be brought against the "employer" (as defined by statute and case law) in circumstances meeting the criteria of the F.O.M. Chapter 4. This charge can be brought against any legal entity that is an employer, including corporations and natural persons. Individuals may also be charged as aiders and abettors of the employer. (Va. Code §§ 18.2-18 to 18.2-21.) As with felony prosecutions, final discretion as to whether to pursue charges lies with the appropriate Commonwealth's Attorney.

Manslaughter charges, on the other hand, will be brought against "any natural person" whose flagrant, culpable, and wanton conduct brings about the death of an employee.

B. Definitions:

For the purposes of this policy, "any natural person" shall mean any individual having direction, management, control, or custody of any worksite, place of employment, or employee and shall exclude corporate or other legal entities.

C. Criteria For Determining When a Manslaughter Charge is Appropriate

1. In order to establish grounds for a manslaughter charge, the department must document that the death occurred as the result of either:

a. the performance of some unlawful, but not felonious, act, OR

b. the improper performance of a lawful act.

2. If the charge is baseed on 1(a) above, i.e., an unlawful but not felonious act, the CSHO must document that:

a. the individual whose conduct brought about the death committed a misdemeanor violation of Virginia law.

[Note: This element is established in those cases where the responsible individual is also the "employer" and has thus committed a criminal willful violation of VOSH standards under § 40.1-49.4(K). The criminal willful misdemeanor violation could be considered a lesser included offense. It is not established where the responsible individual is a co-worker or person outside of the supervisory chain-of-command];

b. the conduct of the responsible individual is so flagrant, culpable, and wanton as to show utter disregard of the safety of others under circumstances likely to cause injury.

[Note: An accidental or inadvertent act of negligence will not support a charge of involuntary manslaughter];

AND

c. the statutory violation is the proximate cause of the victim's death.

[Note: If several factors contributed to the victim's death, and the statutory violation was one of the contributing causes, this element is satisfied].

Example:

A foreman in charge of a construction worksite decides that a job is moving too slowly to allow for proper safety precautions and orders employees to enter a 12 foot deep trench with vertical unshored walls. This same foreman had been responsible for earlier violations of VOSH trench standards and has clear knowledge of the requirements for sloping and shoring.

If the trench caves in, resulting in a fatality, the employer would be cited by VOSH for a civil willful violation of VOSH standards. In addition, a recommendation for criminal willful charges against the "employer" under § 40.1-49.4(K) would be made to the appropriate Commonwealth's Attorney.

Because the foreman committed a nonfelonious criminal violation of the statute, and because his conduct, considering his actual or imputed knowledge of the dangers of unshored trenches, was flagrant, culpable, and proximately caused the employee's death, a manslaughter charge against the foreman would be appropriate.

3. If the charge is based on 1(b) above, i.e., the improper performance of a lawful act, the department must document that:

a. the individual whose conduct brought about the death was negligent in the performance of his duty, and the negligence was so gross and culpable as to indicate a callous disregard of human life. Each element should be analyzed separately:

i. the individual had a legal duty under § 40.1-51.1(a) to provide a workplace free from recognized hazards and to comply with Virginia

Occupational Safety and Health laws and regulations; OR

the individual has a legal duty under § 40.1-51.2(a) to comply with Virginia Occupational Safety and Health laws and regulations; OR

the indiviudal has a legal duty imposed by contract to protect emloyee safety and health;

ii. the individual negligently breached that duty;

iii. the individual's negligent breach of duty was the proximate cause of the victim's death; AND

iv. the negligence was so reckless, wanton, and flagrant as to indicate a callous disregard for human life.

Example:

An example of this type of manslaughter would be the foreman who sends an untrained maintenance employee to paint an unlocked enclosure for an electrical installation, and, knowing that the electrical box was live, fails to warn the employee about the exposed live parts or to instruct him in methods of disconnecting live equipment, resulting in the electrocution of the employee.

A second example would be the highrise construction site where a county building inspector tells the General Contractor, the Safety Director, and the Subcontractor's foreman on 3 occasions to replace missing guardrails on the 10th floor. The project is under a deadline and all three men ignore his warnings, and a worker falls to his death from the unguarded 10th floor.

In both caes described above, the persons responsible had either a statutory or contractual responsibility for the safety of the employees, they breached that duty by failing to take action (warning/training employee, installing guardrails), and their behavior showed a callous disregard for the lives of the deceased employees.

D. Manslaughter Distinguished From Murder

If an individual willfully or purposefully (rather than negligently) embarks on a course of wrongful conduct with an obvious likelihood of death or serious bodily harm, the charge is not manslaughter, but murder. Second degree murder is defined as any purposeful, cruel act committed by one individual against another without great provocation. If the death results from an intentional or malicious omission of the performance of a duty defined in § C(3)(a)(i), the charge is also murder.

E. Procedure:

1. When a jobsite fatality has occurred, the Compliance Safety and Health Officer (CSHO) shall follow existing procedures in the Field Operations Manual and the Significant Case Review Policy for fatality investigations.

2. At any time during the investigation, if the CSHO determines that a willful violation of the Act may have occurred, the CSHO shall immediately notify his/her Supervisor. The CHSO, Supervisor, and Enforcement Director shall review the evidence in the case with the Office of Federal Liaison and Technical Support.

3. If the evidence at this point seems to support a criminal violation of the Act, the Enforcement Director shall notify the Assistant Commissioner, the Commissioner, and the Assistant Attorney General. At the direction of the Commissioner, the CSHO and/or the Technical Support staff shall immediately consult with the appropriate Commonwealth's Attorney.

4. After the initial determination is made, all stages of the investigation shall be coordinated with local law enforcement officials. The Commonwealth's Attorney may determine the type and scope of investigatory procedures to be followed, and shall determine whether the investigation has proceeded to a point at which Miranda warnings should be given by local law enforcement officials.

5. Once the investigation is completed, the Enforcement Director shall review the case and recommend the appropriate course of action to the Assistant Commissioner and Commissioner. The Commissioner, on review of the evidence in the case file, shall recommend a course of action to the Commonwealth's Attorney, who has final discretionary authority in the matter.

6. If the Commonwealth's Attorney determines that prosecution is warranted, the CSHO and Technical Support staff, at the direction of the Attorney General's Office and the Commissioner, shall provide the Commonwealth's Attorney with all requested support.

IV. Recisions.

None.

V. Impact.

This is not a regulation which requires action on the part of any individual party or entity other than agency employees. This is rather an internal procedural outline not intended to create any rights or disabilities in third parties.

VI. Reference.

"Criminal/Willful Violations," VOSH F.O.M., Chapter IV, pp. 26-29.

4. Criminal/Willful Violations. § 40.1-49.4.K., Code of Virginia, provides that: "Any employer who willfully violates any safety or health provisions of this title or standards, rules or regulations adopted pursuant thereto, and that violation causes death to any employee, shall, upon conviction, be punished by a fine of not more than $10,000 or by imprisonment for not more than six months, or by both such fine and imprisonment. If the conviction is for a violation committed after a first conviction of such person, punishment shall be a fine of not more than $20,000 or by imprisonment for not more than one year, or by both such fine and imprisonment."

a. The Division Director, in coordination with the Technical Services Director and Assistant Attorney General, shall carefully evaluate all cases involving workers' deaths to determine wether they involve criminal violation of § 40.1-49.4.K, Code of Virginia.

b. In cases where an employee's death has occurred which may have been caused by a willful violation of a VOSH standard, the supervisor shall be consulted prior to the completion of the investigation to determine whether evidence exists and whether further evidence is necessary to establish the elements of a criminal/willful violation. The Division Director shall consult with the Technical Services Director and, if appropriate, with the Assistant Attorney General after the initial determination has been made concerning possible willful violation.

c. The following criteria shall be considered in investigating possible criminal/willful violations:

(1) Establisment of Criminal/Willful. In order to establish a criminal/willful violation VOSH must prove that:

(a) The employer violated a VOSH standard. A criminal/willful violation cannot be based on violation of § 40.1-51.1.(a).

(b) The violation was willful in nature; i.e.,

1 The employer had knowledge of the hazardous working conditions. Knowledge could be demonstrated through such evidence as the foreman having been in the vicinity of an unshored, unsloped trench in which employees are working.

2 The employer had knowledge of the requirements of the applicable standard.

a Providing knowledge of the requirements of the applicable standard may present greater difficulties. Evidence of knowledge of the applicable standard gained through a prior citation, discussions with VOSH or other safety and health personnel of the requirements of the standard, or other similar evidence would be sufficient to support this element of knowledge.

b In addition, it may be possible to establish willfulness, even in the absence of specific knowledge of the VOSH standard, where the requirements of the standard are known to the employer. Where it can be shown that is was recognizeed by the employer that certain precautions must be taken in order to make a trench safe, either through the employer's past practice of shoring or sloping, through employee complaints, or otherwise, knowledge of the standard's requirements will have been shown.

c Finally, in particularly flagrant situations, willfulness can be proved where employees are exposed to a working condition which a reasonably prudent employer should have recognized as being hazardous and requiring corrective action. Even in the absence of evidence that an employer knew that specific precautions should have been taken, if the working conditions are so obviously hazardous and the accepted industry practice is to take certain precautions, an employer's conduct could constitute a willful violation.

NOTE: It must be emphasized that, particularly with regard to this situation, a key element of willfulness is flagrancy of the conduct and the employer's plain indifference to employee safety.

(c) The violation of the standard caused the death of an employee. In order to prove that the violation of the standard caused the death of an employee, there must be evidence in the file which clearly demonstrates that the violation of the standard was the cause of or a contributing factor to an employee's death.

(2) Division Director Responsibilities. Although it is generally not necessary to issue "Miranda" warnings to an employer when a criminal/willful investigation is in progress, the Division Director shall seek the advice of the Assistant Attorney General on this question.

(a) If the Division Director determines that expert assistance is needed to prove the causal connection between an apparent violation of the standard and the death of an employee, such assistance shall be obtained in accordance with instructions in Chapter III, B.3.

(b) Following the investigation, if the Division Director decides to recommend criminal prosecution, a memorandum containing that recommendation shall be forwarded promptly to the Technical Services Director who will consult with the Assistant Attorney General. The memo shall include an evaluation of the possible criminal charges, taking into consideration the greater burden of proof which requires that the Commonwealth's case be proven beyond a reasonable doubt. In addition, if the

correction of the hazardous condition appears to be an issue, this shall be noted in the transmittal memorandum because in most cases the prosecution of a criminal/willful case delays the affirmance of the civil citation and its correction requirements.

(c) The Division Director shall normally issue a civil citation in accordance with current procedures even if the citation involves allegations under consideration for criminal prosecution. The Technical Services Director and the VOSH Assistant Commissioner shall be notified immediately of such cases. The Technical Services Director shall notify the Assistant Attorney General and assist him in determining whether or not to refer the case to the appropriate Commonwealth's Attorney.

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 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 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 (BOARD OF)

Title of Regulation: **VR 115-02-16. Rules and Regulations Governing Pseudorabies in Virginia.**

Publication: 5:19 VA.R. 2614 June 19, 1989

Correction to the Proposed Regulation:

Page 2614, an incorrect date for the public hearing was published; the correct date is September 27, 1989 at 10 a.m.

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: 5:20 VA.R. 2943 July 3, 1989

Correction to the Proposed Regulation:

Page 2793, first column, line 7, "Subparts N through U Q through U- (Reserved)" should read "Subparts Q through U (Reserved)."

DEPARTMENT OF COMMERCE

Title of Regulation: **VR 220-01-2. Regulations of the Board for Contractors.**

Publication: 5:20 VA.R. 2803 July 3, 1989

Correction to the Proposed Regulation:

Page 2803, Definitions, "Building Contractors," line 5, "accessory use" should read "accessory-use"

Page 2806, § 2.8, "(initial) license" should read "(initial license)"

Page 2806, § 3.3 B, lines 2 and 4, "license/registrant" should read "licensee/registrant"

Page 2807, § 3.3 D, line 3, "license/registrant" should read "licensee/registrant"

Page 2807, § 4.2, line 7, "license registration" should read "license/registration"

Page 2809, § 5.1.7, line 3, reference should be to § 5.1.6 not § 5.16

Page 2809, § 5.1.13, line 8, "licensee" should read "licensee/registrant"

Page 2810, Consumer Information Sheet, paragraph 5, line 4 from the end, "licensee/registration" should read "licensee/registrant"

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

VIRGINIA AGRICULTURAL COUNCIL

† **August 14, 1989 - 9 a.m.** – Open Meeting
Holiday Inn-Airport, 5208 Williamsburg Road, Sandston, Virginia

A meeting of the council called by the chairman and per minutes of meeting of May 15, 1989 to hear (i) any new project proposals which are properly supported by the Board of Directors of a commodity group; and (ii) any other business that may come before the members of the council.

Contact: Henry H. Budd, Assistant Secretary, Washington Bldg., 1100 Bank St., Room 1111, Richmond, VA 23219, telephone (804) 371-8038

DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES (BOARD OF)

September 27, 1989 - 10 a.m. – Public Hearing
Washington Building, 1100 Bank Street, Board Room, 2nd Floor, Richmond, Virginia. ♿

Notice is hereby given in accordance § 9-6.14:7.1 of the Code of Virginia that the Board of Agriculture and Consumer Services intends to amend regulations entitled: **VR 115-02-12. Health Requirements Governing the Admission of Livestock, Poultry, Companion Animals, and other Animals or Birds into Virginia.** The amendment to the regulation is necessary to establish a program in Virginia for the eradication of pseudorabies in swine and to improve the regulation's clarity and effectiveness.

Statutory Authority: §§ 3.1-724, 3.1-726 and 3.1-730 of the Code of Virginia.

Written comments may be submitted until August 28, 19898, to William D. Miller, D.V.M., State Veterinarian, Division of Animal Health, Department of Agriculture and Consumer Services, Washington Building, 1100 Bank Street, Suite 600, Richmond, Virginia 23219.

Contact: Paul J. Friedman, D.V.M., Chief, Bureau of Veterinary Services, Division of Animal Health, Department of Agriculture and Consumer Services, Washington Bldg., 1100 Bank St., Suite 600, Richmond, VA 23219, telephone (804) 786-2483 or SCATS 786-2483

* * * * * * * *

September 27, 1989 - 10 a.m. – Public Hearing
Washington Building, 1100 Bank Street, Board Room, 2nd Floor, 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 adopt regulations entitled: **VR 115-02-16. Rules and Regulations Governing Pseudorabies in Virginia.** The regulation is necessary to establish a program in Virginia for the eradication of pseudorabies in swine.

Statutory Authority: §§ 3.1-724, 3.1-726 and 3.1-730 of the Code of Virginia.

Written comments may be submitted until August 28, 1989, to William D. Miller, D.V.M., State Veterinarian, Division of Animal Health, Department of Agriculture and Consumer Services, Washington Building, 1100 Bank Street, Suite 600, Richmond, Virginia 23219.

Contact: Paul J. Friedman, D.V.M., Chief, Bureau of Veterinary Services, Division of Animal Health, Department of Agriculture and Consumer Services, Washington Bldg., 1100 Bank St., Suite 600, Richmond, VA 23219, telephone (804) 786-2483 or SCATS 786-2483

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL

September 20, 1989 - 10 a.m. – Public Hearing
2901 Hermitage Road, First Floor Hearing Room, Richmond, Virginia

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Alcoholic Beverage Control Board intends to amend numerous regulations which relate to (i) corporations not being required to be represented by attorneys at initial or appeal hearings with respect to matters involving legal conclusions, examination of witnesses, preparation of briefs or pleadings, (ii) statutory reference changes to the Wine Franchise Act, (iii) permitting more alcoholic beverage advertising inside retail licensee establishments through the use of printed paper and cardboard materials which are not obtained from manufacturers, bottlers or wholesalers, (iv) regulation subsection and subdivision changes, (v) the sale of ice and the cleaning and servicing of equipment, (vi) changing licensee record keeping requirements for beer and 3.2 beverages to two years, and (vii) permitting the 45% food sales ratio requirement for special mixed beverage licensees located in food courts to be determined by reference to the combined sales of all places primarily engaged in the sale of meals or light lunches in a food court.

Statutory Authority: §§ 4-7(1), 4-11, 4-36, 4-69, 4-69.2, 4-72.1, 4-98.14, 4-103(b) and 9-6.14:1 et seq. of the Code of Virginia.

Written comments may be submitted until 10 a.m., September 20, 1989.

Contact: Robert N. Swinson, Secretary to the Board, Alcoholic Beverage Control Board, P.O. Box 27491, Richmond, VA 23261, telephone (804) 367-0616 or SCATS 367-0616

STATE AIR POLLUTION CONTROL BOARD

September 6, 1989 - 10 a.m. – Public Hearing
Department of Air Pollution Control, Southwest Virginia Regional Office, 121 Russell Road, Abingdon, Virginia

September 6, 1989 - 10 a.m. – Public Hearing
Department of Air Pollution Control, Valley of Virginia Regional Office, 5338 Peters Creek Road, Suite D, Roanoke, Virginia

September 6, 1989 - 10 a.m. – Public Hearing
Department of Air Pollution Control, Central Virginia Regional Office, 7701-03 Timberlake Road, Lynchburg, Virginia

September 6, 1989 - 10 a.m. – Public Hearing
Department of Air Pollution Control, State Capitol Regional Office, 8205 Hermitage Road, Richmond, Virginia

September 6, 1989 - 10 a.m. – Public Hearing
Department of Air Pollution Control, Hampton Roads Regional Office, Old Greenbrier Village - Suite A, 2010 Old Greenbrier Road, Chesapeake, Virginia

September 6, 1989 - 10 a.m. – Public Hearing
Department of Air Pollution Control, National Capitol Regional Office, Springfield Towers, Suite 502, 6320 Augusta Drive, Springfield, Virginia

Notice is hereby given in accordance § 9-6.14:7.1 of the Code of Virginia that the State Air Pollution Control Board 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 New Source Performance Standards and National Emissions Standard for Hazardous Air Pollutants.

Statutory Authority: § 10.1-1308 of the Code of Virginia.

Written comments may be submitted until September 6, 1989, to Director of Program Development, Department of Air Pollution Control, P.O. Box 10089, Richmond, Virginia 23240.

Contact: Nancy S. Saylor, Policy Analyst, Department of Air Pollution Control, Division of Program Development, P.O. Box 10089, Richmond, VA 23240, telephone (804) 786-1249 or SCATS 786-1249

BOARD FOR ARCHITECTS, PROFESSIONAL ENGINEERS, LAND SURVEYORS AND LANDSCAPE ARCHITECTS

Board for Land Surveyors

August 11, 1989 - 9 a.m. – Open Meeting
Department of Commerce, 3600 West Broad Street, Richmond, Virginia.

A meeting to (i) approve minutes of May 18, 1989, meeting; (ii) review applications; (iii) review and discuss correspondence; and (iv) review enforcement files.

Board for Professional Engineers

August 23, 1989 - 9 a.m. – Open Meeting
Department of Commerce, 3600 West Broad Street, Richmond, Virginia.

A meeting to (i) approve minutes from May 4, 1989, meeting; (ii) review applications; (iii) review general correspondence; and (iv) review enforcement files.

Contact: Bonnie S. Salzman, Assistant Director, Department of Commerce, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8514, toll-free 1-800-552-3016 or SCATS 367-8514

COMMISSION FOR THE ARTS

† **August 1, 1989 - 10 a.m.** – Open Meeting
Berkeley Hotel, 12th & Cary Streets, Richmond, Virginia

A regular quarterly meeting.

Contact: Wanda T. Smith, Executive Secretary Senior, James Monroe Bldg., 101 N. 14th St., 17th Floor, Richmond, VA 23219-3683, telephone (804) 225-3132

BOARD OF AUDIOLOGY AND SPEECH PATHOLOGY

† **October 4, 1989 - 10 a.m.** – Open Meeting
Department of Health Professions, 1601 Rolling Hills Drive, Richmond, Virginia. ♿

A board meeting.

Contact: Mark L. Forberg, Executive Director, 1601 Rolling Hills Dr., Richmond, VA 23229-5005, telephone (804) 662-9111

BOARD FOR BRANCH PILOTS

NOTE: CHANGE OF HEARING DATE
September 12, 1989 - 9 a.m. – Public Hearing
Virginia Port Authority, World Trade Center, Suite 600, Norfolk, Virginia

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board for Branch Pilots intends to adopt, amend and repeal regulations entitled: **VR 535-01-01. Branch Pilot Regulations.** The purpose of the proposed amendments is to continue and revise the standards for Branch Pilot licensure, continued licensure and conduct in piloting vessels in Virginia's waters.

Statutory Authority: § 54.1-902 of the Code of Virginia.

Written comments may be submitted until September 5, 1989.

Contact: David E. Dick, Deputy Director, Department of Commerce, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8500, toll-free 1-800-552-3016 or SCATS 367-8500

LOCAL EMERGENCY PLANNING COMMITTEE OF CHESTERFIELD COUNTY

August 3, 1989 - 5:30 p.m. – Open Meeting
September 7, 1989 - 5:30 p.m. – Open Meeting
† **October 5, 1989 - 5:30 p.m.** – Open Meeting
Chesterfield County Administration Building, 10001 Ironbridge Road, Room 502, Chesterfield, Virginia. ♿

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 10, 1989 - 9 a.m.** – Open Meeting
Koger Executive Center, West End, 8007 Discovery Drive, Blair Building, Conference Rooms A & B, Richmond, Virginia. ♿ (Interpreter for deaf provided if requested)

The council will meet to discuss issues, concerns, and programs that impact licensed child care centers.

Contact: Diana Thomason, Program Development Supervisor, Division of Licensing Programs, Department of Social Services, 8007 Discovery Dr., Richmond, VA 23229-8699, telephone (804) 662-9034 or SCATS 662-9034

CONSORTIUM ON CHILD MENTAL HEALTH

August 2, 1989 - 9 a.m. – Open Meeting
September 6, 1989 - 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, Chair, Virginia Department for Children, 805 E. Broad St., Richmond, VA 23219, telephone (804) 786-2208 or SCATS 786-2208

DEPARTMENT FOR CHILDREN

Child Abuse Fatalities Study Committee

† **September 7, 1989 - 3 p.m.** – Open Meeting
State Capitol, Capitol Square, Senate Room 4, Richmond, Virginia. ♿

A meeting of the legislative study committee reviewing criminal sanctions in child abuse fatality cases.

Contact: Gerardine Luongo, Planner, Virginia Department for Children, 805 E. Broad St., 11th Floor, Eighth Street Office Bldg., Richmond, VA 23219, telephone (804) 786-5399 or SCATS 786-5399

COORDINATING COMMITTEE FOR INTERDEPARTMENTAL LICENSURE AND CERTIFICATION OF RESIDENTIAL FACILITIES FOR CHILDREN

August 11, 1989 - 8:30 a.m. – Open Meeting
September 8, 1989 - 8:30 a.m. – Open Meeting
Interdepartmental Licensure and Certification, Office of the Coordinator, Tyler Building, 1603 Santa Rosa Drive, Suite 210, Richmond, Virginia. &

Regularly scheduled meetings to consider such administrative and policy issues as may be presented to the committee.

Contact: John Allen, Coordinator, Interdepartmental Licensure and Certification, Office of the Coordinator, 8007 Discovery Dr., Richmond, VA 23229-8699, telephone (804) 662-7124 or SCATS 662-7124

BOARD FOR CONTRACTORS

August 7, 1989 - 7:30 p.m. – Public Hearing
Roanoke, Virginia

August 8, 1989 - 7:30 p.m. – Public Hearing
Fredericksburg, Virginia

August 9, 1989 - 7:30 p.m. – Public Hearing
Williamsburg, Virginia

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board for Contractors intends to adopt, amend and repeal regulations entitled: **VR 220-01-2. Board for Contractors Licensing Regulations.** The proposed regulations have been reorganized to place entry requirements before renewal, list fees at appropriate places, and to separate standards of practice from standards of conduct. In addition, in accordance with changes made by the Code Commission to Title 54.1, Chapter 11 on the regulation of contractors, the term "registration" has been added in the appropriate places. The proposed regulations also change some of the conditions for licensure, add the requirement for licensure of an individual Class A contractor for every licensed Class A firm, delete the requirement for board-administered examinations for certain specialty classifications, and substitute the requirement of a master certification from the Department of Housing and Community Development in those specialities. In addition, the regulations require assurance of continued competence for renewal or reinstatement of a license or registration and require some additional documentation of contractual agreements, record keeping and reporting to the board.

Statutory Authority: §§ 9-6.14:7.1 and 54.1-1102 of the Code of Virginia.

Written comments may be submitted until September 3, 1989.

Contact: Florence R. Brassier, Deputy Director, Board for Contractors, 3600 W. Broad St., 5th Floor, Richmond, VA 23230, telephone (804) 367-8557, toll-free 1-800-552-3016 or SCATS 367-8557

BOARD OF CORRECTIONS

August 23, 1989 - 10 a.m. – Open Meeting
Board of Corrections, 6900 Atmore Drive, Board Room, Richmond, Virginia. &

A regular monthly meeting to consider such matters as may be presented to the board.

August 28, 1989 - 10 a.m. – Open Meeting
Board of Corrections, 6900 Atmore Drive, Board Room, Richmond, Virginia. &

Special board meeting/budget briefing.

NOTE: If this briefing is completed during the August 23, 1989, board meeting; the August 28, 1989, special meeting will not be held.

Contact: Vivian Toler, Secretary of the Board, 6900 Atmore Dr., Richmond, VA 23225, telephone (804) 674-3235

DEPARTMENT OF CORRECTIONS (STATE BOARD OF)

August 3, 1989 - 7 p.m. – Public Hearing
Holiday Inn Airport, 6626 Thirlane Road, Roanoke, Virginia

August 16, 1989 - 10 a.m. – Public Hearing
Board of Corrections, 6900 Atmore Drive, Meeting Room, Richmond, Virginia

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Virginia Board of Corrections intends to adopt regulations entitled: **VR 230-30-005. Guide for Minimum Standards in Design and Construction of Jail Facilities.** These regulations establish minimum standards for the design and construction of jail facilities.

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

Written comments may be submitted until August 18, 1989.

Contact: Dave Hawkins, Architect, Department of Corrections, Architecture and Design Unit, 6900 Atmore Drive, Richmond, VA 23225, telephone (804) 674-3231 or SCATS 674-3231

BOARD FOR COSMETOLOGY

† **August 14, 1989 - 9 a.m.** – Open Meeting
Department of Commerce, 3600 West Broad Street, 5th Floor, Richmond, Virginia.

A meeting to (i) review enforcement cases; (ii) review correspondence; (iii) review applications; (iv) conduct routine board business; (v) conduct old business; and (vi) conduct new business.

Contact: Roberta L. Banning, Assistant Director, Department of Commerce, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-8590 or toll-free 1-800-552-3016 (VA only)

DEPARTMENT OF CRIMINAL JUSTICE SERVICES (BOARD OF)

NOTE: CHANGE OF HEARING DATE

September 15, 1989 - 10 a.m – Public Hearing
State Capitol, Capitol Square, House Room 2, Richmond, Virginia.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of Criminal Justice Services intends to amend regulations entitled: **VR 240-02-1. Regulations Relating to Criminal History Record Information Use and Security.** Regulations to ensure the completeness, accuracy, privacy and security of criminal history record information. Amendments expand present language to provide further clarification of procedures.

Statutory Authority: §§ 9-170 and 9-184 through 9-196 of the Code of Virginia.

Written comments may be submitted until August 30, 1989.

Contact: Paula Scott, Executive Assistant, Department of Criminal Justice Services, 805 E. Broad St., Richmond, VA 23219, telephone (804) 786-4000 or SCATS 786-4000

* * * * * * * * *

† **October 4, 1989 - 9:30 a.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 Criminal Justice Services Board intends to amend regulations entitled: **VR 240-03-01. Rules Relating to Compulsory Minimum Training Standards for Private Security Services Business Personnel.** The amended regulations will revise and update training standards and requirements of Private Security Services Business Personnel.

STATEMENT

Statement of purpose:

These regulations are being proposed pursuant to the provisions of § 9-182 of the Code of Virginia. The purpose of these amendments is to review and update periodic training required for private security services business personnel in accordance with an amendment to § 9-170 of the Code of Virginia by the 1988 session of the Virginia General Assembly.

Estimated impact:

Number and types of regulated entities affected.

Approximately 400 private security services business firms who employ guards and private investigators. A small number of persons who will complete the mandated training before seeking employment in the private security field.

Additional costs are projected where the training of new employees is concerned. Additional costs are also projected for the approximately 100 approved private security services training academies throughout the Commonwealth.

Projected cost to agency for implementation and enforcement.

1. Any cost incurred by the Department of Criminal Justice Services is considered minimal and would primarily be for the purpose of compliance with the Administrative Process Act, applicable Executive Orders and the department's "Public Participation Guidelines."

2. Enforcement costs: Enforcement activities are currently occurring for this activity. No significant increase in cost is anticipated.

Source of funds.

Funds for implementation are from the special fund appropriation to the agency.

Explanation of need and potential consequences that may result in the absence of these regulations:

Because our society is one of constant change and at times very complex, those persons involved in the private security field must be cognizant and sensitive of those changes when called upon to protect the fundamental rights and expectations of the citizenry. The proposed regulations are directed at that very aspect of the role of the private security community.

Explanation of how clarity and simplicity were assured:

These regulations were drafted with strict adherence to the recommended guidelines published in the Virginia Register Form, Style and Procedure Manual. Practitioners assisted in the formation and development of the proposed

rules.

Impact upon small business:

Some additional expense can be expected as a result of the additional hours of training proposed.

Discussion of alternative approaches considered:

The Department of Criminal Justice Services has maintained a cyclical review process to evaluate rules for effectiveness every 24 months. Staff has periodic discussions with the private security community to identify potential needs or problems. Many of the proposed amendments result from recommendations made by committees appointed to study the needs of the private security practitioner. Four committees composed of members of the private security community assisted staff throughout the process. In addition, the Crime Commission has recommended that the firearms portion of the mandated training be strengthened.

Schedule for evaluation:

Ongoing, informal assessments of the mandated training schedules will be conducted. At the end of a two-year period as referenced above, a formal evaluation and updating will be conducted.

Statutory Authority: § 9-182 of the Code of Virginia.

Written comments may be submitted until September 29, 1989, to L.T. Eckenrode, Department of Criminal Justice Services, 805 East Broad Street, Richmond, Virginia 23219.

Contact: Paula Scott, Executive Assistant, Department of Criminal Justice Services, 805 E. Broad St., Richmond, VA 23219, telephone (804) 786-4000 or SCATS 786-4000

BOARD OF DENTISTRY

September 21, 1989 - 2 p.m. – Public Hearing
General Assembly Building, Capitol Square, House Room C, Richmond, Virginia. ♿

An informational public hearing for the Virginia Board of Dentistry for the purpose of receiving proposed regulations.

September 20, 1989 - 1 p.m. – Open Meeting
September 21, 1989 - 8:30 a.m. – Open Meeting
September 22, 1989 - 1:45 p.m. – Open Meeting
September 23, 1989 - 10 a.m. – Open Meeting
Richmond-Marriott Hotel, 500 East Broad Street, Richmond, Virginia. ♿

A business meeting, formal hearings, committee meetings, disciplinary actions, and committee reports.

Contact: Nancy Taylor Feldman, Executive Director, 1601 Rolling Hills Dr., Richmond, VA 23229, telephone (804) 662-9906

STATE EDUCATION ASSISTANCE AUTHORITY

Board of Directors

† **August 1, 1989 - 10 a.m.** – Open Meeting
† **September 26, 1989 - 2 p.m.** – Open Meeting
State Education Assistance Authority, 6 North 6th Street, Suite 300, Richmond, Virginia

A general business meeting.

Contact: Lyn Hammond, Secretary to the Board, State Education Assistance Authority, 6 N. 6th St., Suite 300, Richmond, VA 23219, telephone (804) 786-2035, toll-free 1-800-792-5626 or SCATS 786-2035

DEPARTMENT OF EDUCATION

August 31, 1989 - 7 p.m. – Public Hearing
Hermitage High School, Richmond, Virginia
Lake Taylor High School, Norfolk, Virginia
George Wythe High School, Wytheville, Virginia
Osbourn High School, Manassas, Virginia

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 270-01-0012. Standards for Accrediting Public Schools in Virginia.** These regulations provide a foundation for quality education and provide guidance and direction to assist schools in their continuing efforts to offer educational programs to meet the needs, interests and aspirations of students. These proposed regulations establish minimum standards and criteria which serve as the basis for determining the accreditation status of public schools in the Commonwealth.

Statutory Authority: §§ 22.1-16 and 22.1-19 of the Code of Virginia.

Written comments may be submitted until September 1, 1989.

Contact: Dr. Robert B. Jewell, Associate Director, Accreditation and Evaluation Service, Department of Education, P.O. Box 6Q, Richmond, VA 23216, telephone (804) 225-2105

VIRGINIA EMPLOYMENT COMMISSION

Advisory Board

August 9, 1989 - 1 p.m. – Open Meeting
August 10, 1989 - 9 a.m. – Open Meeting
Sheraton Hotel, Harrisonburg, Virginia. ♿

A regular meeting of the Advisory Board to conduct general business.

Contact: Ron Montgomery, 703 E. Main St., Richmond, VA 23219, telephone (804) 786-1070

VIRGINIA FIRE SERVICES BOARD

July 31, 1989 - 7 p.m. – Public Hearing
Lynchburg Public Library, 2315 Memorial Avenue, Lynchburg, Virginia

August 1, 1989 - 7 p.m. – Public Hearing
Wytheville Municipal Building, Tazewell and Monroe Streets, Wytheville, Virginia

August 17, 1989 - 7 p.m. – Public Hearing
Fredericksburg City Council Chambers, 715 Princess Ann Street, Fredericksburg, Virginia

August 24, 1989 - 7 p.m. – Public Hearing
Holiday Inn-Waterfront, 8 Crawford Parkway, Portsmouth, Virginia

The Virginia Fire Services Board is requested by HJR 351 to study the feasibility of adopting the National Fire Protection Association (NFPA) 1500 - standard for a fire department occupational safety and health program. The design of NFPA 1500 is to provide the framework for a safety and health program for a fire department or any type of organization providing similar services. This standard is intended to meet or exceed any existing mandatory or voluntary compliance standards addressing any aspect of firefighter safety and health. The purpose of the public hearings is two-fold. One is to provide complete and accurate information about NFPA 1500 to the fire service personnel throughout the State. The other purpose is to solicit comments from the fire service community concerning the adoption of NFPA 1500 by the Commonwealth of Virginia.

Contact: Carl N. Cimino, Executive Director, Department of Fire Programs, James Monroe Bldg., 101 N. 14th St., Richmond, VA 23219, telephone (804) 225-2681 or SCATS 225-2681

† **August 24, 1989 - 7 p.m.** – Public Hearing
Holiday Inn-Waterfront, 8 Crawford Parkway, Portsmouth, Virginia. ♿

A public hearing to discuss fire training and fire policies. This public hearing is for comments and questions relating to the fire services in the Commonwealth and the area in which the hearing is held. Also at this session the NFPA 1500 Standard will be discussed.

† **August 25, 1989 - 9 a.m.** – Open Meeting
Holiday Inn-Waterfront, 8 Crawford Parkway, Portsmouth, Virginia. ♿

A regular business meeting of the board. This meeting is open to the public for their input and comments.

Fire/EMS Education Committee

† **August 24, 1989 - 1 p.m.** – Open Meeting
Holiday Inn-Waterfront, 8 Crawford Parkway, Portsmouth, Virginia. ♿

A committee meeting to discuss fire training and fire policies. The meeting is open to the public for their input.

Fire Prevention Committee

† **August 24, 1989 - 9 a.m.** – Open Meeting
Holiday Inn-Waterfront, 8 Crawford Parkway, Portsmouth, Virginia. ♿

A committee meeting to discuss fire training and fire policies. The meeting is open to the public for their input.

Legislative Committee

† **August 24, 1989 - 1 p.m.** – Open Meeting
Holiday Inn-Waterfront, 8 Crawford Parkway, Portsmouth, Virginia. ♿

A committee meeting to discuss fire training and fire policies. The meeting is open to the public for their input.

Contact: Anne J. Bales, Executive Secretary Senior, James Monroe Bldg., 17th Floor, 101 N. 14th St., Richmond, VA 23219, telephone (804) 225-2681 or SCATS 225-2681

BOARD OF FUNERAL DIRECTORS AND EMBALMERS

August 27, 1989 - 3 p.m. – Open Meeting
August 28, 1989 - 9 a.m. – Open Meeting
August 29, 1989 - 9 a.m. – Open Meeting
Koger Center - West, 1601 Rolling Hills Drive, Surry Building, Richmond, Virginia.

August 27, 1989 - Preneed Committee Meeting.

August 28, 1989 - Certify candidates for September examination, general board meeting, and discuss proposed regulations.

August 29, 1989 - Informal fact-finding conferences.

Contact: Mark L. Forberg, Executive Director, 1601 Rolling Hills Dr., Richmond, VA 23229-5005, telephone (804) 662-9907

Calendar of Events

DEPARTMENT OF GENERAL SERVICES

Art and Architectural Review Board

August 4, 1989 - 10 a.m. – Open Meeting
Virginia Museum of Fine Arts, Main Conference Room, Richmond, Virginia. ♿

The board will advise the Director 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, Rancorn, Wildman & Krause, Architects, P.O. Box 1817, Newport News, VA 23601, telephone (804) 867-8030

GLOUCESTER COUNTY LOCAL EMERGENCY PLANNING COMMITTEE

August 30, 1989 - 6:30 p.m. – Open Meeting
The Old Courthouse, Gloucester, Virginia. ♿

The committee will conduct a table top exercise to test the recently approved County Hazardous Materials Plan.

Contact: Georgette N. Hurley, Assistant County Administrator, P.O. Box 329, Gloucester, VA 23061, telephone (804) 693-4042

BOARD OF HEALTH

August 8, 1989 - 10 a.m. – Public Hearing
James Madison Building, 109 Governor Street, Main Floor Conference Room, Richmond, Virginia. ♿

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Health intends to amend regulation entitled: **VR 355-30-01. Virginia Medical Care Facilities Certificate of Public Need Rules and Regulations.** This action amends the existing Virginia Medicare Care Facilities Certificate of Public Need (COPN) Rules and Regulations in order to implement the COPN program consistent with amended COPN law that becomes effective on July 1, 1989.

Statutory Authority: §§ 32.1-12 and 32.1-102.1 et seq. of the Code of Virginia.

Written comments may be submitted until 5 p.m., August 8, 1989.

Contact: Marilyn H. West, Director, Division of Resources Development, Department of Health, James Madison Bldg., 109 Governor St., Richmond, VA 23219, telephone (804) 786-7463 or SCATS 786-7463

BOARD OF HEALTH PROFESSIONS

Task Force on the Practice of Nurse Practitioners

† **July 31, 1989 - 2 p.m.** – Open Meeting
† **August 1, 1989 - 2 p.m.** – Open Meeting
General Assembly Building, Capitol Square, 4th Floor West Conference Room, Richmond, Virginia. ♿ (Interpreter for deaf provided if requested)

† **August 1, 1989 - 10 a.m.** – Informational Hearing
General Assembly Building, Capitol Square, House Room C, Richmond, Virginia. ♿ (Interpreter for deaf provided if requested)

The Task Force on the Practice of Nurse Practitioners will meet and hear comments on access and barriers to the services of nurse practitioners in Virginia on July 31, 1989, and August 1, 1989. The public is invited to comment on issues related to the practice of certified nurse practitioners on Tuesday, August 1, 1989, commencing at 10 am. Written comments will be accepted if received by August 31, 1989.

Contact: Richard D. Morrison, Executive Director, 1601 Rolling Hills Dr., Richmond, VA 23229, telephone (804) 662-9918 or SCATS 662-8818

VIRGINIA HEALTH SERVICES COST REVIEW COUNCIL

† **August 22, 1989 - 9:30 a.m.** – Open Meeting
Department of Rehabilitative Services, 4901 Fitzhugh Avenue, Richmond, Virginia. ♿

A monthly meeting to address financial, policy or technical matters which may have arisen since the last meeting.

Contact: Ann Y. McGee, Director, 805 E. Broad St., 6th Floor, Richmond, VA 23219, telephone (804) 786-6371 or SCATS 786-6371

BOARD FOR HEARING AID SPECIALISTS

September 11, 1989 - 9 a.m. – Public Hearing
Department of Commerce, 3600 West Broad Street, 5th Floor, Board Room 1, Richmond, Virginia. ♿

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board for Hearing Aid Specialists intends to amend regulation entitled: **VR 375-01-02. Board for Hearing Aid Specialists Regulations.**

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

Written comments may be submitted until August 30, 1989.

Contact: Geralde W. Morgan, Administrator, Department of

Commerce, 3600 W. Broad St., 5th Floor, Richmond, VA 23230-4917, telephone (804) 367-8534

DEPARTMENT OF HISTORIC RESOURCES

State Review Board

† **August 15, 1989 - 10 a.m.** – Open Meeting
State Capitol, Capitol Square, House Room 1, Richmond, Virginia.

A meeting to consider the addition of the following properties to the Virginia Landmarks Register and their nomination to the National Register of Historic Places:

1. Bellevue, Beford Co.
2. Bolling Island, Goochland Co.
3. Brooks House, Franklin Co.
4. Cocke's Mill, Albemarle Co.
5. Louisiana Camp, City of Manassas Park
6. Marion Male Academy, Marion, Smyth Co.
7. Mountain Glen, Bland Co.
8. Richmond Almshouse (Boundary Adjustment), Richmond (City)
9. Shelley Archaeological District, Gloucester Co.
10. Cape Charles Historic District, Northampton Co.
11. Conjuror's Field Archaeological Site, Colonial Heights

Contact: Margaret Peters, Information Officer, Department of Historic Resources, 221 Governor St., Richmond, VA 23219, telephone (804) 786-3143, SCATS 786-3143 or 786-4276/TDD

HOPEWELL INDUSTRIAL SAFETY COUNCIL

August 1, 1989 - 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 Services Coordinator, 300 N. Main St., Hopewell, VA 23860, telephone (804) 541-2298

VIRGINIA HOUSING DEVELOPMENT AUTHORITY

† **August 15, 1989 - 9 a.m.** – Open Meeting
Omni International Hotel, 777 Waterside Drive, Norfolk, Virginia.

A regular meeting 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. Various committees of the Board of Commissioners may also meet before or after the regular meeting and consider matters within their purview. The planned agenda of the meeting will be available at the offices of the authority one week prior to the date of the meeting.

Contact: J. Judson McKellar, Jr., General Counsel, 601 S. Belvidere Street, Richmond, VA 23220, telephone (804) 782-1986

BOARD OF HOUSING AND COMMUNITY DEVELOPMENT

August 21, 1989 - 10 a.m. – Public Hearing
General Assembly Building, Capitol Square, House Room C, Richmond, Virginia.

The purpose of this hearing is to receive public input on the proposed criteria for accrediting local jurisdictions' Building Code Academies. Localities which establish training academies for building code officials, that are consistent with these accreditation criteria, will be exempt from transmitting the 1% levy proposed for adoption in the Uniform Statewide Building Code, Volume I, New Construction Code.

See General Notices section for criteria.

Contact: Gregory H. Revels, Program Manager, Code Development Office, 205 N. 4th St., Richmond, VA 23219, telephone (804) 371-7772 or SCATS 371-7772

DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT (BOARD OF)

August 21, 1989 - 10 a.m. – Public Hearing
General Assembly Building, Capitol Square, House Room C, Richmond, Virginia.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Housing and Community Development intends to amend regulations entitled: **VR 394-01-03. Survey Standards for the Inspection of Buildings Being Converted to Condominiums.** The purpose is to amend the survey standards for inspection of buildings being converted to condominiums for the presence of asbestos.

Statutory Authority: § 55-79.94 of the Code of Virginia.

Written comments may be submitted until August 25, 1989.

Contact: Gregory H. Revels, Program Manager, Department of Housing and Community Development, Code

Development Office, 205 N. 4th St., Richmond, VA 23219, telephone (804) 371-7772 or SCATS 371-7772

* * * * * * * *

August 21, 1989 - 10 a.m. – Public Hearing
General Assembly Building, Capitol Square, House Room C, Richmond, Virginia.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of Housing and Community Development intends to amend regulations entitled: **VR 394-01-06. Virginia Uniform Statewide Fire Prevention Code/1987 Edition.**

Statutory Authority: §§ 27-95 and 27-97 of the Code of Virginia.

Written comments may be submitted until August 25, 1989.

Contact: Gregory H. Revels, Program Manager, Department of Housing and Community Development, Code Develoment Office, 205 N. 4th St., Richmond, VA 23219, telephone (804) 371-7772 or SCATS 371-7772

* * * * * * * *

August 21, 1989 - 10 a.m. – Public Hearing
General Assembly Building, Capitol Square, House Room C, Richmond, Virginia.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Housing and Community Development intends to amend regulations entitled: **VR 394-01-7. Asbestos Survey Standards for Buildings to be Renovated or Demolished. The purpose is to amend the standards for inspection and management of buildings to be renovated or demolished.**

Statutory Authority: § 36-99.7 of the Code of Virginia.

Written comments may be submitted until August 25, 1989.

Contact: Gregory H. Revels, Program Manager, Department of Housing and Community Development, Code Development Office, 205 N. 4th St., Richmond, VA 23219, telephone (804) 371-7772 or SCATS 371-7772

* * * * * * * *

August 21, 1989 - 10 a.m. – Public Hearing
General Assembly Building, Capitol Square, House Room C, Richmond, Virginia.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Housing and Community Development intends to amend reguations entitled: **VR 394-01-21. Virginia Uniform Statewide Building Code, Volume I, New Construction Code, 1987 Edition.**

Statutory Authority: §§ 36-98 and 36-99 of the Code of Virginia.

Written comments may be submitted until August 25, 1989.

Contact: Gregory H. Revels, Program Manager, Department of Housing and Community Development, Code Development Office, 205 N. 4th St., Richmond, VA 23219, telephone (804) 371-7772 or SCATS 371-7772

* * * * * * * *

August 21, 1989 - 10 a.m. – Public Hearing
General Assembly Building, Capitol Square, House Room C, Richmond, Virginia.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Housing and Community Development intends to amend regulations entitled: **VR 394-01-22. Virginia Uniform Statewide Building Code - Volume II Building Maintenance Code/1987.** The purpose is to amend those portions of the regulations pertaining to: Application to Pre-USBC and Post-USBC Buildings; Fire Protection Systems for Use Group R-1 (Hotels, Motels).

Statutory Authority: §§ 36-98 and 36-99 of the Code of Virginia.

Written comments may be submitted until August 25, 1989.

Contact: Gregory H. Revels, Program Manager, Department of Housing and Community Development, Code Development Office, 205 N. 4th St., Richmond, VA 23219, telephone (804) 371-7772 or SCATS 371-7772

COUNCIL ON HUMAN RIGHTS

August 10, 1989 - 10 a.m. – Open Meeting
General Assembly Building, Capitol Square, Fourth Floor Conference Room West, Richmond, Virginia.

A regularly scheduled council meeting.

Contact: Sandra Norman, Staff Administrative Specialist, P.O. Box 717, Richmond, VA 23206, telephone (804) 225-2292, toll-free 1-800-633-5510/TDD ☎ or SCATS 225-2292

VIRGINIA COUNCIL ON INDIANS

September 18, 1989 - 2 p.m. – Open Meeting
Old City Hall, 1001 East Broad Street, AT&T Communications Conference Room, 1st Floor, Richmond, Virginia

A regular meeting of the Council on Indians to conduct general business and to receive reports from

the council standing committees.

Contact: Mary Zoller, Information Director, Virginia Council on Indians, 8007 Discovery Dr., Richmond, VA 23229-8699, telephone (804) 662-9285 or SCATS 662-9285

STATE LAND EVALUATION ADVISORY COUNCIL

August 18, 1989 - 10 a.m. – Open Meeting
September 8, 1989 - 10 a.m. – Open Meeting
Department of Taxation, 2220 West Broad Street, Richmond, Virginia. ♿

A meeting to determine a range of suggested values for each of the several soil conservation service land capability classifications for agricultural, horticultural, forest and open-space uses in the various areas of the Commonwealth.

Contact: David E. Jordan, Assistant Director, Property Tax, P.O. Box 6-L, Richmond, VA 23282, telephone (804) 367-8020 or SCATS 367-8020

VIRGINIA LONG-TERM CARE COUNCIL

September 28, 1989 - 9:30 a.m. – Open Meeting
Cabinet Conference Room, 622 Ninth Street Office Building, Richmond, Virginia. ♿

Business pertains to developing increased long-term care services for disabled or chronically ill people of all ages.

Contact: Thelma E. Bland, Deputy Commissioner, 700 E. Franklin St., 10th Floor, Richmond, VA 23219-2327, telephone (804) 225-2271/TDD ☎ , toll-free 1-800-552-4464 or SCATS 225-2271

LONGWOOD COLLEGE

Board of Visitors

† **August 24, 1989 - 10 a.m.** – Open Meeting
Longwood College Campus, Virginia Room, Farmville, Virginia. ♿

A meeting to conduct business pertaining to the governance of the institution.

Contact: William F. Dorrill, Longwood College, Farmville, VA 23901, telephone (804) 392-9211 or SCATS 265-4211

MARINE RESOURCES COMMISSION

† **August 1, 1989 - 9:30 a.m.** – Open Meeting
Marine Resources Commission, 2600 Washington Avenue, 4th Floor, Room 403, Newport News, Virginia. ♿

The commission will meet on the first Tuesday of each month to hear and decide cases on fishing licensing, oyster ground leasing, enviromental permits in wetlands, bottomlands, coastal sand dunes and beaches. It hear 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, 2600 Washington Ave., Room 303, Newport News, VA 23607-0756, telephone (804) 247-2208

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES (BOARD OF)

September 1, 1989 – 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 amend regulations entitled: **VR 460-02-4.191. Disproportionate Share Adjustments for Inpatient Hospitals.** These proposed regulations intend to regulate the additional reimbursement to qualifying hospitals which serve a disproportionately higher number of Medicaid days.

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

Written comments may be submitted until 4:30 p.m., September 1, 1989, to William R. Blakely, Director, Division of Cost Settlement and Audit, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, Virginia 23219.

Contact: Victoria P. Simmons, Regulatory Coordinator, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 786-7933

* * * * * * * *

September 15, 1989 – 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 Board of Medical Assistance Services intends to adopt regulations

entitled: **VR 460-03-3.1100; VR 460-05-2000.0000; VR 460-05-2000.1000. New Drug Review Program.** The proposed regulations will regulate Medicaid's coverage of new drugs as a cost savings measure.

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

Written comments may be submitted until September 15, 1989, to Stephen B. Riggs, D.D.S., Director, Division of Health Services Review, 600 E. Broad Street, Suite 1300, Richmond, Virginia 23219.

Contact: Victoria P. Simmons, Regulatory Coordinator, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 786-7933

GOVERNOR'S ADVISORY BOARD ON MEDICARE AND MEDICAID

† **August 29, 1989 - 2 p.m.** – Open Meeting
Hyatt Hotel - I-64, West Broad Street, Richmond, Virginia. ♿

An open meeting to discuss 1990 Legislative Proposals and Budget Addenda items.

Contact: Jacqueline Fritz, Department of Medical Assistance Services, 600 E. Broad St., Richmond, VA 23219, telephone (804) 786-7958

BOARD OF MEDICINE

September 20, 1989 – 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 Board of Medicine intends to adopt and amend regulations entitled: **VR 465-02-01. Practice of Medicine, Osteopathy, Podiatry, Chiropractic, Clinical Psychology, and Acupuncture.** The purpose is to amend regulations to clarify advertising free services/examination of practitioners of the healing arts and establish fees for special purpose examinations, out-of-state candidates to sit for FLEX, and withdrawing an application for licensure.

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

Written comments may be submitted until September 20, 1989, to Hilary H. Conner, M.D., Executive Director, Virginia Board of Medicine, Department of Health Professions, 1601 Rolling Hills Drive, Surry Building, Richmond, VA 23229-5005, telephone (804) 662-9908.

Contact: Eugenia K. Dorson, Board Administrator, Board of Medicine, 1601 Rolling Hills Dr., Richmond, VA 23229-5005, telephone (804) 662-9925 or SCATS 662-9925

Credentials Committee

† **August 12, 1989 - 8:15 a.m.** – Open Meeting
Department of Health Professions, 1601 Rolling Hills Drive, Surry Building, Board Room 1, 2nd Floor, Richmond, Virginia. ♿

The committee will meet to conduct general business, interview, and review medical credentials of applicants applying for licensure in Virginia in open and Executive Session and discuss any other items which may come before this committee.

Contact: Eugenia K. Dorson, Board Administrator, Board of Medicine, 1601 Rolling Hills Dr., Richmond, VA 23229-5005, telephone (804) 662-9925 or SCATS 662-9925

STATE MENTAL HEALTH, MENTAL RETARDATION AND SUBSTANCE ABUSE SERVICES BOARD

† **August 23, 1989 - 10 a.m.** – Open Meeting
General Assembly Building, Capitol Square, Richmond, Virginia. ♿

A regular monthly meeting. Agenda to be published on August 9, 1989. Agenda may be obtained by calling Jane Helfrich.

Contact: Jane Helfrich, Administrative Staff, Department of Mental Health, Mental Retardation and Substance Abuse Services, P.O. Box 1797, Richmond, VA 23214, telephone (804) 786-3921 or SCATS 786-3921

DEPARTMENT OF MENTAL HEALTH, MENTAL RETARDATION AND SUBSTANCE ABUSE SERVICES

August 15, 1989 - 10 a.m. – Public Hearing
James Monroe Building, 101 North 14th Street, Conference Rooms D and E, Richmond, Virginia. ♿ (Interpreter for deaf provided upon request. Please request by July 24, 1989.)

August 15, 1989 - 10 a.m. – Public Hearing
Roanoke City Hall, 215 Church Avenue, Council Chambers, Room 450, Roanoke, Virginia. ♿ (Interpreter for deaf provided upon request. Please request by July 24, 1989.)

August 15, 1989 - 10 a.m. – Public Hearing
Norfolk Public Schools Building, 800 East City Hall Avenue, 12th Floor Board Room, Room 202, Norfolk, Virginia. ♿ (Interpreter for deaf provided upon request. Please request by July 24, 1989.)

August 15, 1989 - 10 a.m. – Public Hearing
Oakton Corporate Center, 10461 White Granite Drive, 3rd Floor Training Room, Suite 300, Oakton, Virginia. ♿ (Interpreter for deaf provided upon request. Please request by July 24, 1989.)

August 15, 1989 - 7:30 p.m. – Public Hearing
Holiday Inn-Koger Center-South, 1021 Koger Center Boulevard, Anna Room, Richmond, Virginia. ♿ (Interpreter for deaf provided upon request. Please request by July 24, 1989.)

August 15, 1989 - 7:30 p.m. – Public Hearing
Roanoke City Hall, 215 Church Avenue, Council Chambers, Room 450, Roanoke, Virginia. ♿ (Interpreter for deaf provided upon request. Please request by July 24, 1989.)

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, acting as the lead agency administering Part H (EHA) early intervention services to infants and toddlers with handicaps (Public Law 99-457), intends to conduct public hearings for the purpose of presenting the FY 89 State Early Intervention Grant Application. Interested parties are asked to give their comments and suggestions. Copies of the grant may be obtained by contacting the Department of Mental Health, Mental Retardation and Substance Abuse Services employee listed below. The application will be available as of June 1, 1989. Written comments will be accepted by the listed contact person until August 18, 1989.

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 5, 1989 - 8:30 a.m. – Open Meeting
The Homestead, Hot Springs, Virginia. ♿

A regular summer meeting of the VMI Board of Visitors.

Election of president
Committee reports

Contact: Colonel Edwin L. Dooley, Jr., Secretary to Board of Visitors, Virginia Military Institute, Lexington, VA 24450, telephone (703) 464-7206

DEPARTMENT OF MOTOR VEHICLES

September 11, 1989 - 10:30 a.m. – Public Hearing
Department of Motor Vehicles, 2300 West Broad Street, Cafeteria, Richmond, Virginia

† **September 12, 1989 - 1 p.m.** – Public Hearing
Ramada Renaissance, Herndon, Virginia. ♿

† **September 14, 1989 - 10:30 a.m.** – Public Hearing
Sheraton Inn, Military Circle, Norfolk, Virginia

† **September 15, 1989 - 10:30 a.m.** – Public Hearing
Holiday Inn, Route 58 & I-85, South Hill, Virginia. ♿

† **September 19, 1989 - 10:30 a.m.** – Public Hearing
Virginia Highlands Community College Auditorium, Bristol, Virginia. ♿

† **September 20, 1989 - 10:30 a.m.** – Public Hearing
Roanoke Airport Marriott, Roanoke, Virginia. ♿

† **September 21, 1989 - 10:30 a.m.** – Public Hearing
Red Carpet Inn, Waynesboro, Virginia. ♿

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of Motor Vehicles intends to adopt regulations entitled: **VR 485-50-8901. Virginia Commercial Driver's License Regulations.** These regulations establish certain standards and requirements for licensing drivers of commercial motor vehicles in Virginia. These requirements and standards relate to (i) the licensing of new residents and nonresidents, (ii) the satisfaction of vision requirements, and (iii) the administration of skills tests by persons other than DMV employees. The Virginia Commercial Driver's License Act (House Bill 1675, enacted by the 1989 General Assembly); the federal Commercial Motor Vehicle Safety Act of 1986 (Title XII of Public Law 99-750), and §§ 46.1-26 and 46.1-370.2 of the Code of Virginia.

Statutory Authority: §§ 46.1-26 and 46.1-370.2 of the Code of Virginia.

Written comments may be submitted until September 1, 1989.

Contact: Dan W. Byers, DSA Assistant Administrator or Rudy C. McCollum, CDL Program Manager, Department of Motor Vehicles, P.O. Box 27412, Richmond, VA 23269, telephone (804) 367-1836 (Dan Byers) or 367-6633 (Rudy McCollum)

September 26, 1989 - 10 a.m. – Public Hearing
Holiday Inn Airport, 6626 Thirlane Road, Roanoke, Virginia. ♿ (Interpreter for deaf provided if requested)

September 27, 1989 - 1 p.m. – Public Hearing
Best Western Springfield Inn, 6550 Loisdale Court, Springfield, Virginia. ♿ (Interpreter for deaf provided if requested)

October 2, 1989 - 10 a.m. – Public Hearing
Omni, 100 Batten Bay Boulevard, Newport News, Virginia. ♿ (Interpreter for deaf provided if requested)

October 3, 1989 - 1 p.m. – Public Hearing
Department of Motor Vehicles, 2300 West Broad Street, Richmond, Virginia. ♿ (Interpreter for deaf provided if

requested)

The Department of Motor Vehicles, in conjunction with the Commission on Virginia Alcohol Safety Action program and the Transportation Safety Board, will conduct a public hearing for the purpose of discussing issues regarding SJR 172, administrative revocation of the driver's licenses of persons who operate motor vehicles while under the influence of alcohol or drugs, or both, or who refuse to submit to chemical testing after having been arrested for driving under the influence.

Contact: Vince M. Burgess, Administrator, Traffic Safety Administrator, P.O. Box 27412, Richmond, VA 23269, telephone (804) 367-8150 or SCATS 367-8150

BOARD OF NURSING

July 31, 1989 - 10 a.m. – Open Meeting
Lynchburg General Hospital, Large Private Dining Room, 1901 Tate Springs Road, Lynchburg, Virginia. ♿ (Interpreter for deaf provided if requested)

Four 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.

† **August 24, 1989 - 10 a.m.** – Public Hearing
General Assembly Building, Capitol Square, House Room C, Richmond, Virginia. ♿ (Interpreter for deaf provided if requested)

10 a.m. - Public hearing to receive comments on proposed regulations to establish a registry for Clinical Nurse Specialists and to prescribe MINIMUM standards for programs preparing such specialists.

1:30 p.m. - Public hearing to receive comments on existing Board of Nursing Regulations including emergency regulations for Certified Nurse Aides. Hearing is first step in the board's biennial review of its regulations.

Contact: Corinne F. Dorsey, R.N., Executive Director, 1601 Rolling Hills Drive, Richmond, VA 23229, telephone (804) 662-9909 or (toll-free) 1-800-533-1560

BOARD OF NURSING HOME ADMINISTRATORS

† **September 6, 1989 - 8 a.m.** – Open Meeting
† **September 7, 1989 - 8 a.m.** – Open Meeting
Department of Health Professions, 1601 Rolling Hills Drive, Richmond, Virginia. ♿

National and State Examinations will be given to applicants for licensure for nursing home administrators.

Board committee meetings.

Contact: Mark L. Forberg, Executive Director, 1601 Rolling Hills Dr., Richmond, VA 23229-5005, telephone (804) 662-9111

BOARD FOR OPTICIANS

† **August 10, 1989 - 9 a.m.** – Open Meeting
Department of Commerce, 3600 West Broad Street, 5th Floor, Richmond, Virginia. ♿

A meeting to review (i) enforcement cases; (ii) correspondence; (iii) applications; (iv) regulations; (v) routine board business; (vi) old business; and (vii) new business.

Contact: Roberta L. Banning, Assistant Director, Department of Commerce, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-8590 or toll-free 1-800-552-3016 (VA only)

BOARD OF PHARMACY

† **August 9, 1989 - 9 a.m.** – Open Meeting
Department of Health Professions, 1601 Rolling Hills Drive, Richmond, Virginia

A board meeting and possible adoption of proposed fee increases.

Contact: Jack B. Carson, Executive Director, Virginia Board of Pharmacy, 1601 Rolling Hills Dr., Richmond, VA 23229, telephone (804) 662-9911

BOARD OF PROFESSIONAL COUNSELORS

August 3, 1989 - 9 a.m. – Open Meeting
August 4, 1989 - 9 a.m. – Open Meeting
The Tides Lodge, Irvington, Virginia

A meeting to (i) conduct business of the board including receiving committee reports; (ii) review the board's regulations; and (iii) engage in planning for the board for the 1990-92 biennium.

Contact: Stephanie A. Sivert, Executive Director, or Joyce D. Williams, Administrative Assistant, 1601 Rolling Hills Dr., Richmond, VA 23229, telephone (804) 662-9912 or SCATS 662-9912

BOARD OF PROFESSIONAL COUNSELORS AND THE BOARD OF PSYCHOLOGY

† **August 24, 1989 - 9 a.m.** – Open Meeting
Department of Health Professions, 1601 Rolling Hills Drive, Richmond, Virginia. ♿

The Board of Psychology and the Board of Professional Counselors will meet jointly to hear testimony in a formal hearing regarding a licensee of both boards.

Contact: Stephanie A. Sivert, Executive Director, or Joyce D. Williams, Administrative Assistant, 1601 Rolling Hills Dr., Richmond, VA 23229, telephone (804) 662-9912 or SCATS 662-9912

BOARD OF PSYCHOLOGY

† **August 24, 1989 - 9 a.m.** – Open Meeting
See preceding entry under "Board of Professional Counselors and the Board of Psychology."

† **August 25, 1989 - 9 a.m.** – Open Meeting
Department of Health Professions, 1601 Rolling Hills Drive, Richmond, Virginia. ♿

A meeting to (i) conduct general board business and (ii) review applications for licensure, residency, and registrations as Technical Assistants.

Contact: Stephanie A. Sivert, Executive Director, 1601 Rolling Hills Dr., Richmond, VA 23229-5005, telephone (804) 662-9913

VIRGINIA RACING COMMISSION

† **August 9, 1989 - 10 a.m.** – Open Meeting
VSRS Building, 1204 East Main Street, Richmond, Virginia. ♿

A regular commission meeting.

Contact: Pat Green, Office Manager, P.O. Box 1123, Richmond, VA 23208, telephone (804) 371-7363 or SCATS 371-7363

* * * * * * * * *

September 1, 1989 – Written comments may be received until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Virginia Racing Commission intends to adopt regulations entitled: **VR 662-01-01. Virginia Racing Commission Public Participation Guidelines for Adoption or Amendment of Regulations.** The guidelines will establish permanent procedures to solicit and obtain comments from interested individuals and organizations as the commission drafts and promulgates regulations governing horse-racing and parimutuel wagering.

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

Written comments may be submitted until September 1, 1989, to Chairman, Virginia Racing Commission, P.O. Box 1123, Richmond, Virginia 23208.

Contact: Elizabeth Kaplan, Senior Analyst, Department of Planning and Budget, P.O. Box 1422, Richmond, VA 23211, telephone (804) 786-7478 or SCATS 786-7478

REAL ESTATE BOARD

August 9, 1989 - 10:30 a.m. – Open Meeting
Department of Agriculture and Consumer Services, 4832 Tyreeanna Road, Lynchburg, Virginia

The board will meet to conduct a formal hearing:

File Number 87-00327, Real Estate Board v. Agnes H. Dowdy.

Contact: Gayle Eubank, Hearings Coordinator, Department of Commerce, 3600 W. Broad St., 5th Floor, Richmond, VA 23230, telephone (804) 367-8524

SAFETY AND HEALTH CODES BOARD

† **August 7, 1989 - 10 a.m.** – Open Meeting
General Assembly, Capitol Square, House Room C, Richmond, Virginia. ♿

The board will meet to consider the following:

1. Request for Variance under § 40.1-51.19 of the Code of Virginia, Extension of Certificate of Inspection Expiration Date - Multi-Trade Group, Inc. & Multi-Trade of Martinsville.

2. Request for Variance under the Boiler and Pressure Vessel Safety Act for certain miniature hobby boilers.

3. Proposed regulations on Local Government Certification of Boiler and Pressure Vessel Operators.

4. Underground Construction Standard, 1926.800.

5. Amendment to the Air Contaminents Standard, Permissible Exposure Limits, Corrections, 1910.1000.

6. Amendment to the Lead Standard, 1910.1025.

Contact: Jay W. Withrow, Director, Office of Federal Liaison and Technical Support, Department of Labor and Industry, P.O. Box 12064, Richmond, VA 23241, telephone (804) 786-9873 or SCATS 786-9873

DEPARTMENT OF SOCIAL SERVICES (BOARD OF)

August 24, 1989 – 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 Board of Social Services intends to adopt regulations entitled: **VR 615-70-17. Child Support Enforcement Programs.** This regulation describes the rules the Department of Social Services will use in establishing, enforcing, and collecting child support payments.

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

Written comments may be submitted until August 24, 1989, to Jane Clements, Department of Social Services, Division of Child Support Enforcement, 8007 Discovery Drive, Blair Building, Richmond, Virginia, 23229-8699.

Contact: Margaret J. Friedenberg, Legislative Analyst, Department of Social Services, 8007 Discovery Drive, Blair Building, Richmond, VA 23229-8699, telephone (804) 662-9217 or SCATS 662-9217

COMMONWEALTH TRANSPORTATION BOARD

† **August 16, 1989 - 2 p.m.** – Open Meeting
Department of Transportation, 1401 East Broad Street, Board Room, Richmond, Virginia. ♿ (Interpreter for deaf provided if requested)

A work session of the Commonwealth Transportation Board and the Department of Transportation staff.

† **August 17, 1989 - 10 a.m.** – Open Meeting
Department of Transportation, 1401 East Broad Street, Board Room, Richmond, Virgnia. ♿ (Interpreter for deaf provided if requested)

A monthly meeting 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, telephone (804) 786-9950

VIRGINIA RESOURCES AUTHORITY

† **August 8, 1989 - 10 a.m.** – Open Meeting
Mutual Building, 909 East Main Street, Suite 707, Conference Room A, Richmond, Virginia.

The board will meet to approve minutes of the meeting of July 11, 1989, to review the authority's operations for the prior months; and to consider other matters and take 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: Shockley D. Gardner, Jr., P.O. Box 1300, Richmond, VA 23210, telephone (804) 644-3100

DEPARTMENT FOR THE VISUALLY HANDICAPPED

Interagency Coordinating Council on Delivery of Related Services to Handicapped Children

August 22, 1989 - 1:30 p.m. – Open Meeting
Department for the Visually Handicapped, 397 Azalea Avenue, Richmond, Virginia. ♿

A regular monthly meeting.

Contact: Glen R. Slonneger, Jr., Department for the Visually Handicapped, 397 Azalea Ave., Richmond, VA 23227, telephone (804) 371-3140

VIRGINIA COUNCIL ON VOCATIONAL EDUCATION

† **August 2, 1989 - 10 a.m.** – Open Meeting
† **August 3, 1989 - 8:30 a.m.** – Open Meeting
Jefferson-Sheraton Hotel, Franklin and Adams Streets, Richmond, Virginia

August 2, 1989 - 10 a.m.
10 a.m. - Orientation session for new members
1:30 p.m. - General Session
3 p.m. - Committee Meetings (State Plan and Private Sector Initiatives, Evaluation and Access)
4:30 p.m. - Executive Committee

August 3, 1989 - 8:30 a.m.
8:30 a.m. - Business session: Reports will be received from council committees, Virginia Department of Education, Governor's Job Training Coordinating Council, Virginia Community College System, and Department of Correctional Education.

Contact: George S. Orr, Jr., Executive Director, Virginia Council on Vocational Education, 7420-A Whitepine Rd., Richmond, VA 23237, telephone (804) 275-6218

VIRGINIA VOLUNTARY FORMULARY BOARD

August 10, 1989 - 10:30 a.m. – Open Meeting
Department of Health, James Madison Building, 109 Governor Street, Main Floor Conference Room, Richmond, Virginia. ♿

A meeting to review public hearing comments and product data for drug products being considered for inclusion in the Virginia Voluntary Formulary.

Contact: James K. Thomson, Bureau of Pharmacy Services, 109 Governor St., Richmond, VA 23219, telephone (804) 786-4326 or SCATS 786-3596

DEPARTMENT OF WASTE MANAGEMENT

† **August 31, 1989 - 7:30 p.m.** – Public Hearing
Charles City County Neighborhood Center, Courthouse Complex, Charles City, Virgnia.

A public hearing on the draft permit for the proposed Charles City County landfill will be held pursuant to § 7.2 E 2, VR 672-20-10. The draft permit will be available for public review and comment by August 17, 1989, subject to the results of the full review pursuant to § 7.2 D 3, VR 672-20-10. A public announcement will be made in the Richmond Times-Dispatch at least two weeks prior to the scheduled date should cancellation become necessary.

Contact: Persons wishing to speak contact: A. C. McNeer, Hearing Officer, Department of Waste Management, Division of Administration, James Monroe Bldg., 101 N. 14th St., 11th Floor, Richmond, VA 23219, telephone (804) 225-2667; for additional information contact: E. D. Gillispie, Department of Waste Management, Division of Technical Services, James Monroe Bldg., 101 N. 14th St., 11th Floor, Richmond, VA 23219, telephone (804) 225-2667

STATE WATER CONTROL BOARD

August 1, 1989 - 9 a.m. – Open Meeting
August 2, 1989 - 9 a.m. – Open Meeting
Sheriff's Administration Building, Training and Conference Center, 401 Albemarle Drive, Chesapeake, Virginia. &

A regular board meeting

† **August 17, 1989 - 2 p.m.** – Open Meeting
Virginia War Memorial, 621 South Belvidere Street, Richmond, Virginia. &

The purpose of this meeting is to allow the public an opportunity to review and comment on the board's draft list of targeted FY 90 loan recipients, the FY 90 draft list and FY 90 Intended Use Plan.

Contact: Doneva A. Dalton, Hearing Reporter, State Water Control Board, Office of Policy Analysis, P.O. Box 11143, Richmond, VA 23230, telephone (804) 367-6829

* * * * * * * *

August 22, 1989 - 10 a.m. – Public Hearing
Augusta County Office Building, 6 East Johnson Street, Board Room (# 174), Staunton, Virginia

August 22, 1989 - 7 p.m. – Public Hearing
Washington County Board of Supervisors Room, 205 Academy Drive, Abingdon, Virginia

August 23, 1989 - 2 p.m. – Public Hearing
City of Danville Council Chambers, Municipal Building, 4th Floor, 418 Patton Street, Danville, Virginia

August 29, 1989 - 2 p.m. – Public Hearing
Williamsburg/James City Courthouse Council Chambers, 321-45 Court Street, West, Williamsburg, Virginia

August 31, 1989 - 7 p.m. – Public Hearing
Prince William County, McCourt Building, Board Room, 1 County Complex, 4850 Davis Ford Road, Prince William, 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 amend regulations entitled: **VR 680-21-01. Surface Water Standards with General, Statewide Application; and VR 680-21-03. Water Quality Criteria for Surface Water.** The board proposes to repeal existing regulations. The purpose of this proposed action is to adopt standards for toxics for protection of aquatic life to comply with federal regulations which state that water quality standards must be adopted for section 307(a) toxic pollutants. The associated narrative and amendments to existing sections are necessary to clarify the language, specify the implementation of the standards and provide a mechanism whereby permittees could request alternate permit limitations due to site specific factors, technology/economic limitations, or cases where natural background levels exceed established standards.

Statutory Authority: § 62.1-44.15(3a) of the Code of Virginia.

Written comments may be submitted until 4 p.m., September 18, 1989, to Doneva Dalton, Hearing Reporter, State Water Control Board, P.O. Box 11143, Richmond, Virginia 23230.

Contact: Elleanore Moll, Office of Environmental Research and Standards, State Water Control Board, P.O. Box 11143, Richmond, VA 23230, telephone (804) 367-6418 or SCATS 367-6418

* * * * * * * *

August 29, 1989 - 7 p.m. – Public Hearing
Williamsburg/James City Courthouse Council Chambers, 321-45 Court Street, West, Williamsburg, 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 amend regulations entitled: **VR 680-13-04. Eastern Virginia Groundwater Management Area.** The proposed amendments would expand the existing Groundwater Management Area in Southeastern Virginia to include the counties of Charles City, James City, King William, New Kent, and York; the areas of Chesterfield, Hanover, and Henrico counties east of Interstate 95; and the cities of Hampton, Newport News, Poquoson, and Williamsburg.

Statutory Authority: § 62.1-44.96 of the Code of Virginia.

Written comments may be submitted until 4 p.m., September 15, 1989, to Doneva Dalton, Hearing Reporter, State Water Control Board, P.O. Box 11143, Richmond, Virginia 23230.

Contact: Fred C. Cunningham, Officer of Water Resources Management, State Water Control Board, P.O. Box 11143, Richmond, VA 23230, telephone (804) 367-0411 or SCATS 367-0411

BOARD FOR WATERWORKS AND WASTEWATER WORKS OPERATORS

† **August 2, 1989 - 9 a.m.** – Open Meeting
Department of Commerce, 3600 West Broad Street, Richmond, Virginia.

An open meeting to conduct regulatory review and routine board business.

Contact: Geralde W. Morgan, Adminstrator, Department of Commerce, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-8534, toll-free 1-800-552-3016 or SCATS 367-8534

WINCHESTER LOCAL EMERGENCY PLANNING COMMITTEE

† **August 2, 1989 - 3 p.m.** – Open Meeting
O'Sullivan Corporation, Valley Avenue, Winchester, Virginia.

O'Sullivan is hosting a Response Readiness Training Session, to demonstrate to members of the committee O'Sullivan's ability to resolve releases of hazardous substances.

Contact: Kim Havenner, SARA Clerical Aide, 126 N. Cameron St., Fire Department Headquarters, Winchester, VA 22601, telephone (703) 665-5695

VIRGINIA COUNCIL ON THE STATUS OF WOMEN

September 11, 1989 – CANCELLED
The Embassy Suites Hotel, 2925 Emerywood Parkway, Richmond, Virginia

This meeting has been cancelled.

September 12, 1989 - 9 a.m. – CANCELLED
The Embassy Suites Hotel, 2925 Emerywood Parkway, Richmond, Virginia

This meeting has been cancelled.

Contact: Bonnie H. Robinson, Executive Director, 8007 Discovery Dr., Richmond, VA 23229-8699, telephone (804) 662-9200 or SCATS 662-9200

LEGISLATIVE

JOINT SUBCOMMITTEE STUDYING THE FEASIBILITY OF CREATING AN ADMINISTRATIVE LAW JUDGE PANEL AND THE ESTABLISHMENT OF UNIFORM RULES OF PROCEDURE FOR ADMINISTRATIVE HEARINGS

† **August 28, 1989 - 10 a.m.** – Open Meeting
General Assembly Building, Capitol Square, House Room C, Richmond, Virginia.

The joint subcommittee will consider alternatives, including the establishment of these alternatives, to the current hearing officers systems in Virginia. HJR 333

Contact: Mary Geisen, Division of Legislative Services, General Assembly Bldg., Capitol Square, Richmond, VA 23219, telephone (804) 786-3591

SENATE COMMITTEE ON AGRICULTURE, CONSERVATION AND NATURAL RESOURCES

† **August 17, 1989 - 10 a.m.** – Public Hearing
General Assembly Building, Capitol Square, Senate Room A, Richmond, Virginia.

A public hearing on the implementation of the Chesapeake Bay Preservation Act.

Contact: Marty G. Farber, Research Associate, Division of Legislative Services, P.O. Box 3-AG, Richmond, VA 23208, telephone (804) 786-3591

COMMISSION TO STUDY ALTERNATIVE METHODS OF FINANCING CERTAIN FACILITIES AT STATE-SUPPORTED COLLEGES AND UNIVERSITIES

August 17, 1989 - 1 p.m. – Open Meeting
General Assembly Building, Capitol Square, House Room C, Richmond, Virginia.

An organizational meeting to set agenda for interim meetings. HJR 373

Contact: Kathleen G. Harris, Staff Attorney, Division of Legislative Services, General Assembly Bldg., Capitol Square, Richmond, VA 23219, telephone (804) 786-3591

JOINT SUBCOMMITTEE STUDYING BANKING SERVICES FOR LOW AND MODERATE INCOME CONSUMERS

† **July 31, 1989 - 11 a.m.** – Public Hearing
Chesapeake City Council Chambers, New City Hall, 306 Cedar Road, Chesapeake, Virginia

† **August 24, 1989 - 11 a.m.** – Public Hearing
Roanoke City Council Chambers, Municipal Building, 215 Church Avenue, S.W., Roanoke, Virginia

A public hearing. SJR 226

Contact: Arlen Bolstad, Staff Attorney, Division of Legislative Services, P.O. Box 3-AG, Richmond, VA 23208, telephone (804) 786-3591, or Thomas Gilman, Chief Committee Clerk, Senate of Virginia, P.O. Box 396, Richmond, VA 23203, telephone (804) 786-7869

VIRGINIA CODE COMMISSION

† **September 5, 1989 - 10 a.m.** – Open Meeting
General Assembly Building, Capitol Square, Sixth Floor Conference Room, Richmond, Virginia. &

The commission will meet to begin its revision of Title 51 (Pensions and Retirement). It will also review the current status of The Virginia Register of Regulations.

Contact: Joan W. Smith, Registrar of Regulations, General Assembly Bldg., Room 292, P.O. Box 3-AG, Richmond, VA 23208, telephone (804) 786-3591

VIRGINIA STATE CRIME COMMISSION

† **August 1, 1989 - 2 p.m.** – Open Meeting
General Assembly Building, Capitol Square, House Room D, Richmond, Virginia. &

Full Drug Task Force Kickoff. Presentations from agency heads of the Drug Enforcement Administration; U.S. Marshal's Service; and INTERPOL.

† **August 14, 1989 - 4 p.m.** – Open Meeting
General Assembly Building, Capitol Square, House Room D, Richmond, Virginia. &

Purpose of the meeting will be for the Law Enforcement Subcommittee to review matters concerning Court Security and Plastic Firearms (HJR 367) and discussion of any other concerns pertaining to law-enforcement issues.

† **August 14, 1989 - 2 p.m.** – Open Meeting
General Assembly Building, Capitol Square, House Room D, Richmond, Virginia. &

Purpose of the meeting will be for the Treatment Issues Subcommittee to review matters concerning the education of handicapped inmates which was authorized by HJR 283.

† **August 15, 1989 - 9 a.m.** – Open Meeting
General Assembly Building, Capitol Square, House Room D, Richmond, Virginia. &

Purpose of the meeting will be for the Victims and Witnesses Subcommittee to review matters concerning the continued study as authorized by HJR 48. Review reports from the Division of Crime Victims Compensation and any other concerns of members.

† **August 15, 1989 - 10 a.m.** – Open Meeting
General Assembly Building, Capitol Square, House Room D, Richmond, Virginia. &

Purpose of the meeting wil be for the Corrections Subcommittee to review matters concerning the study of Shock Incarceration (HJR 321) and the Youthful Offender Act, and discussion of any other concerns pertaining to on-going correctional issues.

† **August 15, 1989 - 2 p.m.** – Open Meeting
General Assembly Building, Capitol Square, House Room D, Richmond, Virginia. &

Purpose of the meeting will be for the Law Enforcement Subcommittee to examine drug-related efforts in law-enforcement and the effectiveness of the state's anti-drug efforts as authorized by SJR 144.

† **August 16, 1989 - 9 a.m.** – Open Meeting
General Assembly Building, Capitol Square, House Room D, Richmond, Virginia. &

Purpose of the meeting will be for the Education Subcommittee to examine drug awareness education efforts in the Commonwealth pursuant to SJR 144.

† **August 16, 1989 - 1 p.m.** – Open Meeting
General Assembly Building, Capitol Square, House Room D, Richmond, Virginia. &

Purpose of the meeting will be for the Corrections/Rehabilitation Subcommittee to examine drug-related treatment efforts and assess the effectiveness of consumption reduction programs pursuant to SJR 144.

Contact: Robert E. Colvin, Executive Director, General Assembly Bldg., 9th Floor, Room 915, P.O. Box 3-AG, Richmond, VA 23208, telephone (804) 225-4534

LONG-TERM CARE SUBCOMMITTEE OF THE JOINT SUBCOMMITTEE STUDYING HEALTH CARE FOR ALL VIRGINIANS

† **August 21, 1989 - 9:30 a.m.** – Open Meeting

† **September 11, 1989 - 1 p.m.** – Open Meeting
General Assembly Building, Capitol Square, House Appropriations Room, 9th Floor, Richmond, Virginia. ♿

A regular meeting. SJR 214

Contact: Jane Kusiak, House Appropriations Office, 9th Floor, General Assembly Bldg., Richmond, VA 23219, telephone (804) 786-1837 or John McE. Garrett, Deputy Clerk, Senate of Virginia, P.O. Box 396, Richmond, VA 23203, telephone (804) 786-4639

UNINSURED SUBCOMMITTEE OF THE JOINT SUBCOMMITTEE STUDYING HEALTH CARE FOR ALL VIRGINIANS

September 18, 1989 - 1:30 p.m. – Open Meeting
General Assembly Building, Capitol Square, 10th Floor Conference Room, Richmond, Virginia. ♿

A regular meeting. SJR 214

Contact: John McE. Garrett, Deputy Clerk, Senate of Virginia, P.O. Box 396, Richmond, VA 23203, telephone (804) 786-4639 or Dick Hickman, Senate Finance Office, 10th Floor, General Assembly Bldg., Richmond, VA 23219, telephone (804) 786-4400

JOINT SUBCOMMITTEE STUDYING INDIGENT DEFENSE SYSTEMS

August 2, 1989 - 10 a.m. – Open Meeting
General Assembly Building, Capitol Square, House Room D, Richmond, Virginia. ♿

A regular meeting. HJR 279

Contact: Mary Devine, Staff Attorney, Division of Legislative Services, P.O. Box 3-AG, Richmond, VA 23208, telephone (804) 786-3591

JOINT SUBCOMMITTEE STUDYING STRUCTURE AND MANAGEMENT OPTIONS FOR THE VIRGINIA INDUSTRIES FOR THE BLIND PROGRAM

July 31, 1989 - 9:30 a.m. – Public Hearing
General Assembly Building, Capitol Square, House Room C, Richmond, Virginia. ♿

First public hearing scheduled for this subcommittee to hear about options for the Virginia Industries for the Blind Program. HJR 418

Contact: Gayle Nowell, Research Associate, Division of Legislative Services, P.O. Box 3-AG, Richmond, VA 23208, telephone (804) 786-3591, or Anne R. Howard, House Committee Operations Office, P.O. Box 406, Richmond, VA 23203, telephone (804) 786-7681

JOINT SUBCOMMITTEE STUDYING REINSURANCE, INSURANCE ANTITRUST LAWS AND LIABILITY INSURANCE COVERAGE

August 21, 1989 - 10 a.m. – Open Meeting
General Assembly Building, Capitol Square, House Room D, Richmond, Virginia. ♿

September 22, 1989 - 10 a.m. – Open Meeting
General Assembly Building, Capitol Square, House Room C, Richmond, Virginia. ♿

The focus of each meeting will be devoted to either Reinsurance, Anti-trust laws or Liability Insurance Coverage. HJR 382

Contact: Bill Cramme', Staff Attorney, or Arlen Bolstad, Staff Attorney, Division of Legislative Services, P.O. Box 3-AG, Richmond, VA 23208, telephone (804) 786-3591, or Jeffrey A. Finch, House of Delegates, P.O. Box 406, Richmond, VA 23203, telephone (804) 786-2227

JOINT SUBCOMMITTEE STUDYING SURROGATE MOTHERHOOD

† **September 6, 1989 - 10 a.m.** – Open Meeting
State Capitol, Capitol Square, Senate Room 4, Richmond, Virginia. ♿

A regular meeting. SJR 178

Contact: Norma Szakal, Staff Attorney, Division of Legislative Services, P.O. Box 3-AG, Richmond, VA 23208, telephone (804) 786-3591 or Amy Wachter, Committee Clerk, Senate of Virginia, P.O. Box 396, Richmond, VA 23203, telephone (804) 786-3838

CHRONOLOGICAL LIST

OPEN MEETINGS

July 31
† Banking Services for Low and Moderate Income Consumers, Joint Subcommittee Studying
† Health Professional, Board of
- Task Force on the Practice of Nurse Practitioners
Nursing, Board of
Structure and Management Options for the Virginia Industries for the Blind Program, Joint Subcommittee Studying

August 1
† Arts, Commission for the
† Crime Commission, Virginia State
† Education Assistance Authority, State
- Board of Directors

† Health Professions, Board of
- Task Force on the Practice of Nurse Practitioners
Hopewell Industrial Safety Council
† Marine Resources Commission
Water Control Board, State

August 2
Child Mental Health, Consortium on
Indigent Defense Systems, Joint Subcommittee Studying
† Vocational Education, Virginia Council on
Water Control Board
† Waterworks and Wastewater Works Operators, Board for
† Winchester, Local Emergency Planning Committee

August 3
Chesterfield County, Local Emergency Planning Committee of
Professional Counselors, Board of
† Vocational Education, Virginia Council on

August 4
General Services, Department of
- Art and Architectural Review Board
Professional Counselors, Board of

August 5
Virginia Military Institute
- Board of Visitors

August 7
† Safety and Health Codes Board

August 8
Health, Board of
† Virginia Resources Authority

August 9
Employment Commission, Virginia
- Advisory Board
† Pharmacy, Board of
† Racing Commission, Virginia
Real Estate Board

August 10
† Child Day-Care Council
Human Rights, Council on
† Opticians, Board for
Voluntary Formulary, Virginia

August 11
Architects, Professional Engineers, Land Surveyors and Landscape Architects, Board for
- Board for Land Surveyors
Children, Coordinating Committee for Licensure and Certification of Residential Facilities for

August 12
† Medicine, Board of
- Credentials Committee

August 14
† Agricultural Council, Virginia
† Cosmetology, Board for
† Crime Commission, Virginia State

August 15
† Crime Commission, Virginia State
† Historic Resources, Department of
- State Review Board
† Housing Development Authority

August 16
† Crime Commission, Virginia State
† Transportation Board, Commonwealth

August 17
Alternative Methods of Financing Certain Facilities at State-Supported Colleges and Universities, Commission to Study
† Transportation Board, Commonwealth
† Water Control Board, State

August 18
Land Evaluation Advisory Council, State

August 21
† Long-Term Care Subcommittee of the Joint Subcommittee Studying Health Care for All Virginians
Reinsurance, Insurance Antitrust Laws and Liability Insurance Coverage, Joint Subcommittee Studying

August 22
† Health Services Cost Review Council
Visually Handicapped, Department for the
- Interagency Coordinating Council and Delivery of Related Services to Handicapped Children

August 23
Architects, Professional Engineers, Land Surveyors and Landscape Architects, Board for
- Board for Professional Engineers
Corrections, Board of
† Mental Health, Mental Retardation and Substance Abuse Services Board

August 24
† Banking Services for Low and Moderate Income Consumers, Joint Subcommittee Studying
† Fire Services Board, Virginia
- Fire EMS/Education Committee
- Fire Prevention Committee
- Legislative Committee
† Longwood College
- Board of Visitors
† Professional Counselors, Board of; Psychology, Board of

August 25
† Fire Services Board, Virginia
† Psychology, Board of

August 27
Funeral Directors and Embalmers, Board of

August 28
† Administrative Law Judge Panel and the Establisement of Uniform Rules of Procedures for Administrative Hearings, Joint Subcommittee Studying the Feasibility of Creating an
Corrections, Board of
Funeral Directors and Embalmers, Board of

August 29
Funeral Directors and Embalmers, Board of
† Medicare and Medicaid, Governor's Advisory Board on

August 30
Gloucester County Local Emergency Planning Committee

August 31
Education, Department of

September 5
† Code Commission, Virginia

September 6
Child Mental Health, Consortium on
† Nursing Home Administrators, Board of
† Surrogate Motherhood, Joint Subcommittee Studying

September 7
Chesterfield County Local Emergency Planning Committee
† Children, Department for
- Child Abuse Fatalities Study Committee
† Nursing Home Administrators, Board of

September 8
Children, Coordinating Committee for Licensure and Certification of Residential Facilities for
Land Evaluation Advisory Council, State

September 11
† Long-Term Care Subcommittee of the Joint Subcommittee Studying Health Care for All Virginians

September 18
Health Care for All Virginians, Uninsured Subcommittee of the Joint Subcommittee Studying
Indians, Virginia Council on

September 20
Dentistry, Board of

September 21
Dentistry, Board of

September 22
Dentistry, Board of
Reinsurance, Insurance Antitrust Laws and Liability Insurance Coverage, Joint Subcommittee Studying

September 23
Dentistry, Board of

September 26
† Education Assistance Authority, State
- Board of Directors

September 28
Long-Term Care Council, Virginia

October 4
† Audiology and Speech Pathology, Board of

October 5
† Chesterfield County, Local Emergency Planning Committee of

PUBLIC HEARINGS

July 31
Fire Services Board, Virginia

August 1
Fire Services Board, Virginia

August 3
Corrections, Virginia Board of

August 7
Contractors, Board for

August 8
Contractors, Board for

August 9
Contractors, Board for

August 15
Mental Health, Mental Retardation and Substance Abuse Services, Department of

August 16
Corrections, Virginia Board of

August 17
† Agriculture, Conservation and Natural Resources, Senate Committee on
Fire Services Board, Virginia

August 21
Housing and Community Development, Board of
Housing and Community Development, Department of

August 22
Water Control Board, State

August 23
Water Control Board, State

August 24
† Fire Services Board, Virginia
† Nursing, Board of

August 29
Water Control Board, State

August 31
Education, Department of
† Waste Management, Department of
Water Control Board, State

September 6
Air Pollution Control Board, State

September 11
Hearing Aid Specialists, Board for
Motor Vehicles, Department of

September 12
Branch Pilots, Board for
† Motor Vehicles, Department of

September 14
† Motor Vehicles, Department of

September 15
† Motor Vehicles, Department of

September 19
Criminal Justice Services, Department of
† Motor Vehicles, Department of

September 20
Alcoholic Beverage Control, Department of
† Motor Vehicles, Department of

September 21
† Motor Vehicles, Department of

September 26
Motor Vehicles, Department of

September 27
Agriculture and Consumer Services, Department of
Motor Vehicles, Department of

October 2
Motor Vehicles, Department of

October 3
Motor Vehicles, Department of

October 4
† Criminal Justice Services Board

Calendar of Events