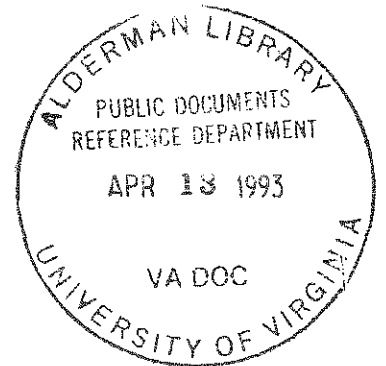


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THE VIRGINIA REGISTER

OF REGULATIONS

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March 22, 1993

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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 the regulation becomes final.

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

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Mar. 17	Apr. 5
Index 2 - Volume 9	

Mar. 31	Apr. 19
Apr. 14	May 3
Apr. 28	May 17
May 12	May 31
May 26	June 14
June 9	June 28
Index 3 - Volume 9	

Jun. 23	July 12
July 7	July 26
July 21	Aug. 9
Aug. 4	Aug. 23
Aug. 18	Sept. 6
Sept. 1	Sept. 20
Final Index - Volume 9	

Volume 10 - 1993-94

Sept. 15	Oct. 4
Sept. 29	Oct. 18
Oct. 13	Nov. 1
Oct. 27	Nov. 15
Nov. 10	Nov. 29
Nov. 24	Dec. 13
Dec. 8	Dec. 27
Index 1 - Volume 10	

Dec. 22	Jan 10, 1994
Jan. 5	Jan. 24
Jan. 19	Feb. 7
Feb. 2	Feb. 21
Feb. 16	Mar. 7
Mar. 2	Mar. 21
Mar. 16	Apr. 4
Index 2 - Volume 10	

TABLE OF CONTENTS

NOTICES OF INTENDED REGULATORY ACTION

Notices of Intent 1965

PROPOSED REGULATIONS

DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES (BOARD OF)

Regulation Governing the Oxygenation of Gasoline. (VR 115-04-28) 1970

DEPARTMENT OF EDUCATION (STATE BOARD OF)

Regulations Governing Special Education Programs for Children with Disabilities in Virginia. (VR 270-01-0007) 1975

VIRGINIA HEALTH SERVICES COST REVIEW COUNCIL

Rules and Regulations of the Virginia Health Services Cost Review Council. (VR 370-01-001) 2014

Regulations to Measure the Efficiency and Productivity of Health Care Institutions. (VR 370-01-002) 2020

STATE COUNCIL OF HIGHER EDUCATION FOR VIRGINIA

Virginia Scholars Program Regulations (Repealing). (VR 380-03-03) 2022

Virginia Scholars Program Regulations. (VR 380-03-03:1) 2022

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES (BOARD OF)

State Plan for Medical Assistance Relating to Interim Settlement/Prospective Rate Time Frames, Audited Financial Statements, and Appeal Notice Requirements.

Nursing Home Payment System Patient Intensity Rating System. (VR 460-03-4.1940:1) 2026

DEPARTMENT OF SOCIAL SERVICES (STATE BOARD OF)

Human Subject Research Regulations. (VR 615-80-01) 2046

FINAL REGULATIONS

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES (BOARD OF)

Pediatric and Obstetric Services Maximum Payments. (VR 460-03-4.1921) 2052

DEPARTMENT OF SOCIAL SERVICES (STATE BOARD OF)

General Relief Program - Deeming Income from Alien Sponsors. (VR 615-01-48) 2054

STATE CORPORATION COMMISSION

ADMINISTRATIVE LETTERS

Revisions to VA CP-19 (2/93) and VA CP-20 (2/93)/Revisions to Filing Procedures of VA CP-12 (12/90), VR CP-19 (2/93), and VA CP-20 (2/93). (1993-5) 2057

ORDERS

Promulgation of Regulations Relating to Road Tax on Motor Carriers. (MCA900050) 2060

Investigation of Conservation and Load Management Programs. (PUE900070) 2060

GENERAL NOTICES/ERRATA

DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

Methods Prescribed or Approved for Animal Euthanasia and Competency Certification Requirements. (Administration Directive No. 79-1) ... 2062

Approved Capture Drugs and Drug Administering Equipment. (Administration Directive No. 83-1) 2069

AUDITOR OF PUBLIC ACCOUNTS

Uniform Financial Reporting Manual Summary of Revisions and Manual Contents. 2071

COUNCIL ON THE ENVIRONMENT

Virginia Coastal Resources Management Program Public Notice of Approved Routine Program Implementations. 2072

DEPARTMENT OF LABOR AND INDUSTRY

Notice of Proposed Revision to the Safety Standards

Table of Contents

for Steel and Other Metal and Non-Metal Erection. .2073

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Notice of Significant Change in Statewide Methods
and Standards for Setting Payment Rates - Selective
Contracting of Inpatient Hospital Services. 2073

VIRGINIA CODE COMMISSION

NOTICE TO STATE AGENCIES

Notice of mailing address. 2074

Forms for filing material on dates for publication. .. 2074

CALENDAR OF EVENTS

EXECUTIVE

Open Meetings and Public Hearings 2075

LEGISLATIVE

Open Meetings and Public Hearings 2103

CHRONOLOGICAL LIST

Open Meetings 2103

Public Hearings 2105

NOTICES OF INTENDED REGULATORY ACTION

Symbol Key †

† Indicates entries since last publication of the Virginia Register



DEPARTMENT FOR THE AGING

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Department for the Aging intends to consider amending regulations entitled: **VR 110-01-02. Grants to Area Agencies on Aging.** The purpose of the proposed action is to review the regulation to determine whether new regulations should be adopted, the current regulation should be amended, and sections of the current regulation should be repealed. In particular, the department is soliciting comments on its intent to (i) include services standards in regulation and (ii) clarify the circumstances under which approved Area Plans for Aging Services must be amended.

Statutory Authority: § 2.1-373(a)(7) of the Code of Virginia.

Written comments may be submitted until March 22, 1993.

Contact: J. James Cotter, Director, Division of Program Development and Management, Virginia Department for the Aging, 700 E. Franklin St., 10th Floor, Richmond, VA 23219-2327, telephone (804) 225-2271 or toll-free 1-800-552-4464.

BOARD FOR ARCHITECTS, PROFESSIONAL ENGINEERS, LAND SURVEYORS AND LANDSCAPE ARCHITECTS

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board for Architects, Professional Engineers, Land Surveyors and Landscape Architects intends to consider amending regulations entitled: **VR 130-01-2. Board for Architects, Professional Engineers, Land Surveyors and Landscape Architects Rules and Regulations.** The purpose of the proposed action is to make changes to the minimum standards of practice and conduct and make other changes as needed.

Statutory Authority: § 54.1-404 of the Code of Virginia.

Written comments may be submitted until April 22, 1993.

Contact: Willie Fobbs, III, Assistant Director, Department of Commerce, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8514.

BOARD FOR BRANCH PILOTS

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board for Branch Pilots intends to consider amending regulations entitled: **VR 535-01-01. Branch Pilot Regulations.** The purpose of the proposed action is to make (i) changes to the requirements for license renewal; (ii) changes requiring ARPA radar training, and (iii) other changes as needed.

Statutory Authority: § 54.1-902 of the Code of Virginia.

Written comments may be submitted until April 22, 1993.

Contact: Willie Fobbs, III, Assistant Director, Department of Commerce, 3600 W. Broad Street, 5th Floor, Richmond, VA 23230, telephone (804) 367-8514.

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: **Special Education Program Standards.** The purpose of the proposed action is to set forth criteria for teacher endorsements, educational interpreter qualifications, class size maximums and operation of programs for students with disabilities.

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

Written comments may be submitted until March 25, 1993.

Contact: Dr. Patricia Abrams, Principal Specialist, Virginia Department of Education, P.O. Box 2120, Richmond, VA 23216-2120, telephone (804) 225-2874.

STATE EDUCATION ASSISTANCE AUTHORITY

Notices of Intended Regulatory Action

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the State Education Assistance Authority intends to consider amending regulations entitled: **VR 275-01-1. Regulations Governing Virginia Administration of the Federally Guaranteed Student Loan Programs.** The purpose of the proposed action is to reflect recent changes in federal laws and regulations governing the student loan programs.

Statutory Authority: § 23-38.33:1 C of the Code of Virginia.

Written comments may be submitted until April 9, 1993, to Marvin Ragland, Virginia Student Assistance Authorities, 411 East Franklin Street, Richmond, Virginia 23219.

Contact: Lyn Hammond or Sherry Scott, Policy Analysts, Virginia Student Assistance Authorities, 411 E. Franklin St., Richmond, VA 23219, telephone (804) 775-4000 or toll-free 1-800-792-5626.

DEPARTMENT OF HEALTH (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 Health intends to consider promulgating regulations entitled: **Rules and Regulations Governing Emergency Medical Services Do Not Resuscitate Program.** The purpose of the proposed action is to promulgate permanent regulations for the Emergency Medical Services Do Not Resuscitate Program to replace emergency regulations currently in effect.

Statutory Authority: §§ 32.1-151, 32.1-153, and 54.1-2987.1 of the Code of Virginia.

Written comments may be submitted until April 20, 1993.

Contact: Susan D. McHenry, Director, Office of Emergency Medical Services, Virginia Department of Health, 1538 East Parham Road, Richmond, VA 23228, telephone (804) 371-3500 or toll-free 1-800-523-6019.

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the State Board of Health intends to amend regulations entitled: **VR 355-33-100 (formerly VR 355-33-01). Regulations for the Licensure of Nursing Homes.** The purpose of the proposed action is to amend the current regulations to incorporate additional state and federal requirements.

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

Written comments may be submitted until April 22, 1993.

Contact: Deborah Little-Spurlock, Director, Office of Health Facilities Regulation, Department of Health, 3600 W. Broad St., Suite 216, Richmond, VA 23230, telephone (804) 371-2102.

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the State Board of Health intends to amend regulations entitled: **VR 355-33-500. Regulations for the Licensure of Hospitals.** The purpose of the proposed action is to amend the current regulations to incorporate additional requirements contained within the Code of Virginia.

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

Written comments may be submitted until April 22, 1993.

Contact: Deborah Little-Spurlock, Director, Office of Health Facilities Regulation, Department of Health, 3600 W. Broad St., Suite 216, Richmond, VA 23230, telephone (804) 371-2102.

DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT (BOARD OF)

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board of Housing and Community Development intends to consider amending regulations entitled: **VR 394-01-2. Certification Standards for Building Inspection Personnel, Amusement Device Inspectors, Blasters, Plumbers, Electricians, and Building Related Mechanical Workers/1990.** The purpose of the proposed action is to amend current regulations to comply with other revised regulations and standards.

Statutory Authority: §§ 15.1-11.4, 36-98.3, 36-137, and 27-97 of the Code of Virginia.

Written comments may be submitted until April 22, 1993, to the Department of Housing and Community Development, Code Development Office, 501 N. 2nd St., Richmond, VA 23219-1321.

Contact: Norman R. Crumpton, Program Manager, Department of Housing and Community Development, 501 N. 2nd St., Richmond, VA 23219-1321, telephone (804) 371-7170.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board of Housing and Community Development intends to consider amending regulations entitled: **VR 394-01-4. Virginia Amusement Device Regulations/1990.** The purpose of the proposed action is to amend current regulations to comply with

Notices of Intended Regulatory Action

other revised regulations and standards.

Statutory Authority: §§ 36-98 and 36-98.3 of the Code of Virginia.

Written comments may be submitted until April 22, 1993, to the Department of Housing and Community Development, Code Development Office, 501 N. 2nd St., Richmond, VA 23219-1321.

Contact: Norman R. Crumpton, Program Manager, Department of Housing and Community Development, 501 N. 2nd St., Richmond, VA 23219-1321, telephone (804) 371-7170.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board of Housing and Community Development intends to consider amending regulations entitled: **VR 394-01-6. Virginia Statewide Fire Prevention Code/1990.** The purpose of the proposed action is to amend current regulations to comply with other revised regulations and standards.

Statutory Authority: § 27-97 of the Code of Virginia.

Written comments may be submitted until April 22, 1993, to the Department of Housing and Community Development, Code Development Office, 501 N. 2nd St., Richmond, VA 23219-1321.

Contact: Norman R. Crumpton, Program Manager, Department of Housing and Community Development, 501 N. 2nd St., Richmond, VA 23219-1321, telephone (804) 371-7170.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board of Housing and Community Development intends to consider amending regulations entitled: **VR 394-01-21. Virginia Uniform Statewide Building Code - Vol. I - New Construction Code/1990.** The purpose of the proposed action is to amend current regulations to comply with other revised regulations and standards.

Statutory Authority: § 36-98 of the Code of Virginia.

Written comments may be submitted until April 22, 1993, to the Department of Housing and Community Development, Code Development Office, 501 N. 2nd St., Richmond, VA 23219-1321.

Contact: Norman R. Crumpton, Program Manager, Department of Housing and Community Development, 501 N. 2nd St., Richmond, VA 23219-1321, telephone (804) 371-7170.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board of Housing and Community Development intends to consider amending regulations entitled: **VR 394-01-22. Virginia Uniform Statewide Building Code - Vol. II - Building Maintenance Code/1990.** The purpose of the proposed action is to amend current regulations to comply with other revised regulations and standards.

Statutory Authority: §§ 36-98 and 36-103 of the Code of Virginia.

Written comments may be submitted until April 22, 1993, to the Department of Housing and Community Development, Code Development Office, 501 N. 2nd St., Richmond, VA 23219-1321.

Contact: Norman R. Crumpton, Program Manager, Department of Housing and Community Development, 501 N. 2nd St., Richmond, VA 23219-1321, telephone (804) 371-7170.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board of Housing and Community Development intends to consider amending regulations entitled: **VR 394-01-31. Virginia Industrialized Building and Manufactured Home Safety Regulations/1990.** The purpose of the proposed action is to amend current regulations to comply with other revised regulations and standards.

Statutory Authority: §§ 36-73 and 36-85.7 of the Code of Virginia.

Written comments may be submitted until April 22, 1993, to the Department of Housing and Community Development, Code Development Office, 501 N. 2nd St., Richmond, VA 23219-1321.

Contact: Norman R. Crumpton, Program Manager, Department of Housing and Community Development, 501 N. 2nd St., Richmond, VA 23219-1321, telephone (804) 371-7170.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board of Housing and Community Development intends to consider amending regulations entitled: **VR 394-01-200. Virginia Private Activity Bond Regulations.** The purpose of the proposed action is to change allocation priorities and make minor administrative changes.

Statutory Authority: § 15.1-1399.15 of the Code of Virginia.

Written comments may be submitted until April 8, 1993.

Contact: Charles Gravatt, Financial Assistance Coordinator,

Notices of Intended Regulatory Action

Department of Housing and Community Development,
Division of Community Development, 501 N. 2nd St.,
Richmond, VA 23219-1321, telephone (804) 371-7025.

DEPARTMENT OF LABOR AND INDUSTRY

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Department of Labor and Industry intends to consider repealing regulations entitled: **VR 425-01-81. Regulations Governing the Employment of Minors on Farms, in Gardens and in Orchards.** The purpose of the proposed action is to repeal this regulation which was replaced by an emergency regulation. The emergency regulation was effective January 15, 1993. The emergency regulation which has replaced this regulation is effective for one year until January 15, 1994. Copies of the emergency regulation are available from the agency.

Statutory Authority: §§ 40.1-6(3), 40.1-100(A)(9) and 40.1-114 of the Code of Virginia.

Written comments may be submitted until March 26, 1993, to John J. Crisanti, Director, Office of Enforcement Policy, 13 South 13th Street, Richmond, Virginia 23219.

Contact: Dennis Merrill, Labor Law Director, Department of Labor and Industry, Powers-Taylor Bldg., 13 S. 13th St., Richmond, VA 23219, telephone (804) 786-3224.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Department of Labor and Industry intends to consider promulgating regulations entitled: **VR 425-01-81:1. Regulation Governing the Employment of Minors on Farms, in Gardens and in Orchards.** The purpose of the proposed action is to promulgate a new permanent regulation governing the employment of minors on farms, in gardens and in orchards to replace the emergency regulation (VR 425-01-81) which became effective January 15, 1993. The emergency regulation is effective for one year until January 15, 1994.

Statutory Authority: §§ 40.1-6(3), 40.1-100(A)(9) and 40.1-114 of the Code of Virginia.

Written comments may be submitted until March 29, 1993, to John J. Crisanti, Director, Office of Enforcement Policy, 13 South 13th Street, Richmond, Virginia 23219.

Contact: Dennis Merrill, Labor Law Director, Department of Labor and Industry, Powers-Taylor Bldg., 13 S. 13th St., Richmond, VA 23219, telephone (804) 786-3224.

VIRGINIA MANUFACTURED HOUSING BOARD

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Virginia Manufactured Housing Board intends to consider promulgating regulations entitled: **VR 449-01-01. Public Participation Guidelines for Formation, Promulgation and Adoption of Regulations.** The purpose of the proposed action is to develop permanent public participation guidelines to replace the public participation guidelines adopted as emergency regulations.

Statutory Authority: §§ 9-6.14:7.1 and 36-85.18 of the Code of Virginia.

Written comments may be submitted until April 22, 1993.

Contact: Curtis L. McIver, Associate Director, Department of Housing and Community Development, Code Enforcement Office, The Jackson Center, 501 N. 2nd St., Richmond, VA 23219-1321, telephone (804) 371-7160.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Virginia Manufactured Housing Board intends to consider promulgating regulations entitled: **VR 449-01-02. Manufactured Housing Licensing and Transaction Recovery Fund Regulations.** The purpose of the proposed action is to develop regulations to be used in the administration and enforcement of the Manufactured Housing Licensing Law and Recovery Fund.

Statutory Authority: § 36-85.18 of the Code of Virginia.

Written comments may be submitted until April 22, 1993.

Contact: Curtis L. McIver, Associate Director, Department of Housing and Community Development, Code Enforcement Office, The Jackson Center, 501 N. 2nd St., Richmond, VA 23219-1321, telephone (804) 371-7160.

DEPARTMENT OF SOCIAL SERVICES (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 Social Services intends to consider amending regulations entitled: **VR 615-08-1. Virginia Energy Assistance Program.** The purpose of the proposed action is to solicit input into the development of the regulations to govern the 1993-94 Energy Assistance Program. Interested parties may view the regulations governing the program at the Virginia Department of Social Services, Division of Benefit Programs, Tyler Building, 1603 Santa Rosa Road, Suite 214, Richmond, Virginia 23229-8699.

Notices of Intended Regulatory Action

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

Written comments may be submitted until March 23, 1993, to Charlene H. Chapman, Program Manager, Division of Benefit Programs, 8007 Discovery Drive, Richmond, Virginia 23229-8699.

Contact: Peggy Friedenber, Legislative Analyst, Department of Social Services, 8007 Discovery Dr., Richmond, VA 23229-8699, telephone (804) 662-9217.

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the State Board of Social Services intends to consider promulgating regulations entitled: **Virginia Department of Social Services Administrative Hearing Procedure: Telephone Hearings.** The purpose of the proposed action is to streamline the existing administrative hearing process.

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

Written comments may be submitted until April 30, 1993, to Donna Douglas, Bureau of Customer Services, 8007 Discovery Drive, Richmond, Virginia 23229-8699.

Contact: Margaret J. Friedenber, Regulatory Coordinator, Department of Social Services, 8007 Discovery Dr., Richmond, VA 23229-8699, telephone (804) 662-9217.

PROPOSED REGULATIONS

For information concerning Proposed Regulations, see information page.

Symbol Key

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

DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES (BOARD OF)

Title of Regulation: VR 115-04-28. Regulation Governing the Oxygenation of Gasoline.

Statutory Authority: §§ 59.1-153 and 59.1-156 of the Code of Virginia.

Public Hearing Date: June 30, 1993 - 1 p.m.

Written comments may be submitted until June 25, 1993.

(See Calendar of Events section for additional information)

Summary:

The proposed regulation continues authority contained in a soon-to-expire emergency regulation governing the oxygenation of gasoline.

The proposed regulation assures that motor fuels dispensed in this Commonwealth comply with any oxygenation requirements specified by the federal Clean Air Act pertaining to motor fuels. The 1990 amendments to the federal Clean Air Act require states with carbon monoxide nonattainment areas with design values of 9.5 parts per million (ppm) or more to implement an oxygenated gasoline program in all such designated nonattainment areas. Title II of the 1990 amendments to the federal Clean Air Act requires that states institute an oxygenated gasoline program by establishing "control areas" in any Metropolitan Statistical Area (MSA) which contains one or more carbon monoxide nonattainment areas. Pursuant to such provisions, the Department of Air Pollution Control has designated as the control area the Virginia counties within the Washington, D.C. Metropolitan Statistical Area (MSA) consisting of Arlington, Fairfax, Loudoun, Prince William, and Stafford; and the Virginia cities within the Washington, D.C. MSA consisting of Alexandria, Fairfax, Falls Church, Manassas, and Manassas Park.

The oxygen content requirement applies during the portion of the year in which the control area is prone to high ambient concentrations of carbon monoxide. The Environmental Protection Agency has established this control period (which the Board of Agriculture and Consumer Services anticipates will recur annually) to be, in the case of Virginia, a specified four months out of twelve. In Virginia this control period will begin on November 1 of one year and continue through the last day of February of the following year.

The proposed regulation:

- a. Specifies carbon monoxide nonattainment areas;
- b. Specifies the control area;
- c. Specifies the control period;
- d. Specifies a minimum oxygenate content in gasoline during the control period;
- e. Requires all persons regulated to keep records of classes of oxygenates and oxygenate content;
- f. Requires gasoline pump labelling;
- g. Specifies methods of sampling, testing, and oxygen content calculations; and
- h. Specifies means of compliance and methods of enforcement

.....
¹ Design value means the calculation which is used to derive the number of carbon monoxide parts per million in the air in order to determine whether an area shall be designated a carbon monoxide nonattainment area.

Preamble:

Section 59.1-156 of the Code of Virginia authorizes the Board of Agriculture and Consumer Services to "make all necessary rules and regulations for, ... (ii) assuring that motor fuels dispensed in this Commonwealth comply with any oxygenation requirements specified by the federal Clean Air Act or any other federal environmental requirement pertaining to motor fuels; ..." The 1990 amendments to the federal Clean Air Act require states with carbon monoxide nonattainment areas with design values of 9.5 parts per million (ppm) or more to implement an oxygenated gasoline program in all such designated nonattainment areas. The Department of Air Pollution Control has designated the County of Arlington and the City of Alexandria as carbon monoxide nonattainment areas pursuant to Title II of the 1990 amendments to the federal Clean Air Act (hereinafter "Title II"), as design values of carbon monoxide exceed 9.5 ppm in such areas. Title II requires that states institute an oxygenated gasoline program by establishing "control areas" in any Metropolitan Statistical Area (MSA)

which contains one or more carbon monoxide nonattainment areas. Pursuant to such provisions, the Department of Air Pollution Control has designated as the control area the area so defined in § 1 of VR 115-04-28.

This oxygen content requirement applies during the portion of the year in which the control area is prone to high ambient concentrations of carbon monoxide. The Environmental Protection Agency has established this control period (which the Board of Agriculture and Consumer Services anticipates will recur annually) to be, in the case of Virginia, a specified four months out of twelve. In Virginia this control period will begin on November 1 of one year and continue through the last day of February of the following year.

The use of oxygenated gasoline in lieu of nonoxygenated gasoline reduces carbon monoxide emissions from motor vehicles and, thereby, helps carbon monoxide nonattainment areas in their efforts to achieve compliance with the national ambient air quality standard for carbon monoxide. The use of oxygenated gasoline is becoming a widely recognized control strategy for reducing carbon monoxide emissions from motor vehicles in a timely and cost-effective manner.

There are sanctions associated with the failure to adopt a regulation to require the oxygenation of gasoline. If the administrator of the Environmental Protection Agency finds that a state has failed to adopt the necessary regulation, then the state will be subject to sanctions. The sanctions include loss of federal funds, including funds for highways.

VR 115-04-28. Regulation Governing Oxygenation of Gasoline.

§ 1. Definitions.

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

"Administrator" means the Administrator of the United States Environmental Protection Agency.¹

"ASTM" means the American Society for Testing and Materials.

"Batch" means any discrete amount of gasoline.

"Blender" means any person who owns, leases, operates, controls, or supervises an oxygenate blending facility.

"Bulk gasoline plant operator" means any person who owns, leases, operates, or controls a plant which is a secondary distribution point for delivering gasoline to local farms, businesses, service stations, and other distribution points, where the total gasoline throughput is 20,000 gallons

or less per working day, based on the daily average for the most recent 12-month period.

"Bulk gasoline terminal operator" means any person who owns, leases, operates, or controls a terminal which is a primary distribution point for delivering gasoline to bulk plants, service stations, and other distribution points, where the total gasoline throughput is greater than 20,000 gallons per working day, based on the daily average for the most recent 12-month period.

"Control area" means the Virginia counties within the Washington, D.C. Metropolitan Statistical Area (MSA) consisting of Arlington, Fairfax, Loudoun, Prince William, and Stafford; and the Virginia cities within the Washington, D.C. MSA consisting of Alexandria, Fairfax, Falls Church, Manassas, and Manassas Park.

"Control period" means a specified four months out of 12, beginning on November 1 of one year and continuing through the last day of February of the following year.

"Owner" means any person who owns or controls any batch of gasoline.

"Oxygenate" means any substance or substances which, when added to gasoline, increases the amount of oxygen in that gasoline blend.

"Oxygenated gasoline" means gasoline which contains a measurable amount of oxygenate.²

"Person" includes an individual, corporation, partnership, association, state, municipality, political subdivision of a state, and any agency, department, or instrumentality of the United States and any officer, agent, or employee thereof.³

"Record" means any document which takes the form of, but is not limited to, a bill of lading, invoice, receipt, commodity manifest, or delivery ticket.

"Retail outlet operator" means any person who owns, leases, operates, or controls any establishment at which gasoline is sold or offered for sale to the ultimate consumer for use in a motor vehicle.

"Sell or transfer" means to sell, exchange, ship, receive, or to offer or expose for sale.

"Substantially similar" means "substantially similar" as stated in § 211(f)(1) of the federal Clean Air Act, 42 USC § 7545(f)(1).

"Terminal operator" means any person who owns, leases, operates or controls a gasoline terminal at which gasoline is sold or dispensed into trucks or other containers for transportation to retail outlets or wholesale purchaser-consumer facilities, and shall include, but not be limited to, any bulk gasoline plant operator and any bulk gasoline terminal operator.

Proposed Regulations

"Ultimate consumer" means any person who purchases gasoline for any purpose other than resale.

"Wholesale purchaser-consumer" means any person who is an ultimate consumer of gasoline and who purchases or obtains gasoline from a supplier for use in motor vehicles and receives delivery of gasoline into a storage tank or other gasoline container.

"Wholesale purchaser-consumer facility" means any facility at which a wholesale purchaser-consumer stores gasoline in a storage tank or other gasoline container.

§ 2. Exception for aircraft.

Nothing in this regulation shall apply to any person who sells or transfers any batch of gasoline for use in aircraft.

§ 3. Minimum oxygenate content.

No person may sell or transfer gasoline to a retail outlet operator or wholesale purchaser-consumer who is within the control area during a control period unless the gasoline contains a minimum of 2.7% oxygen by weight as determined in accordance with § 7 of this regulation.

§ 4. Nature of oxygenates.

A. No person may sell or transfer gasoline to a retail outlet operator or wholesale purchaser-consumer located in the control area during a control period unless such gasoline contains an oxygenate which is:

1. Of the type and quality allowed under the federal Clean Air Act;
2. Of a type "substantially similar" under § 211(f)(1) of the federal Clean Air Act, 42 USC § 7545(f)(1); or
3. Approved through the waiver granted under § 211(f)(4) of the federal Clean Air Act, 42 USC § 7545(f)(4).

B. No person may sell or transfer to a retail outlet operator or wholesale purchaser-consumer located in the control area during a control period gasoline that exceeds the maximum oxygen content specified by the "substantially similar" definition of § 211(f)(1) of the federal Clean Air Act, 42 USC § 7545(f)(1), unless such gasoline is approved through the waiver ("the waiver") granted by the administrator under the authority of § 211(f)(4) of the federal Clean Air Act, 42 USC § 7545(f)(1);

No person may sell or transfer to a retail outlet operator or wholesale purchaser-consumer located in the control area during the control period gasoline approved through the waiver unless the oxygen content of such gasoline is no more than that specified by the waiver.

C. No person may use any oxygenate unless it is

"substantially similar" as defined by this regulation, or unless it is approved through the waiver.

§ 5. Record keeping and transfer requirements.

A. Any terminal operator who ships or causes to have shipped gasoline to or within the control area during a control period shall make a record to be made no later than the time of shipment of the gasoline. Any person who ships the gasoline to or within the control area during a control period shall carry a copy of the record made by the terminal operator. The terminal operator shall retain for one year after the creation of the record or until this regulation ceases to have effect, whichever is the sooner, a copy the record and shall make such record available for inspection by the commissioner. Such record shall contain for each batch of gasoline leaving the terminal operator:

1. The volume of gasoline;
2. The class of oxygenate in the gasoline, if any, that is to say whether the gasoline contains an ether or an alcohol based oxygenate;
3. The oxygen content, if any;
4. A declaration of whether the destination of the batch of gasoline leaving the terminal operator is within the control area or not; and
5. The name and address of the person to whom the terminal operator shipped the batch of gasoline and the date of such shipment.

B. Any blender who ships or causes to have shipped gasoline to or within the control area during a control period shall make a record to be made no later than the time of shipment of the gasoline.

Any person who ships the gasoline to or within the control area during a control period shall carry a copy of the record made by the terminal operator. The blender shall retain for one year after the creation of the record or until this regulation ceases to have effect, whichever is the sooner, a copy of the record and shall make such record available for inspection by the commissioner. Such record shall contain for each batch of gasoline leaving the blender:

1. The volume of gasoline;
2. The class of oxygenate in the gasoline, if any, that is to say whether the gasoline contains an ether or an alcohol based oxygenate;
3. The oxygen content, if any;
4. A declaration of whether the destination of the batch of gasoline leaving the blender is within the control area or not; and

5. The name and address of the person to whom the blender shipped the gasoline and the date of the shipment.

C. Any retail outlet operator who purchases or receives the gasoline and record specified in § 5 A or § 5 B of this regulation shall retain the record for one year after the creation of the record or until this regulation ceases to have effect, whichever is the sooner, and shall make such record available for inspection by the commissioner.

D. Any wholesale purchaser-consumer who purchases or receives the gasoline and record specified in § 5 A or § 5 B of this regulation shall retain the record for one year after the creation of the record or until this regulation ceases to have effect, whichever is the sooner, and shall make such record available for inspection by the commissioner.

E. Any blender or terminal operator who ships or causes to have shipped gasoline destined for the control area during a control period other than to be sold to a retail outlet operator or a wholesale purchaser-consumer shall make a record to be made no later than the time of shipment of the gasoline. Any person who ships the gasoline destined for the control area during a control period shall carry a copy of the record made by the blender or terminal operator. The blender or the terminal operator shall retain for one year after the creation of the record or until this regulation ceases to have effect, whichever is sooner, a copy of the record and shall make such record available for inspection by the commissioner. Such record shall contain for each batch of gasoline shipped the following information:

1. The date of the shipment of the gasoline;
2. The name and address of the blender or terminal operator shipping or causing to have shipped the gasoline and where the blender or terminal operator is not the person shipping the gasoline, the name and address of the person shipping the gasoline;
3. The name and address of the recipient of the gasoline;
4. The volume of gasoline shipped;
5. The identification of the gasoline as nonoxygenated or oxygenated; and
6. The class of oxygenate used in the gasoline, if any, that is to say whether the gasoline contains an ether or an alcohol based oxygenate, and the oxygen content of the gasoline, if any, required by § 3 of this regulation.

The person shipping the gasoline destined for the control area during a control period shall provide the recipient of the gasoline with a copy of the record required by this subsection E upon delivery of the gasoline to the recipient.

The recipient shall retain for one year after the creation of the record or until this regulation ceases to have effect, whichever is the sooner, a copy of the record and shall make such record available for inspection by the commissioner.

§ 6. Gasoline pump labeling.

A. The retail outlet operator shall post a label on any gasoline pump located in the control area from which gasoline is dispensed and which is operated by the retail outlet operator. The retailer shall ensure that the label remains permanently affixed to the gasoline pump. The label shall be worded as follows:

"The following statement is applicable only from November 1 through the last day of February: 'The gasoline dispensed from this pump is oxygenated and will reduce carbon monoxide pollution from motor vehicles.'"

B. The retail outlet operator shall post the label required by § 6 A of this regulation in block letters of no smaller than 20-point bold type, in a color contrasting with the background. The label shall be placed in the upper two-thirds of the front panel of the gasoline pump on the vertical surface of the same side as the price and gallonage or quantity display of the gasoline pump in a position plain and conspicuous from the driver's position.

C. The retail outlet operator shall also label the pump with:

1. The brand name, trademark or trade name of the motor fuel it contains;
2. The grade, blend or mixture of the motor fuel it contains;
3. The octane ... rating of the motor fuel it contains; and
4. If the product contains one percent or more ethanol or methanol, information identifying the kind of alcohol and the percentage of each at the time of blending, in letters not less than one inch in height. *

§ 7. Sampling, testing, and oxygen content calculations.

A. Sampling methodologies used by the commissioner to determine compliance with this regulation shall be those set forth in Appendix D, 40 CFR Part 80, which is hereby adopted by reference.

B. Determination by the commissioner of the oxygenate and its weight and volume in gasoline shall be in accordance with test method ASTM D 4815-89 as set forth in ASTM specification D 4814 or other methods developed or approved by the United States Environmental Protection Agency.

Proposed Regulations

C. Oxygen content shall be calculated by the commissioner by multiplying the mass concentration of each oxygenate in gasoline by the oxygen molecular weight contribution of the oxygenate. All volume measurements shall be adjusted to 60 degrees Fahrenheit. For the purpose of calculating oxygen content, the following oxygen molecular weight contributions shall be used:

Oxygenate	Oxygen Mass Fraction	Relative Density 60/60°F
Methyl Alcohol	0.4993	0.7963
Ethyl Alcohol	0.3473	0.7939
n-Propyl Alcohol	0.2662	0.8080
Isopropyl Alcohol	0.2662	0.7899
n-Butyl Alcohol	0.2158	0.8137
Isobutyl Alcohol	0.2158	0.8058
sec-Butyl Alcohol	0.2158	0.8114
tertiary-Butyl Alcohol	0.2158	0.7922
Methyl Tertiary-Butyl Ether	0.1815	0.7460
Ethyl tertiary-Butyl Ether	0.1566	0.7452
tertiary-Amyl Methyl Ether	0.1566	0.7752
tertiary-Hexyl Methyl Ether	0.1377	0.7860
Dilso propyl ether	0.1566	0.7300

D. Oxygenated gasoline shall consist of a single homogenous mixture, presenting no indication of phase separation when tested by the commissioner in accordance with the test method described in Annex A3 of ASTM Specification D-4814.

1. -8°C (17°F) during the month of January.
2. -7°C (19°F) during the month of February.
3. -3°C (26°F) during the month of March.
4. 3°C (37°F) during the month of April.
5. 9°C (48°F) during the month of May.
6. 10°C (50°F) during the months of June, July, August, and September.
7. 4°C (39°F) during the month of October.
8. -2°C (28°F) during the month of November.
9. -7°C (19°F) during the month of December.

§ 8. Compliance and enforcement.

A. Any retail outlet operator or wholesale purchaser-consumer will be deemed in compliance with the requirements of this regulation during a transitional period comprising the first 10 days of the control period, provided that for all deliveries of gasoline during the five days immediately preceding the control period the gasoline delivered to that retail outlet operator or wholesale purchaser-consumer complies with the minimum oxygenate content specified by § 3 of this regulation.

B. Any retail outlet operator or wholesale purchaser-consumer who purchases or receives, and offers for sale, or dispenses gasoline found not to be in compliance with the requirements of this regulation will be subject to having such gasoline ordered off sale or removed from use by the commissioner. After such ordering off sale or removal from use, the retail outlet operator or wholesale purchaser-consumer may:

1. Re-offer for sale gasoline that has been ordered off sale or removed from use, provided that prior to such re-offering for sale such gasoline has been blended by any person with additional oxygenates sufficient to comply with the minimum oxygenate content specified by § 3 of this regulation, and provided that prior to such re-offering for sale the sampling taken by the commissioner meets the minimum oxygenate content specified by § 3 of this regulation;

2. Sell or transfer gasoline for use outside the control area that has been ordered off sale or removed from use, provided that the retail outlet operator or wholesale purchaser-consumer complies with the record keeping requirements of § 5 C (in the case of the retail outlet operator) and § 5 D (in the case of the wholesale purchaser-consumer) of this regulation, and provided that prior to the sale or transfer the retail outlet operator or wholesale purchaser-consumer provides the commissioner with an affidavit stating that the retail outlet operator or the wholesale purchaser-consumer will not sell or transfer the gasoline in or to the control area during the control period, and also stating the proposed disposition of the gasoline; or

3. Have gasoline that has been ordered off sale or removed from use released and returned to the retail outlet operator or wholesale purchaser-consumer by the commissioner, provided that prior to such release the retail outlet operator or wholesale purchaser-consumer provides the commissioner with an affidavit stating that the retail outlet operator or wholesale purchaser-consumer will not sell or transfer the gasoline in or to the control area during the control period, and also stating the proposed disposition of the gasoline.

¹ Clean Air Act § 302(a), 42 USC § 7602(a).

² Proposed federal regulation as contained in Federal Register July 9, 1991. The placement of this definition as proposed in the Federal Register would be at 40 CFR § 80.1 (oo).

³ Clean Air Act § 302(e), 42 USC § 7602(e).

⁴ From § 59.1-167 A of the Code of Virginia.

⁵ Extrapolated, below freezing temperature.

DEPARTMENT OF EDUCATION (STATE BOARD OF)

Title of Regulation: VR 270-01-0007. Regulations Governing Special Education Programs For Handicapped Children and Youth with Disabilities in Virginia.

Statutory Authority: §§ 22.1-214 and 22.1-215 of the Code of Virginia; § 4 of Article VIII of the Constitution of Virginia.

Public Hearing Dates:

April 21, 1993 - 7 p.m.

April 22, 1993 - 7 p.m.

April 27, 1993 - 7 p.m.

April 28, 1993 - 7 p.m.

(See Calendar of Events section for additional information)

Summary:

These regulations govern special education programs for children with disabilities in Virginia. The amendments to these regulations fall into five categories. First, changes have been made to incorporate federal requirements established by the Individuals with Disabilities Education Act (20 U.S.C. §§ 1400-1485) and its implementing regulations. Those changes include the addition of traumatic brain injury as a new disability category, the addition of assistive technology services/devices as a new related service, and the addition of transition services as a component of the Individualized Education Program. Second, the evaluation requirements have been amended to comply with § 22.1-214 G of the Code of Virginia. Third, the regulations have been reviewed and revised to eliminate any unnecessary, burdensome requirements on local school divisions. Fourth, attention deficit hyperactivity disorder/attention deficit disorder has been added to the definition of "Other Health Impairment." Fifth, language throughout the regulations has been revised both for clarity and for the coordination with language in the federal special education regulations.

VR 270-02-0007. Regulations Governing Special Education Programs for Children with Disabilities in Virginia.

PART I. DEFINITIONS.

§ 1.1. Definitions.

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

"Age of eligibility" means all eligible handicapped children with disabilities who have not graduated from a secondary school or completed a program approved by the Board of Education and who are mentally retarded, physically handicapped, seriously emotionally disturbed, speech or language impaired, hearing impaired, visually impaired, autistic, multihandicapped, severely and profoundly handicapped, other health impaired, or having a specific learning disability, identified as having autism, deaf-blindness, a developmental delay, a hearing impairment which may include deafness, mental retardation, multiple disabilities, an orthopedic impairment, other health impairment, a physical disability, a serious emotional disturbance, a severe and profound disability, a specific learning disability, a speech or language impairment, a traumatic brain injury, a visual impairment which may include blindness or who are otherwise handicapped have other disabilities as defined by the Board of Education, who, because of such impairments, are in need of special education, whose second birthday falls on or before September 30, and who have not reached their 22nd birthday on or before September 30.

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

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

1. The evaluation of the needs of a child with a disability, including a functional evaluation of the child in the child's customary environment;
2. Purchasing, leasing or otherwise providing for the acquisition of assistive technology devices by children with disabilities;
3. Selecting, designing, fitting, customizing, adapting, applying, retaining, repairing, or replacing assistive technology devices;
4. Coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing education and rehabilitation programs;
5. Training or technical assistance for a child with disability or, if appropriate, that child's family;

Proposed Regulations

6. Training or technical assistance for professionals (including individuals providing education or rehabilitation services), employers, or other individuals who provide services to employ, or are otherwise substantially involved in the major life function of children with disabilities.

"Audiology" means:

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

"Autism" means a behaviorally defined syndrome; the essential functions are typically manifested prior to 30 months of age and include disturbances of:

1. Developmental rates or sequences;
2. Responses to sensory stimuli; and
3. Speech, language, and cognitive capacities and capacities to relate to people, events and objects: means a developmental disability significantly affecting verbal and nonverbal communication and social interaction, generally evident before age 3, that adversely affects a child's educational performance. Other characteristics often associated with autism are engagement in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routines, and unusual responses to sensory experiences. The term does not apply if a child's education performance is adversely affected primarily because the child has a serious emotional disturbance as defined in these regulations.

"Change in identification" means a change in the eligibility committee's determination of the child's primary

disability.

"Change in placement" means:

1. The change in a child's academic offerings from general to special education and from special education to general education;
2. The expulsion or long-term suspension of a student with a disability;
3. The placement change which results from a change in the identification of a disability;
4. The change from a public school to a private day, residential or state operated program; from a private day, residential or state operated program to a public school; or to a placement in a separate facility;
5. Graduation.

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

"Children with disabilities" means those children evaluated, in accordance with these regulations, as having autism, deaf-blindness, a developmental delay, a hearing impairment which may include deafness, mental retardation, multiple disabilities, an orthopedic impairment, other health impairment, a physical disability, a serious emotional disturbance, a severe or profound disability, a specific learning disability, a speech or language impairment, a traumatic brain injury, or a visual impairment which may include blindness, who because of these impairments, need special education and related services.

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

"Consent" means:

1. The parent has been fully informed of all information relevant to the activity for which consent is sought in his native language, or other mode of communication;
2. The parent understands and agrees, in writing, to the carrying out of the activity for which consent is sought and the consent describes that activity and lists the records (if any) which will be released and to whom; and
3. The parent understands that the granting of consent is voluntary on the part of the parent and may be

Proposed Regulations

revoked any time prior to the time limits set forth in § 3.5 3.4 .

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

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

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

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

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

"*Developmentally delayed*" "*Developmental delay*" means a child below age eight who exhibits a significant delay in one or more of the following areas of development for a child below age 8 :

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

"*Direct services*" means services provided to a handicapped child with a disability by the state directly, by contract, or through other arrangements.

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

"*Emotional disturbance*": see "*Serious emotional disturbance*."

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

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

"*Free appropriate public education*" (FAPE) means special education and related services which:

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

FAPE is a statutory term which requires special education and related services to be provided in accordance with an individualized education program (IEP). However, under § 504, each recipient LEA must provide an education which includes services that are "...designed to meet individual educational needs of handicapped persons as adequately as the needs of nonhandicapped persons are met..." Those regulations state that implementation of an IEP, in accordance with Part B, is one means of meeting the "FAPE" requirement.

"*Handicapped children*" means those children evaluated, in accordance with these regulations, as being mentally retarded, hard of hearing, deaf, speech or language impaired, autistic, visually impaired, seriously emotionally disturbed, orthopedically impaired, other health impaired, deaf-blind, severely and profoundly handicapped, multihandicapped, or having a specific learning disability, who, because of these impairments, need special education and related services.

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

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

Proposed Regulations

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

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

A hearing officer is not an employee of the LEA *Local Education Agency (LEA)* or SEA *State Education Agency (SEA)* solely because he is paid by the agency to serve as a hearing officer.

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

"Independent educational evaluation" (IEE) means an evaluation conducted by a qualified examiner(s) who is not employed by the public agency responsible for the education of the child in question. Whenever an independent evaluation is made at public expense, the criteria governing the evaluation, including the location of the evaluation and the qualifications of the examiner(s), must be the same as the criteria the public agency uses when it initiates an evaluation. An independent educational evaluation may incorporate part or all of the four core evaluations utilized for determining eligibility in Virginia.

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

1. A statement of the present levels of educational performance;

a. *The statement should accurately describe the effect of the child's disability on the child's performance in any area of education that is affected including academic areas and nonacademic areas.*

b. *The statement should be written in objective measurable terms, to the extent possible. Test scores, if appropriate, should be self-explanatory or an explanation should be included.*

c. *There should be a direct relationship between the present level of performance and the other components of the IEP.*

2. A statement of annual goals, including short-term

instructional objectives ; .

3. A statement of the specific education and related services to be provided, and the extent to which such child will be able to participate in regular educational programs ; .

4. The projected date for initiation and anticipated duration of the services ; and .

5. Appropriate objective criteria and evaluation procedures and schedules for determining, at least on an annual basis, whether instructional objectives are being achieved.

6. *Necessary information regarding the Literacy Testing Program (LTP) (see § 3.4 B 5 f).*

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

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

"Initial placement" means the first public agency placement in either a public school, state operated program, or private school program providing special education or related services.

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

"Interpreting personnel" for the hard of hearing or deaf means personnel providing educational interpreting services for hard of hearing or deaf students children with hearing impairments, deafness or both meeting qualifications set forth under the section on Qualified Professionals.

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

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

Proposed Regulations

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

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

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

"*Multihandicapped*" "*Multiple disabilities*" means concomitant impairments (such as ~~mentally retarded mental retardation - blind blindness, mentally retarded mental retardation - orthopedically impaired orthopedic impairment~~, etc.), the combination of which causes such severe educational problems that they cannot be accommodated in special education programs solely for one of the impairments. The term does not include ~~deaf-blind~~ children with *deaf-blindness*.

"*Native language*" as defined by § 703(a)(2) of the Bilingual Education Act, when used with reference to a person of limited English-speaking ability, means the language normally used by that person, or in the case of a child, the language normally used by the parents of the child.

1. In all direct contact with a child (including evaluation of the child), communication would be in the language normally used by the child and not that of the parents, if there is a difference between the two.
2. If a person is deaf or blind, or has no written language, the mode of communication would be that normally used by the person (such as sign language, Braille, or oral communication).

"*Notification*" means written statements in English and in the primary language of the parent's home, and oral communication in the primary language of the parent's home.

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

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

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

"*Other health impaired impairment*" means having limited strength, vitality or alertness due to ~~chronic or acute~~ health problems such as a heart condition, tuberculosis, rheumatic fever, arthritis, asthma, sickle cell anemia, hemophilia, epilepsy, lead poisoning, leukemia, *attention deficit disorder/attention deficit hyperactivity disorder*, or diabetes ~~which that~~ are chronic or acute and that adversely affects *affect* a child's educational performance.

"*Parent*" means a parent, a guardian, or a person acting as a parent of a child, or a surrogate parent who has been appointed pursuant to § 3.6. The term does not include the state if the child is a ward of the state. The term "*parent*" means either parent, unless the LEA has been provided with evidence that there is a legally binding instrument or a state law or court order governing such matters as divorce, separation, or custody which mother or father, the adoptive mother or father, or the legally appointed guardian or committee has custody of the child to the contrary. The definition term also includes persons acting in the place of a parent such as a ~~grandmother grandparent~~ or stepparent with whom the child lives; as well as the persons who are legally responsible for a child's welfare. The term "*parent*" also means a surrogate parent appointed pursuant to provisions set forth in the regulations. A child 18 years or older may assert any rights under these regulations in his own name.

"*Parent counseling and training*" means assisting parents in understanding the special needs of their child and providing parents with information about child development.

"*Participating agency*" means any agency or institution which collects, maintains, or uses personally identifiable information or from which information is obtained.

"*Physical education*" means the development of:

1. Physical and motor fitness;

Proposed Regulations

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

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

"Physical therapy" means services provided by a qualified physical therapist or under the direction or supervision of a qualified physical therapist upon medical referral and direction ; and includes the evaluation, testing, treatment, reeducation and rehabilitation by physical, mechanical, or electronic measures and procedures of individuals who because of trauma, disease or birth defect present physical or emotional disorders. The term "physical therapy" does not include the use of Roentgen rays and radium for diagnostic or therapeutic purposes or the use of electricity for shock therapy and surgical purposes, including cauterization .

"Preschool handicapped children" means children (below age five) who may be identified by any of the previously defined handicapping conditions or developmentally delayed.

"Program change" means any change in the way special education services are provided to a child as determined by the child's individualized education program.

"Psychological services" means includes :

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

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

"Public expense" means that a required educational and evaluation service is provided at no cost to the parent the LEA either pays for the full cost of the service or

evaluation or ensures that the service or evaluation is otherwise provided at no cost to the parent .

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

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

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

"Recreation" means:

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

"Reevaluation" means completion of a new assessment components in accordance with the applicable criteria evaluation .

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

"Related services" means transportation and such developmental, corrective, and other supportive services as are required to assist a handicapped child with a disability to benefit from special education, and includes speech speech-langauge pathology and audiology ; ; psychological services ; ; physical and occupational therapy ; ; recreation, including therapeutic recreation; early identification and assessment of disabilities in children ; ; counseling services, including rehabilitation counseling; and medical services for diagnostic or evaluation purposes. The

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

There are certain kinds of services which might be provided by persons from varying professional backgrounds and with a variety of operational titles, depending upon requirements in individual states. For example, counseling services might be provided by social workers, psychologists, or guidance counselors, and psychological examiners, psychometrists, or psychologists, depending upon state standards.

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

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

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

"Section 504" means that section of the Rehabilitation Act of 1973 which is designed to eliminate discrimination on the basis of handicap in any program or activity receiving federal financial assistance.

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

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

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

"Severely and profoundly handicapped" "*Severe and profound disability*" means individuals who:

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

"Significant change in identification or placement" includes:

1. The change in a child's academic offerings from general to special education and from special education to general education (reevaluation, written notice and consent are required);
2. The expulsion of a handicapped student (reevaluation to determine whether expulsion is permissible and written notice for expulsion is required; consent is not required);
3. The placement change which results from a change in the identification of a handicapping condition; for example, mentally retarded to learning disabled (reevaluation, written notice and consent are required);
4. The change from a public school to a private day, residential or state operated program, from a private day, residential or state operated program to a public school, or to a placement in a separate facility (reevaluation, written notice and consent are required).

"Social services" (visiting teacher/school social worker) means work services in schools" includes :

1. Collecting and integrating data to prepare a socio-cultural assessment on a child referred for or identified with a handicapping condition Preparing a social or developmental history on a child with a disability ;
2. Interpreting the socio-cultural assessment;
3. 2. Group and individual counseling with the child and family;

Proposed Regulations

4. 3. Working with those problems in a child's living situation (home, school, and community) that affect the child's adjustment in school; and

5. 4. Mobilizing school and community resources to enable the child to receive maximum benefit from his educational program; and learn as effectively as possible in his educational program.

6. Offering consultation to school personnel and parents.

"Special education" means specially designed instruction, at no cost to the parent, to meet the unique needs of a ~~handicapped~~ child with a disability, including classroom instruction, instruction in physical education, home instruction, and instruction in hospitals and institutions instruction conducted in a classroom, in the home, in hospitals, and institutions and in other settings and instruction in physical education.

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

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

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

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

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

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

The definition of "special education" is a particularly important one under these regulations since a child is not ~~handicapped~~ unless he needs special education. The

definition of "related services" also depends on this definition, since a related service must be necessary for a child to benefit from special education. Therefore, if a child does not need special education, there can be no "related services" and the child (because not "handicapped") is not covered under the Act.

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

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

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

"Speech-language pathology" includes:

1. Identification of children with speech or language disorders;
2. Diagnosis and appraisal of specific speech or language disorders;
3. Referral for medical or other professional attention necessary for the habilitation of speech or language disorders;
4. Provisions of speech and language services for the habilitation or prevention of communicative disorders; and
5. Counseling and guidance of parents, children, and teachers regarding speech and language disorders.

"State agencies" means the State Departments of Education; Health; Mental Health; Mental Retardation; and Substance Abuse Services; Corrections; Rehabilitative Services; Social Services; Correctional Education; and the Department for the Visually Handicapped.

Proposed Regulations

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

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

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

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

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

1. Be based on the individual student's needs, taking into account the student's preferences and interests; and

2. Include:

- a. The development of employment and other post-school adult living objectives;

- b. Instruction;

- c. Community experiences; and

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

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

"Transportation" means includes :

1. Travel to and from school and between schools;
2. Travel in and around school building; and

3. Specialized equipment (such as special or adapted buses, lifts, and ramps), if required to provide special transportation for a handicapped child with a disability.

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

"Visiting teacher/school social worker" (See social services).

"Visually impaired" "Visual impairment" means a visual impairment which in vision that, even with correction, adversely affects a child's educational performance. The term includes both partially seeing and blind children partial sight and blindness.

"Vocational education" means organized educational programs which or instruction in a sequence or aggregation of occupational competencies that are directly related to the preparation of individuals in for paid or unpaid employment in such fields as agriculture, business occupations, home economics, health occupations, marketing and distributive occupations, technical and emerging occupations, modern industrial and agriculture arts, and trades and industrial occupations, or for additional preparation for a career in such fields, and in other occupations, current or emerging occupations requiring other than a baccalaureate or advanced degree . and vocational student organization activities as an integral part of the program; and for purposes of this paragraph, the term "organized education program" means only (i) instruction (including career guidance and counseling) related to the occupation or occupations for which the students are in training or instruction necessary for students to benefit from such training, and (ii) the acquisition (including leasing), maintenance and repair of instructional equipment, supplies, and teaching aides; but the terms do not mean the construction, acquisition, or initial equipment or buildings, or the acquisition or rental of land. These programs must include competency-based applied learning that contributes to an individual's academic knowledge, higher-order reasoning, and problem-solving skills, work attitudes, general employability skills, and the occupation-specific skills necessary for economic independence as a productive and contributing member of society. This term also includes applied technology education.

"Ward of the state" means all parental rights and

Proposed Regulations

responsibilities for the care and custody of a child have been terminated by court order or applicable law, and the child has been placed in the care and custody of the state.

PART II. RESPONSIBILITIES OF THE STATE DEPARTMENT OF EDUCATION.

§ 2.1. *Right to a free appropriate public education.*

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

§ 2.2. *Functions of the Department of Education.*

In keeping with its responsibilities in this regard, the Department of Education (SEA) shall perform the functions which follow:

~~A.~~ 1. Review and submit to the Board of Education for approval the Annual Special Education Plan/Report and Funding Applications from each local school division or other public agencies responsible for providing educational services to ~~handicapped children and youth (LEA)~~ *with disabilities*.

~~B.~~ 2. Prepare and submit for public hearing, for comment from members of the State Special Education Advisory Committee, and for approval by the ~~Board of Education and the U.S. Department of Education~~, the State Plan for Education of ~~Handicapped Children with Disabilities~~. Such plan shall contain assurances of and procedures ~~for as prescribed by federal law~~:

- ~~1. Public notice and opportunity for comment;~~
- ~~2. Right to education policy statement;~~
- ~~3. Full educational opportunity goal and timelines;~~
- ~~4. Policy on priorities;~~
- ~~5. Child identification;~~
- ~~6. Individualized education program;~~
- ~~7. Procedural safeguards;~~
- ~~8. Least restrictive environment;~~
- ~~9. Protection in evaluation procedures;~~

~~10. Comprehensive system of personnel development;~~

~~11. Participation of handicapped children and youth in private schools;~~

~~12. Placement of handicapped children and youth in approved private nonsectarian schools;~~

~~13. Recovery of funds;~~

~~14. Hearing on applications from each LEA;~~

~~15. Monitoring and evaluation;~~

~~16. Interagency agreements.~~

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

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

~~E.~~ 5. Review and evaluate compliance of LEAs with state and federal laws and regulations pertaining to the education of the ~~handicapped children with disabilities~~.

~~F.~~ 6. Review and evaluate compliance of approved private nonsectarian schools for ~~handicapped children with disabilities~~ with state and federal laws and regulations pertaining to the education of the ~~handicapped children with disabilities~~.

~~G.~~ 7. Establish and maintain a state advisory committee composed of persons involved in or concerned with the education of ~~handicapped children and youth with disabilities~~. The membership must include, but need not be limited to, at least one representative from each of the groups as follows:

~~1. a. Handicapped individuals~~ *Individuals with disabilities*;

~~2. b. Teachers of the handicapped children with disabilities~~;

~~3. c. Parents of handicapped children and youth with disabilities~~;

~~4. d. State and local education officials;~~

~~5. e. Special education program administrators;~~

~~6. f. Public and private institutions of higher education; and~~

Proposed Regulations

7. g. Advocacy groups.

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

H. 9. Develop and implement a comprehensive personnel development plan which focuses on pre- and in-service educational needs.

I. 10. Develop procedures for disseminating significant information derived from research, demonstration programs and projects involving the handicapped children with disabilities .

J. 11. Secure agreements from state agency heads regarding appropriate roles and responsibilities for the identification, evaluation, placement, and delivery of educational and related services to all handicapped children and youth with disabilities .

K. 12. Disburse the appropriated funds for the education of handicapped children and youth with disabilities in the Commonwealth of to LEAs and state operated programs which are in compliance with state and federal laws and regulations pertaining to the education of the handicapped children with disabilities .

L. 13. Establish procedures to ensure that the placements of handicapped children and youth with disabilities by other public agencies are in compliance with state and federal laws and regulations pertaining to the education of the handicapped children with disabilities .

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

N. 15. Report and certify annually to the appropriate federal agency the following: the number of children with disabilities in local school divisions and state operated programs receiving special education and related services on December 1.

1. The number of handicapped children and youth in local school divisions receiving special education and related services on December 1; and

2. The number of handicapped children and youth in

state-operated programs receiving special education and related services on October 1.

O. 16. Publish Prepare an annual report which summarizes special education and related services provided handicapped children and youth with disabilities .

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

Q. Report to the State Special Education Advisory Committee all findings and decisions of due process hearings. In addition, the complaint findings shall be reported at least annually.

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

S. Provide private schools with copies of all state regulations and standards relating to the education of the handicapped and revisions of these regulations and standards as they occur.

T. 19. Afford private schools to which a public agency has referred or placed a child with a disability the opportunity to participate in the development and revision of regulations and standards which apply to them.

PART III. RESPONSIBILITIES OF LOCAL SCHOOL DIVISIONS LEAs AND STATE AGENCIES.

§ 3.1. Applicability of requirements.

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

§ 3.2. The requirements, developed in accordance with state and federal laws and regulations, are consistent with the Department of Education's responsibilities outlined as follows:

A. Identification, evaluation, and eligibility.

1. Target ages and eligibility.

2. Definitions of handicapping conditions.

3. Child find.

Proposed Regulations

4. Screening.
5. Referral.
6. Evaluation.
7. Assessment components.
8. Eligibility.
9. Termination of services.
10. Child's status pending determination of eligibility.

B. Service delivery.

1. Free appropriate public education.
2. Individualized education program.

C. Procedural safeguards.

1. Due process.
2. Confidentiality of information.
3. Complaint procedure.

D. Surrogate parent procedures.

1. Role of surrogate parents.
2. Appointment of surrogate parents.
3. Identification and recruitment of surrogate parents.
4. Qualifications of surrogate parents.
5. Rights of surrogate parents.

E. Administration and governance.

1. Plans, applications, and reports.
2. Personnel development.
3. Local advisory committee.
4. Regional programs.

§ 3.3. § 3.2. Identification, evaluation, and eligibility.

A. Target ages and eligibility.

Each annual special education plan/report and funding application shall include procedures which ensure that all children and youth residing within the jurisdiction of an LEA, birth to age 21, inclusive, who may be ~~handicapped~~ *have disabilities*, and who may need special education and related services are identified, located, and evaluated. The plan also shall include a practical method for

determining children and youth who are receiving needed special education and related services and those who are not receiving such services.

B. Definitions of handicapping conditions.

Definitions of handicapping conditions shall be as defined in Part I of this regulation.

C. B. Child find.

1. Each local school division shall, at least annually, conduct a public awareness campaign to:

a. Inform the community of a person's statutory right to a free appropriate education and the availability of special education programs and services;

b. Generate referrals; and

c. Explain the nature of ~~handicapping conditions~~ *disabilities*, the early warning signs of ~~handicapping conditions~~ *disabilities*, and the need for early intervention.

2. Procedures for informing the community shall show evidence of the use of a variety of materials and media, and shall:

a. Provide for personal contacts with community groups, public and private agencies and organizations; and

b. Provide information in the person's native language or primary mode of communication.

3. There shall be evidence of involvement of parents and community members; as well as the local special education advisory committee, in the required child find and community awareness campaign.

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

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

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

Proposed Regulations

inclusive.

D. C. Screening.

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

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

2. The screening process for all children enrolled in the school division is as follows:

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

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

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

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

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

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

a. Referring source, as appropriate (except when referring source would breach confidentiality of child);

a. b. Principal, or designee;

b. c. Teachers; and

e. d. Specialists ; and .

d. Referring source, as appropriate (except when referring source would breach confidentiality of child);

The committee must have at least three persons in attendance.

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

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

E. D. Referral.

f. Children suspected of being handicapped having a disability shall be referred by this committee the child study committee or other referring source to the special education administrator for formal assessment. ~~The~~ If referral to the special education administrator is from the child study committee, it shall be made within five administrative working days following the determination by the child study committee that the child is suspected of being handicapped having a disability. The special education administrator, or designee, shall:

a. 1. Record the date, reason for referral and name(s) of the person/agency making the referral;

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

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

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

(3) c. Secure written permission of the parent for the formal assessment;

e. 3. Initiate formal assessment procedures; and

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

F. E. Evaluation.

f. The LEA shall establish procedures for the evaluation of referred children which include the following:

Proposed Regulations

- a. Written prior notification (in native language);
- b. Opportunity for independent evaluation;
- c. Written parental consent;
- d. Assignment of surrogate parent when necessary;
- e. Opportunity for an impartial hearing;
- f. Confidentiality;
- g. Opportunity for examination of records; and
- h. Nondiscriminatory testing.

2. 1. The LEA shall establish policies and procedures to ensure that tests and other evaluation materials the following :

a. Tests and other evaluation materials:

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

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

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

d. (4) Are administered by trained personnel in conformance with the instructions provided by their producer ; .

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

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

(3) d. No single procedure shall be used as the sole criterion for determining an appropriate educational program for a child;

(4) e. The evaluation shall be made by a multidisciplinary team or group of persons, including at least one teacher or other specialist with knowledge in the area of suspected disability;

(5) 2. For a child suspected of being learning disabled

having a specific learning disability , the multidisciplinary team shall include:

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

(b) b. At least one person qualified to conduct individual diagnostic examinations of children and knowledgeable in the handicapping condition , such as a specific learning disabilities teacher, school psychologist, speech-language pathologist, or remedial reading teacher .

3. The LEA shall establish procedures to ensure :

a. That each child is assessed in all areas related to the suspected disability, including, where appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities. However, the hearing of each handicapped child with a disability shall be tested during the eligibility process prior to placement in a special education program. A complete audiological assessment, including tests which will assess inner and middle ear functioning, must be performed on each child who fails two hearing screening tests. The second hearing screening test shall be completed not less than 15 nor more than 45 calendar days after administration of the first screening test.

b. Parents are provided an opportunity to participate, if they so request, in the consideration of the areas to be assessed.

4. The LEA shall solicit and consider pertinent information from the agency, if any, that has been assigned legal custodial rights of a handicapped child concerning evaluation of such child.

5. 4. The LEA shall establish procedures to ensure that eligibility for special education and related services is determined within 65 administrative working days after request for such services by the child study committee to the special education administrator evaluation is received by the special education administrator .

G. Assessment components:

The eligibility of children for special education programs and related services shall be based upon a formal assessment involving the components as follows:

1. Educational. Written report describing current educational performance and identifying instructional strengths and weaknesses in academic skills and

language performance.

2. Medical. Written report from a licensed physician indicating general medical history and any medical/health problems which may impede learning.

3. Sociocultural. Written report from a qualified visiting teacher or school social worker which describes family history, structure and dynamics; developmental and health history; and social/adaptive behavior in the home, school, and community. The information is obtained through interviews with parents or primary caretakers in addition to use of other social appraisal methods.

4. Psychological. Written report from a qualified psychologist based on the use of a battery of appropriate instruments which shall include individual intelligence test(s), and psychoeducational tests.

5. Developmental. Written report of assessment of how the child functions in the major areas of development such as cognition, motor, social/adaptive behavior, perception, and communication, where required in the regulations for assessing the specified handicapping conditions.

6. Other, such as speech, language, clinical/psychiatric, etc., where appropriate or necessary. Minimum assessment components shall be completed by qualified professional(s) prior to review by the eligibility committee for children suspected of being handicapped in one or more of the following areas: (These requirements are also applicable when the triennial review is conducted.)

a. Mentally retarded. Psychological, medical, sociocultural and educational/developmental.

b. Learning disabled. Educational, medical, sociocultural, and psychological; observation of academic performance in regular classroom by at least one team member who is knowledgeable about learning disabilities other than the child's regular teacher (or in the case of a preschool or out-of-school student, the observation shall be made in an appropriate environment).

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

(1) a. The child does not achieve commensurate with his age and ability levels in one or more of the areas listed in subdivision G 6 b (2) E 5 b of this section when provided with learning experiences appropriate for the child's age and ability levels; and

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

(a) (1) Oral expression;

(b) (2) Listening comprehension;

(c) (3) Written expression;

(d) (4) Basic reading skill;

(e) (5) Reading comprehension;

(f) (6) Mathematics *Mathematical* calculations; or

(g) (7) Mathematics *Mathematical* reasoning.

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

(a) (1) A visual, hearing or motor handicap disability ;

(b) (2) Mental retardation;

(c) (3) *Serious* emotional disturbance; or

(d) (4) Environmental, cultural, or economic disadvantages.

e. Seriously emotionally disturbed. Educational, medical, sociocultural, and psychological.

f. Hearing impaired. Medical (to include complete audiological assessment which will assess inner and middle ear functioning); educational, sociocultural, and psychological.

g. Visually impaired. Medical (to include examination by an eye specialist); educational, sociocultural, and psychological.

h. Orthopedically impaired. Medical (to include evaluation(s)/prescription(s) for occupational therapy or physical therapy when appropriate); educational, sociocultural, and psychological.

i. Other health impaired. Medical (with special examination report as appropriate); educational, sociocultural, and psychological.

j. Severely and profoundly handicapped. Medical (to include evaluation(s)/prescription(s) for occupational or physical therapy when appropriate); educational/developmental, sociocultural, and psychological.

k. Speech or language impaired. Speech and language, hearing screening, educational, and other reports as appropriate. An audiological assessment must be performed on each child who fails two hearing screening tests. When the child has not

Proposed Regulations

made satisfactory progress after receiving two years of speech service a comprehensive assessment must be completed which consists of the following: medical, socio-cultural, psychological, and educational.

j. Preschool. Medical, socio-cultural, developmental, and psychological.

k. Autism. Medical (with special examination reports as appropriate), educational/developmental, socio-cultural, speech and language, and psychological.

l. Multihandicapped. Medical (with special examination reports as appropriate), educational, socio-cultural, and psychological.

m. Deaf/blind. Medical (to include complete audiological assessment which will assess inner and middle ear functioning and examination by an eye specialist), educational, socio-cultural and psychological.

H. Qualified professionals:

1. Audiologist. See teacher certification regulations.

2. Educational interpreting for hard of hearing or deaf students. If the IEP Committee determines that the hard of hearing or deaf student will require educational interpreting services, then qualified personnel shall be provided in accordance with the student's mode of communication.

Educational personnel providing interpreting for students using sign language shall have completed and passed a Virginia Quality Assurance Screening at Level 1 or higher. Personnel shall have completed and passed at Level 2 screening after July 1, 1992, and at Level 3 screening after July 1, 1995. Personnel may have an equivalent or higher registry of interpreters for the deaf certificate (excluding certification in reverse skills) in lieu of the Virginia Quality Assurance Screening certificate.

Personnel providing educational interpreting services for hard of hearing or deaf students using cued speech shall be certified as Cued Speech Interpreters by the National Cued Speech Association at Level 1, or higher, by July 1, 1990, and at Level 2, or higher, by July 1, 1992.

Personnel providing educational interpreting services for the hard of hearing or deaf students requiring oral interpreting shall have completed and passed a Virginia Quality Assurance Screening for the Deaf certificate (excluding certification in reverse skills) in lieu of the Virginia Quality Assurance Screening certificate.

3. Occupational therapist. A qualified occupational therapist is a professional who shall hold at least a Bachelor's degree in occupational therapy from an accredited school. In addition, a qualified occupational therapist is one who maintains or is eligible for annual registration with the American Occupational Therapy Association.

4. Physical therapist. A qualified physical therapist is one who holds a current license or is eligible for licensure in the field of physical therapy from the State Board of Medicine.

I. F. Eligibility.

Eligibility of children for special education programs and related services shall be determined by an eligibility committee.

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

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

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

4. The eligibility committee shall have a written summary which *that* consists of essential deliberations supporting its findings as to the eligibility of each child for a special education program and related services. This summary shall be signed by each eligibility committee member present.

a. The written summary shall be maintained in the child's confidential file(s); and

b. This *The* summary statement of the eligibility committee's essential deliberations shall be forwarded by the committee to the Individualized Education Program (IEP) IEP committee upon determination of eligibility. This *The* summary

statement may include other recommendations. A statement by each eligibility committee member that the summary statement reflects his conclusions shall be included. If the report does not ; *reflect a particular member's conclusion, then* a separate statement shall be submitted by the team member presenting his conclusions.

c. The written summary concerning students identified as *having a specific learning disabled disability* shall also include:

- (1) A statement indicating whether or not the child has a specific learning disability;
- (2) The basis for making the determination;
- (3) Relevant behavior noted during the observation and the relationship of the behavior to the child's academic functioning;
- (4) Educationally relevant medical findings, if any;
- (5) Information indicating whether or not there is a severe discrepancy between the child's achievement and ability which cannot be corrected without special education and related services;
- (6) Effects of any environmental, cultural, or economic disadvantage, as determined by the team; and
- (7) A statement by each eligibility committee member that the report reflects his conclusions. If it does not ; *the reflect a particular member's conclusion, then the* team member must submit a separate statement presenting his conclusions.

J. G. Termination of service(s).

1. ~~Partial~~ Termination of one or more special education related services for a child is a function of the IEP committee. ~~Partial~~ Termination of special education and related services occurs when the IEP committee determines that the service(s) are no longer required and parental consent is obtained in order for the child to benefit from special education .

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

1. a. When If the eligibility committee determines that the services are no longer required based on the fact that the child no longer meets the eligibility criteria for special education and related services

and parental consent has been obtained ; or

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

K. H. Child's status pending determination of eligibility.

The child shall remain in the current placement during determination of eligibility for special education and related services.

L. I. Child's status; previous enrollment in special education.

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

§ 3.4. § 3.3. Service delivery.

A. Free appropriate public education.

1. Age of eligibility ~~timelines~~ . A free appropriate public education shall be available to all ~~handicapped~~ children with disabilities , ages two to 21, inclusive, residing within the jurisdiction of each LEA. Each LEA shall ~~establish~~ have established the goal of providing a full educational opportunity for all ~~handicapped~~ children with disabilities from birth to 21, inclusive, residing within their jurisdiction ; to be fully implemented no later than September 1, 1990 .

2. Continuum of alternative placements.

Proposed Regulations

a. Each local school division shall ensure that a continuum of alternative placements is available to meet the needs of ~~handicapped~~ children who need special education and related services with disabilities .

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

~~(1)~~ (2) No single model for the delivery of services to any specific population or category of ~~handicapped~~ children with disabilities will be acceptable for meeting the requirement for a continuum of alternative placements (e.g., resource classes as the only option for children who need a self-contained placement or a separate facility as the only alternative placement for ~~handicapped~~ students with disabilities). All placement decisions must be based on the individual needs of each child.

~~(2)~~ (3) LEAs shall document fully all alternatives considered and the rationale for choosing the selected placement.

~~(3)~~ (4) ~~Handicapped~~ Children with disabilities must be served in a program with age-appropriate peers (e.g., secondary age children shall be placed in a secondary school and elementary age children shall be placed in an elementary school), unless it can be shown that for a particular ~~handicapped~~ child with a disability the alternative placement is appropriate as documented by the IEP.

b. If a local school division is unable to provide a free appropriate public education to a ~~handicapped~~ child with a disability and it is not appropriately available in a state facility, other than Woodrow Wilson Rehabilitation Center, the local school division shall offer to place the child in Woodrow Wilson Rehabilitation Center or a nonsectarian private school for the ~~handicapped children with disabilities~~ approved by the Board of Education or such other licensing agency as may be designated by state law. The school board of such division shall pay to, or on behalf of, the parent or guardian of such child the reasonable tuition cost and other reasonable charges as may be determined under the rules of the Interdepartmental Council on Rate-Setting as adopted by the Boards of Education,

Social Services and Corrections. The school board, from its own funds, is authorized to pay such additional tuition or charges as it may deem appropriate.

c. If a local school division is unable to provide a free appropriate public education to a child with a disability within the public school setting, the local school division may refer the child to the local family assessment and planning team, as provided by the Comprehensive Services Act for At-Risk Youth and Families. This team may create an individualized family service plan in conjunction with the IEP. The local community policy and management team shall pay for the services identified on the individualized family services plan, in accordance with its local policies.

3. Least restrictive environment (LRE).

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

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

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

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

c. For children in public or private institutions, the LEA shall, where necessary, make arrangements with public and private institutions to ensure that requirements for least restrictive environment are met. (see Placements, § 2-4 3.3 B 8.)

4. Safeguards in evaluation, eligibility and placement.

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

(1) Draw upon information from a variety of sources, including aptitude and achievement tests,

teacher recommendations, physical condition, social or cultural background, and adaptive behavior;

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

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

(4) Ensure that the placement decision is made in conformity with the least restrictive environment (see Least Restrictive Environment, § 3-4 3.3. A 3.)

b. If it is determined that a child is *handicapped has a disability* and needs special education and related services, an individualized education program IEP must be developed for the child in accordance with the regulations.

5. Transportation.

a. Each *handicapped child enrolled in and attending with a disability placed in* an education program provided by the local school division shall be entitled to transportation to and from such school or class at no cost if such transportation is necessary to enable such child to benefit from educational programs and opportunities.

b. If an LEA enters an agreement with another LEA for the provision of special education or related services for a *handicapped child with a disability*, such child shall be transported to and from such program at no cost to the parent.

e. When, pursuant to an IEP, a local school division initiates educational placement of a *handicapped child in a facility operated by the Department of Mental Health, Mental Retardation and Substance Abuse Services*, the local school division is responsible for the payment of reasonable transportation costs attendant thereto.

d. c. If a *handicapped child with a disability* is placed in a state residential school for the deaf and the blind, the responsibility for transportation resides with the respective state school. However, when such children in a state residential school are educated as day students, the responsibility for transportation remains with the placing local school division.

e. If an LEA places a *handicapped child in a private school or facility*, then the LEA shall provide transportation as follows:

(1) At day schools on all school days as required in the IEP and specified in the Formal Agreement for

Services between the LEA and the private nonsectarian school.

(2) At residential schools, at openings and closing of the private school and for those holidays or vacation periods during the school year when the private school is officially closed, or in accordance with other provisions as written in the Formal Agreement for Services to implement the IEP.

(3) The LEA may, in lieu of providing transportation, and with the consent of the parents, allot funds to pay the reasonable cost of transportation for attendance to day and residential schools, which shall be equivalent to the amount established by the LEA as mileage reimbursement to school personnel, or an amount equivalent to the lowest common carrier rate between the location of the private school and the LEA.

6. Reevaluation. Each LEA shall ensure that an evaluation of the child, based on required procedures, is conducted:

a. Every three years, or more frequently if conditions warrant;

b. If the child's parent or teacher requests an evaluation;

e. Anytime a significant change in placement is being considered and the evaluations are not current.

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

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

d. c. Notice is required for the triennial evaluation. Notice and consent are required for those evaluations requested by the LEA other than for triennial evaluations *all reevaluations* .

B. Individualized education program.

1. Responsibility. The LEA shall ensure that an IEP is

Proposed Regulations

developed and implemented for each ~~handicapped~~ child *with a disability* in its jurisdiction, including such children placed in private schools or facilities.

2. Accountability.

a. An IEP must:

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

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

b. Each LEA is responsible for initiating and conducting meetings to develop, review and revise a child with a disability's IEP.

~~b. c.~~ Each LEA shall initiate and conduct meetings periodically to review each child's IEP and, where appropriate, revise its provisions. A meeting must be held for this purpose at least once a year.

~~e. d.~~ Each LEA must provide special education and related services to a ~~handicapped~~ child *with a disability* in accordance with an IEP.

3. Participants in meeting.

a. The LEA shall ensure that each meeting includes participants as follows:

(1) A representative of the LEA, other than the child's teacher, who is qualified to provide or supervise the provision of special education;

(2) The child's teacher;

(3) One or both of the child's parents (see Parent Participation, § ~~2-4~~ 3.3 B 4);

(4) The child, ~~when~~ if appropriate;

(5) Other individuals, at the discretion of the parents or LEA.

b. For a ~~handicapped~~ child *with a disability* who has been evaluated for the first time, the LEA shall ensure that:

(1) A member of the evaluation team participates in the meeting; or

(2) The representative of the LEA, the child's teacher, or some other person is present at the meeting who is knowledgeable about the evaluation procedures used with the child and is familiar with the results of the evaluation.

c. If a purpose of the IEP meeting is the consideration of transition services for a student, the public agency shall invite: (i) the student; and (ii) a representative of any other agency that is likely to be responsible for providing or paying for transition services. If the student does not attend, the LEA shall take other steps to ensure that the student's preferences and interests are considered, and if an agency invited to send a representative to a meeting does not do so, the LEA shall take other steps to obtain the participation of the other agency in the planning of any transition services.

4. Parent participation.

a. Each LEA shall take steps to ensure that one or both of the parents ; or a representative of the agency assigned legal custody, of the ~~handicapped~~ child *with a disability* are present at each meeting or are afforded the opportunity to participate, including:

(1) Notifying the parents and agency assigned legal custody of the meeting early enough to ensure that they will have an opportunity to attend, and

(2) Scheduling the meeting at a mutually agreed on time and place.

b. The notice given the parents and agency assigned legal custody must indicate the purpose, time and location of the meeting, and who will be in attendance.

c. If a purpose of the meeting is the consideration of transition services for a student, the notice must also:

(1) Indicate this purpose;

(2) Indicate that the LEA will invite the student; and

(3) Identify any other agency that will be invited to send a representative.

~~e. d.~~ If neither parent can attend, then the LEA shall use other methods to ensure parent participation, including individual or conference telephone calls.

~~d. e.~~ A meeting may be conducted without the child's parent(s) attending if the LEA is unable to convince them that they should attend. In this case, the LEA must have a record of the attempts to arrange a mutually agreed on time and place, such as:

(1) Detailed records of telephone calls made or attempted and the results of those calls;

Proposed Regulations

(2) Copies of correspondence sent to the parents and any responses;

(3) Detailed records of visits made to the parents' home or place of employment and the results of those visits.

e. f. The LEA shall take whatever action is necessary to ensure that the parent understands the proceedings at a meeting, including arranging for an interpreter for parents who are deaf or whose native language is other than English.

f. g. The LEA shall give the parent and custodial agency a copy of the IEP.

5. Content of the individualized education program. The IEP for each child must include:

a. A statement of the child's present level of educational performance ; .

(1) The statement should accurately describe the effect of the child's disability on the child's performance in any area of education that is affected including academic areas and nonacademic areas.

(2) The statement should be written in objective measurable terms, to the extent possible. Test scores, if appropriate, should be self-explanatory or an explanation should be included.

(3) There should be a direct relationship between the present level of performance and the other components of the IEP.

b. A statement of annual goals, including short-term instructional objectives ; .

c. A statement of the specific special education and related services to be provided for the child, and the extent to which the child will be able to participate in regular educational programs.

d. The projected dates for initiation of services and the anticipated duration of the services ; and *(month, day, and year).*

e. Appropriate objective criteria and evaluation procedures and schedules for determining, at least annually, whether the short-term instructional objectives are being achieved.

f. Reasonable accommodations to take the Literacy Testing Program (LTP) shall be provided as appropriate and designated on the IEP. The school division shall document on the IEP that the LTP or its accommodations have been presented and objected to or accepted, at the appropriate times. This provision of designation of accommodations on

the IEP deals only with children who are handicapped as defined by these regulations.

f. For students beginning in the sixth grade, the following information concerning the Virginia Literacy Passport Testing Program must be included:

(1) Whether the student will participate in the Literacy Passport Testing Program (a decision to exempt the student from participating must be reviewed during the annual IEP review or sooner);

(2) Whether the student will postpone taking any of the literacy tests (a decision to exempt the student from participating must be reviewed during the annual IEP review or sooner);

(3) Reasonable accommodations to take the literacy tests if the student needs them.

The school division shall document on the IEP that the Literacy Passport Testing Program and the requirement that the student pass all of the literacy tests to receive a regular diploma have been presented to the parent.

g. The IEP for each student, beginning no later than age 16 (and at a younger age, if determined appropriate), must include a statement of the needed transition services including, if appropriate, a statement of each public agency's and each participating agency's responsibilities or linkages, or both, before the student leaves the school setting.

The IEP must include the following areas: (i) instruction; (ii) community experiences; and (iii) the development of employment and other post-school adult living objectives, unless the IEP committee determines that services are not needed in one or more of those areas. The IEP committee must then include a statement to that effect together with the basis for that determination in the IEP.

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

6. Agency responsibilities for transition services.

a. If a participating agency fails to provide agreed-upon transition services contained in the IEP of a student with a disability, the public agency responsible for the student's education shall, as soon as possible, initiate a meeting for the purpose of identifying alternative strategies to meet the transition objectives and, if necessary, revising the student's IEP.

b. Nothing in this part relieves any participating agency, including a state vocational rehabilitation agency, of the responsibility to provide or pay for

Proposed Regulations

any transition service that the agency would otherwise provide to students with disabilities who meet the eligibility criteria of that agency.

7. *Placements. Each LEA placing the child shall ensure that:*

a. The educational placement of each child with a disability:

(1) Is determined at least annually;

(2) Is based on his IEP; and

(3) Is as close as possible to the child's home.

b. The various alternative placements, discussed in § 3.3 A 2 of these regulations, are available, to the extent necessary, to implement the IEP for each child with a disability.

c. Unless a child with a disability's IEP requires some other arrangement, the child is educated in the school which he would attend if nondisabled.

d. In selecting the least restrictive environment, consideration is given to any potential harmful effect on the child or on the quality of services which he needs.

e. The placement decision shall include consideration of the child's social and personal needs, as well as the child's level of educational functioning.

6: 8. Private school placement.

a. Before a ~~local school division~~ an LEA places a ~~handicapped child with a disability~~ in, or refers a child to, a private school or facility, the ~~local school division~~ LEA shall initiate and conduct a meeting, in accordance with the preceding requirements, to develop an IEP for the child.

b. Where a child is presently receiving the services of a private school or facility, or where the parents and the LEA agree, prior to the development of an IEP that a private school or facility may be required when the IEP is completed, the ~~local school division~~ LEA shall ensure that a representative of the private school or facility attends the meeting. If the representative cannot attend, the ~~local school division~~ LEA shall use other methods to ensure participation by the private school or facility, including individual or conference telephone calls.

c. After a ~~handicapped child with a disability~~ enters a private school or facility, any meetings to review and revise the child's IEP may be initiated and conducted by the private school or facility at the

discretion of the ~~local school division~~ LEA .

d. If the private school or facility initiates and conducts these meetings, the ~~local school division~~ LEA shall ensure that the parents and a ~~local school division~~ LEA representative:

(1) Are involved in any decision affecting the child's IEP; and

(2) Agree to any proposed changes in the program before those changes are implemented.

e. When a private school or facility implements a child's IEP, responsibility for compliance with this part remains with the ~~local school division~~ LEA .

f. Whenever an eligible ~~handicapped child with a disability~~ is placed in an approved private school or facility by a ~~local school division~~ LEA , steps shall be taken to ensure that all rights extended to any child educated in public school programs ~~are~~ shall be available to him.

g. Each LEA shall provide to all private schools to which the LEA has referred or placed a child with a disability with copies of all state regulations and standards relating to the education of children with disabilities and revision of these regulations and standards as they occur.

7. ~~Handicapped children in parochial or other private schools. If a handicapped child is enrolled in a parochial or other private school and requires special education and related services from a public agency, the local school division shall:~~

~~a. Initiate and conduct meetings, in accordance with the preceding requirements, to develop and review an IEP for the child; and~~

~~b. Ensure that a representative of the parochial or other private school attends each meeting. If the representative cannot attend, the local school division shall use other methods to ensure participation by the private school, including individual or conference telephone calls.~~

8. ~~Placements. Each LEA placing the child shall ensure that:~~

~~a. Each handicapped child's educational placement:~~

~~(1) Is determined at least annually;~~

~~(2) Is based on his IEP; and~~

~~(3) Is as close as possible to the child's home.~~

~~b. The various alternative placements are available, to the extent necessary, to implement the IEP for~~

each handicapped child. The local school division shall consider placement of a handicapped child in a private nonsectarian program only after it has been determined that the local school division is unable to provide free appropriate public education for a handicapped child either locally or through arrangement with other local school divisions, and such a program is not appropriately available in a state facility.

e. Unless a handicapped child's IEP requires some other arrangement, the child is educated in the school which he would attend if not handicapped.

d. In selecting the least restrictive environment, consideration is given to any potential harmful effect on the child or on the quality of services which he needs.

e. The placement decision shall include consideration of the child's social and personal needs, derived from the child's sociocultural assessment, as well as the child's level of educational functioning.

9. Handicapped Children with disabilities in private schools not placed or referred by public agencies.

a. If a handicapped child with a disability has available a free appropriate public education and the parents choose to place the child in a private school or facility, then the local school division is not required to pay for the child's education at the private school or facility. However, the local school division shall make services available to the child as follows:

(1) Each local school division shall provide special education and related services designed to meet the needs of private school handicapped children with disabilities residing in its jurisdiction;

(2) Each local school division shall provide private school handicapped children with disabilities with genuine opportunities to participate in special education and related services consistent with the number of children and their needs.

b. The needs of private school handicapped children with disabilities, the number who will participate, and the types of special education and related services which the local school division will provide for them must be determined after consultation with persons knowledgeable of the needs of these children on a basis comparable to that used in providing for the participation of handicapped children with disabilities enrolled in public schools.

e. Services to private school handicapped children may be provided through such arrangements as dual enrollment, educational radio and television, and the

use of mobile educational services and equipment.

d. c. A local school division may provide special education and related services to private school handicapped children with disabilities which are different from the special education and related services it provides to public school children, if:

(1) The differences are necessary to meet the special needs of the private school handicapped children with disabilities; and

(2) The special education and related services are comparable in quality, scope, opportunity for participation to those provided to public school children with needs of equal importance.

e. d. Each LEA providing services to children enrolled in private schools shall maintain continuing administrative control and direction over those services.

10. Children with disabilities on homebound instruction. Homebound instruction shall be deemed appropriate for a handicapped child with a disability only when such placement is stipulated in the child's IEP and is in accordance with the requirements of the least restrictive environment.

11. Handicapped children suspended or expelled *Suspension or expulsion of children with disabilities.*

a. Suspensions of 10 days or less. This is a short-term suspension where is when the child is removed from class (i.e., an in-school suspension) or school for less than 10 school days. It does not constitute a change in placement. The child is subject to normal disciplinary procedures whether or not there is a causal connection between the child's handicap disability and the misconduct.

b. Long-term suspensions greater than 10 days and expulsions greater than 10 days.

(1) This is where When the child is removed from class or school for more than 10 consecutive school days: Where a disciplinary action involving long-term suspension or expulsion of a handicapped child is being considered, a determination must be made as to whether or not there is a direct causal relationship between the child's handicap disability and the misconduct. This determination must be made by the IEP committee pursuant to the change-of placement procedures:

(2) This determination must be made pursuant to the change in placement procedures by a committee with the following composition:

(a) A representative of the LEA, other than the child's teacher, who is qualified to provide or

Proposed Regulations

supervise the provision of special education;

(b) The child's teacher;

(c) One or both of the child's parents;

(d) The child, if appropriate;

(e) Persons knowledgeable about the child, the meaning of the evaluation data, and the placement options;

(f) Other individuals, at the discretion of the parents or LEA.

(3) A series of suspensions which aggregate to more than 10 days may be considered a significant change in placement requiring reevaluation and procedural protections. Factors to consider in determining whether aggregate suspensions of 10 days or more greater than 10 days are long-term suspensions include length of each suspension, proximity of suspensions, and total amount of time suspended.

(4) If there is a causal connection or if the child was inappropriately placed at the time of the misconduct, the child may not be expelled, nor may the LEA impose a long-term suspension. If there is no causal connection or if the child was appropriately placed at the time of the misconduct, the child may be disciplined the same as a nonhandicapped nondisabled child.

(5) In the case of an expulsion or long-term suspension, parental consent is not required prior to expelling the child.

c. Dangerous handicapped student with a disability. LEAs may not unilaterally change the placement of a student with dangerous behavior when the misconduct is caused by the handicap disability. LEAs, however, may use normal disciplinary measures for a child who exhibits dangerous behavior to include, for example, time outs or suspension up to 10 days. An LEA may only impose an expulsion or long-term suspension on a student with a disability whose misconduct has been determined to be caused by his disability by filing for an injunction, based on dangerousness of the student, from a court of competent jurisdiction.

12. Educational interpreting for hard of hearing or deaf students. If the IEP Committee determines that for the hard of hearing or deaf child educational interpreting services are appropriate, then qualified personnel shall be provided in accordance with the child's mode of communication.

12. Assistive technology. Each LEA shall ensure that assistive technology devices or assistive technology

services, or both, are made available to a child with a disability if required as part of the child's:

a. Special education;

b. Related services; or

c. Supplementary aids and services.

C. Qualified professionals.

1. Audiologist. A qualified audiologist is one who is licensed by the Virginia Board of Audiology and Speech-Language Pathology or the American Speech and Language Association.

2. Educational interpreting for children with hearing impairments or deafness. If the IEP committee determines that the child with hearing impairment or deafness will require educational interpreting services, then qualified personnel shall be provided in accordance with the student's mode of communication.

a. Educational personnel providing interpreting for students using sign language shall have completed and passed a Virginia Quality Assurance Screening at Level 2, or higher, screening and at Level 3, or higher, screening after July 1, 1995. Personnel may have an equivalent or higher Registry of Interpreters for the Deaf certificate (excluding certification in reverse skills) in lieu of the Virginia Quality Assurance Screening certificate.

b. Personnel providing educational interpreting services for hard of hearing or deaf students using cued speech shall be certified as cued speech interpreters by the National Cued Speech Association at Level 2, or higher, and at Level 3 or higher by July 1, 1995.

c. Personnel providing educational interpreting services for the hard of hearing or deaf students requiring oral interpreting shall have completed and passed a Virginia Quality Assurance Screening for the Deaf certificate (excluding certification in reverse skills).

3. Physical therapist. A qualified physical therapist is one who holds a current license or is eligible for licensure in the field of physical therapy from the state Board of Medicine.

§ 2-5. § 3.4. Procedural safeguards.

A. Due process.

1. Procedural safeguards. Each LEA shall establish and implement procedural safeguards as follows:

a. The parent of a handicapped child with a

disability , upon request, shall be afforded an opportunity to inspect and review all education records involving:

(1) The identification, evaluation or educational placement of the child; or

(2) The provision of a free appropriate public education to the child. (see: Management of the Student's Scholastic Records.)

b. The parent of a ~~handicapped~~ child *with a disability* shall be provided, on request, information as to where an independent educational evaluation (IEE) may be obtained.

c. The parent of a ~~handicapped~~ child *with a disability* shall have the right to obtain an IEE of the child:

(1) Such IEE will be at public expense if the parent disagrees with the evaluation obtained by the LEA; however, the LEA shall have the right to initiate a due process hearing to show that its evaluation is appropriate. If the final decision is that the evaluation is appropriate *then* , the parent still has the right to an IEE, but not at public expense.

(2) Whenever an IEE is at public expense, the criteria under which the evaluation is obtained, including the location of the evaluation and the qualifications of the examiner, must be the same as the criteria which the LEA uses when it initiates an evaluation.

(3) The results of the IEE *whether or not at public expense* :

(a) Must be considered by the LEA in any decision regarding a free appropriate public education for the child; and

(b) May be presented as evidence at a hearing under ~~this section~~ § 3.4 A 2 of these regulations .

d. The parent of a ~~handicapped~~ child *with a disability* shall be given written notice within a reasonable time before the LEA proposes or refuses to initiate or change the identification, evaluation, or educational placement of the child, or the provision of free appropriate public education for the child.

e. The notice shall include:

(1) A full explanation of all procedural safeguards available to the parents;

(2) A description of the action proposed or refused by the LEA, an explanation of why the LEA proposes or refuses to take the action, and a description of any options the LEA considered and

the reasons why those options were rejected;

(3) A description of the nature, purpose, and use of any evaluation procedure, test, record, or report the LEA used as a basis for the proposal or refusal; and

(4) A description of any other factors which are relevant to the LEA's proposal or refusal.

f. Information contained in the notice shall be:

(1) Written in language understandable by the public; and

(2) Provided in the native language of the parent or other mode of communication used by the parent, unless it is clearly not feasible to do so.

(3) If the native language or other mode of communication of the parent is not a written language, then the LEA shall take steps to ensure:

(a) That the notice is translated orally or by other means to the parent in his native language or other mode of communication;

(b) That the parent understands the content of the notice; and

(c) That there is documentation that the requirements in subdivisions (a) and (b) of subdivision A 1 f (3) of this section have been met.

g. Written parental consent shall be obtained before:

(1) Preplacement evaluation;

(2) Initial placement of a ~~handicapped~~ child *with a disability* in a program providing special education and related services ; ~~and~~ . *Consent for initial placement may be revoked by the parent at any time prior to the first day of that placement.*

(3) ~~Any change in program/placement, including any partial or complete termination of special education and services, except for expulsions and graduation. Consent for placement may be revoked up until the first day of the placement.~~

h. Written parental consent shall be obtained for the following:

(1) ~~Any change in identification of a handicapped child; and~~

(2) ~~Any evaluation which is conducted other than the assessment components required for the triennial evaluations. (Parental consent is not necessary for reviewing the child's records for conducting a reevaluation.)~~

Proposed Regulations

i. ~~h.~~ Except for preplacement evaluation and initial placement, consent or refusal to give consent for those other situations requiring consent shall be given by the parent to the LEA within 10 administrative working days after notice is received. If the parent fails to notify the LEA within 10 administrative working days, the LEA may proceed as if consent had been granted, and the parent must initiate due process to contest the action. If the parent refuses to give consent, the LEA shall attempt to resolve parental withholding of consent through informal means. If those informal methods are not successful, the LEA must use other measures as necessary to ensure that, except for preplacement evaluation and initial placement, parental refusal to consent will not result in a denial of a necessary free appropriate public education.

2. Impartial due process hearing. Each LEA or the parent of a child determined or believed to be ~~handicapped~~ *have a disability*, shall have the right to initiate a hearing when a disagreement occurs on matters relating to identification, evaluation (including determination of whether or not an IEE at public expense is appropriate), or educational placement of the child or the provision of a free appropriate public education for the child. The LEA may initiate due process to appeal parental refusals for evaluation or provision of special education and related services. For purposes of this subdivision, the time when a disagreement occurs shall be deemed to mean when such disagreement is discovered or by the exercise of due diligence reasonably should have been discovered *withholding of consent where these regulations require the LEA to obtain consent*.

3. Child's status during proceedings. The child's status during proceedings shall be as follows:

a. During the pendency of any administrative hearing or appeal or during the pendency of any judicial proceeding regarding a ~~complaint~~ *these regulations*, unless the LEA and the parent of the child agree otherwise, the child must remain in his current educational placement. While the placement may not be changed, this does not preclude using normal procedures for dealing with children who are endangering themselves or others. Such procedures do not include expulsion or suspension over 10 days; however, the procedures may include time out, detention, restriction of privileges, or temporary suspension up to 10 days.

b. If the issue involves an application for initial admission to an LEA public school, the child of school age, with consent of the parent, must be placed in a public school program until the completion of all proceedings.

4. Mediation. The regulations do not preclude the use

of mediation in the resolution of differences, but mediation shall not be used to deny or delay a parent's rights. Such mediation may be conducted only by personnel who were not previously involved in the particular case. ~~Should the mediation process be formalized as an intervening step within the impartial due process hearing procedure, appropriate policy shall be established.~~ However, such mediation shall not extend the procedure *resolution of a hearing* beyond the 45 calendar days unless otherwise approved and documented *as in the best interests of the child* by the hearing officer upon request of the parties. The hearing officer shall notify the parties and the SEA in writing of the specific number of days to be allowed for mediation.

5. Commencement of the due process hearing.

a. Request for a hearing shall be made *in writing* to the ~~local school board~~ *LEA* or other public agency board as appropriate.

b. The LEA shall inform the parent of any free or low-cost legal or other relevant services available in the area when:

(1) The parent requests the information; or

(2) The parent or the LEA initiate(s) a hearing.

c. A hearing officer shall be appointed according to the ~~Hearing Officer System or Rules of Administration Promulgated by the Supreme Court of Virginia.~~ The LEA shall ensure that the appointment is made *Virginia Supreme Court appoints a hearing officer* within five administrative working days following the request for a hearing to facilitate compliance with the 45 calendar days timeline.

6. Qualifications, removal, substitution and challenge of hearing officers.

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

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

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

~~See: Hearing Officer System Rules of Administration Promulgated by the Supreme Court of Virginia for regulations governing Appointment, qualifications, retention, training, selection, removal and disqualification of hearing officers are governed by the Hearing Office System Rules of Administration~~

Proposed Regulations

Promulgated by the Supreme Court of Virginia .

7. Responsibilities of LEA; prehearing.

a. The confirmation of the appointment of the hearing officer by the LEA shall be done in such a manner as to protect the confidentiality of the parent(s) and the child. All necessary information shall be forwarded promptly to the hearing officer, together with the official request for a hearing in order to ensure that timelines are maintained.

b. The LEA shall send a copy of the correspondence confirming the appointment of a hearing officer along with a copy of the request for a hearing to the SEA within five administrative working days of the appointment of a hearing officer.

c. The LEA shall arrange for recording equipment to be set up, or a stenographer to be present, in the hearing room. The LEA shall also ensure that the recording equipment, if used, is reliable and working and that the recording is clear and can be transcribed, if necessary. A complete, accurate, written verbatim transcript of the proceedings need not be made at the conclusion of the hearing, unless the hearing ~~or reviewing~~ officer needs it for review prior to rendering a decision. When there is an appeal of the decision, a verbatim copy of the recording or transcript shall be supplied to the parties to the hearing *appeal*, upon request, and free of charge.

8. Responsibilities of the hearing officer; prehearing.

a. The hearing officer shall, within five administrative working days of appointment, secure a time, date and location for the hearing which are convenient to both parties, and

~~b. The hearing officer shall~~ notify both parties to the hearing, and the SEA, in writing, of the time, date and location of the hearing.

~~e. b.~~ The hearing officer shall ascertain whether or not the parties will have attorneys at the hearing. If so, the hearing officer shall send copies of correspondence to the attorneys of the parties.

~~d. c.~~ The hearing officer shall ascertain from the parents whether the hearing will be open.

~~e. d.~~ The hearing officer shall ensure that a stenographer or recording equipment is present at the hearing *and ensure that testimony is clearly recorded, either by the stenographer or recording equipment, to permit an accurate record of the proceedings*. If a tape recorder is used, ~~then~~ the hearing officer shall be provided a written list of speakers in order of appearance, ~~or and~~ at the beginning of the hearing identify on tape each

speaker's title, position, and interest in the proceeding. Thereafter, each speaker, prior to addressing the hearing, shall state his name for the record.

~~f. e.~~ The hearing officer shall receive a list of witnesses and documentary evidence for the hearing no later than five administrative working days prior to the hearing.

~~g. f.~~ The hearing officer may schedule a prehearing conference to be attended by the parties and attorneys, if ~~applicable~~ *appropriate*. Such a conference may be requested by the hearing officer or the parties to the hearing to simplify or eliminate issues.

~~h. g.~~ The hearing officer has power to issue subpoenas requiring testimony or the productions of books, papers, and physical or other evidence ~~at the hearing~~.

(1) The hearing officer may procure an order of enforcement for a subpoena in the circuit court of the jurisdiction in which the hearing is to be held.

(2) Any person so subpoenaed may petition the circuit court for a decision regarding the validity of such subpoena if the hearing officer does not question or modify the subpoena after objection thereto.

h. The hearing officer shall ensure that the LEA has appointed a surrogate parent who is acting to protect the educational interests and rights of the child in accordance with § 3.6 of these regulations.

9. Rights of parties to the hearing.

a. Any party to a hearing shall have the right to:

(1) Be accompanied and advised by counsel or by individuals with special knowledge or training concerning the problems of ~~handicapped~~ *children with disabilities*, without being in violation of the provisions of § 54.1-3904 of the Code of Virginia.

(2) Present evidence and confront, cross-examine, and request the hearing officer to compel the attendance of witnesses.

(3) Prohibit the introduction of any evidence at the hearing that has not been disclosed to the other party at least five administrative working days before the hearing.

~~(4) Obtain a written or electronic verbatim record of the hearing upon request and free of charge.~~

~~(5) (4) Receive written findings of fact and decisions rendered by the hearing officer.~~

Proposed Regulations

~~(6) Receive a copy of the implementation plan.~~

b. The parent(s) involved in a hearing must be given the right to:

(1) Have the child who is the subject of the hearing present; and

(2) Open the hearing to the public ;

(3) Receive a copy of the implementation plan; and

(4) Obtain the written or electronic verbatim record of the hearing upon request and free of charge.

10. Due process hearing procedure.

a. The rights of all parties to the hearing shall be protected by the hearing officer.

b. The hearing officer shall ensure that an atmosphere conducive to impartiality and fairness is maintained at all times in the hearing. ~~It may be prudent to~~ *The hearing officer may* excuse witnesses after they testify to limit the number of expert witnesses present at the same time ; or to sequester witnesses during the hearing.

c. The hearing officer may stop unnecessarily hostile or irrelevant pursuits in questioning.

e. d. The hearing officer shall remand the matter in dispute to a conference between the parties only when informal resolution and discussion appear to be desirable and constructive ~~in light of new evidence not admissible in the formal hearing~~ . This action shall not be used to delay or deprive the parties of their rights and shall be exercised only when the best interest of the child will be served.

~~d. Witnesses must be seated so as to ensure that testimony is clearly recorded, either by a stenographer or recording equipment, to permit an accurate record of the proceedings.~~

e. The hearing officer may require an independent educational evaluation of the child. This evaluation shall be at public expense and shall be conducted in accordance with the regulations governing evaluation and assessment.

~~f. The hearing officer shall ensure that the local school division has appointed a surrogate parent who is acting to protect the educational interests and rights of the child when:~~

~~(1) No parent or person who has been allowed to act as a parent by the natural parent(s) or guardians(s) can be identified;~~

~~(2) The LEA, after reasonable efforts, cannot~~

~~discover the location of the parent;~~

~~(3) The child is in legal custody of a public agency and all parental rights and responsibilities for the care and custody of the child have been terminated by court order or permanent entrustment agreement pursuant to applicable law.~~

~~g. f.~~ The hearing officer, in the course of the proceedings, shall ~~determine~~ *include in the written findings a determination* of the following:

(1) Whether or not the requirements of notice to parents were satisfied;

(2) Whether or not the child is ~~handicapped~~ *has a disability* ;

(3) Whether or not the child needs special education and related services; and

(4) Whether or not the LEA is supplying a free appropriate public education. ~~These determinations may or may not be central issues in the appeal, but nevertheless, are focal questions in any hearing conducted under these provisions.~~

~~h. g.~~ The hearing officer shall make no presumptions in the case and shall base his findings of fact and decision(s) solely upon the preponderance of the evidence presented at the hearing and applicable state and federal ~~laws or regulations~~ *law* .

~~i. h.~~ The hearing officer shall report findings of fact and decision(s) to both parties to the appeal, the LEA, and to the SEA. ~~The SEA shall provide copies of summaries of the hearing reports to the State Special Education Advisory Committee after deleting any personally identifiable information.~~

~~j. i.~~ A decision made by the hearing officer is final, unless a party to the hearing appeals to the state for an administrative review. An appeal by either party must be instituted within 30 administrative working days of the date of the hearing decision.

11. Administrative appeal and impartial review.

a. If there is an appeal of the decision of a hearing officer, the SEA shall ensure an impartial review of the hearing. The review shall be conducted by a reviewing officer appointed according to the Hearing Officer System Rules of Administration Promulgated by the Supreme Court of Virginia. The SEA shall ensure the appointment within two administrative days of the receipt of a request for a review of a due process hearing. The official conducting the review shall:

(1) Examine the entire hearing record;

(2) Ensure that the procedures at the hearing were consistent with the requirements of due process;

(3) Seek additional evidence, if necessary. If a hearing is held to receive additional evidence, then all hearing rights as specified in this section apply;

(4) Afford the parties an opportunity for oral or written argument, or both, at the discretion of the reviewing official;

(5) Advise all parties of their right to continue to be represented by counsel whether or not the reviewing official determines that a further hearing is necessary;

(6) Make an independent decision upon completion of the review; and

(7) Give a copy of written findings and the decision(s) to the parties to the appeal, the LEA and to the SEA in the manner prescribed.

b. The decision made by the reviewing official is final *and binding on all parties*, unless any party aggrieved by the findings and decisions of the administrative review brings civil action in any state court of competent jurisdiction within one year or in federal district court. In any such action, the court shall receive the records of the administrative proceedings, shall hear additional evidence in its discretion at the request of either party, and basing its decision on the preponderance of the evidence, shall grant such relief as it determines to be appropriate.

12. Attorney's fees.

a. In any such action or proceeding, the court, in its discretion, may award reasonable attorney's fees as part of the costs to the parents or guardian of a ~~handicapped child or youth with a disability~~ who is the prevailing party.

b. If a written offer of settlement is made to a parent or guardian within the time prescribed by Rule 68 of the Federal Rules of Civil Procedure, or, in the case of an administrative proceeding, at any time more than 10 days before the proceeding begins, and the offer is not accepted within 10 days and the court or administrative officer finds that the relief finally obtained by the parents or guardian is not more favorable to the parent or guardian than the offer of settlement, no award of attorney's fees and related costs may be made for services performed subsequent to the time of such offer, unless the court finds that the prevailing party was reasonably justified in rejecting the settlement offer.

~~12.~~ 13. Timelines for hearings and reviews.

a. The LEA shall ensure that not later than 45 calendar days after the receipt of a request for a due process hearing:

(1) A final decision is rendered in the hearing, unless otherwise documented by the hearing officer; and

(2) A copy of the decision is mailed to the parties and the SEA.

b. The SEA shall ensure that not later than 30 calendar days after the receipt of a request for a review:

(1) A final decision is rendered in the review, unless otherwise documented by the reviewing officer; and

(2) A copy of the decision is mailed to the parties.

c. A hearing or reviewing officer may grant specific extensions of time beyond the periods set out in subdivisions a and b of subdivision A ~~12~~ 13 of this section at the request of either party. This action shall in no way be used to delay or deprive the parties of their rights and should be exercised only when the best interests of the child will be served. Changes in hearing dates or extensions are to be noted in writing which shall be sent to all parties and to the SEA.

d. Each hearing and each review involving oral arguments must be conducted at a time and place which is reasonably convenient to the parent and child involved.

~~13.~~ 14. Costs of due process hearing ~~hearings~~ and state review.

a. Costs for a local hearing shall be shared equally by the LEA and the SEA. The costs shared by the SEA shall include expenses of the hearing officer (i.e., time, travel, secretarial, postal and telephone expenses), expenses incurred by order of the hearing or reviewing officer (i.e., independent educational evaluations, deposition or transcript), and expenses for making a record of a hearing (i.e., hearing tapes or stenographer). The SEA shall not be liable to the LEA for expenses incurred for witnesses (except where hearing or reviewing officers subpoena witnesses on their own initiative) or for attorney's fees.

b. The SEA shall be responsible for all approved costs for state reviews.

~~14.~~ 15. Implementation plan.

a. The LEA shall develop an implementation plan within 45 calendar days of ~~concluding the rendering~~

Proposed Regulations

of a due process hearing decision or the withdrawal of a hearing or review request. Such plan shall be based upon the decision of the hearing officer, the reviewing officer, or agreement between the parties. The implementation plan must state how and when the decision or agreement will be put into operation. If the decision or agreement affects the child's educational program, the revised IEP shall be made a part of the implementation plan. The implementation plan shall include the name and position of a case manager in the LEA charged with implementing the decision. Copies of this plan shall be forwarded to the parties to the hearing, the hearing or reviewing officer, and the SEA.

b. Failure of either of the parties to comply with the implementation plan shall be reported to the SEA for investigation or appropriate action.

~~15.~~ 16. Due process file. The LEA shall maintain a file containing the following:

- a. A copy of the hearing and reviewing officer's findings of fact and decision(s);
- b. A copy of the implementation plan;
- c. A copy of the electronic or verbatim transcript of the hearing proceedings; and
- d. A copy of all documents and exhibits presented at the due process hearing and state level review.

B. Confidentiality of information.

The confidentiality of information shall be as set forth in the Management of the Student's Scholastic Record.

C. Complaint procedure.

Complaints regarding violations of rights of parents or ~~handicapped~~ children with disabilities or both shall be addressed to the ~~complaint officer designated by the SEA~~ Superintendent of Public Instruction or designee, with the additional requirements as follows:

1. The complaint must be in writing, signed by the organization or individual filing the complaint, and contain a statement that an LEA has violated a ~~requirement of a federal or state law(s) or regulation(s) that applies to a program~~ the Individuals with Disabilities Education Act (IDEA) or these regulations.
2. The complaint must contain a statement of facts on which the complaint is based. In addition, all relevant documents shall be forwarded to the ~~complaint officer~~ Superintendent of Public Instruction or designee.
3. Upon receipt of a complaint, the ~~SEA complaint officer~~ Superintendent of Public Instruction or

designee shall initiate an investigation to determine whether or not the LEA against whom such complaint has been filed is in compliance with applicable law and regulations.

4. Within seven administrative days of the receipt of a written, signed complaint, the ~~SEA complaint officer~~ Superintendent of Public Instruction or designee shall send notification in writing to each complainant and LEA against which the violation has been alleged, acknowledging receipt of a complaint with copies to other appropriate SEA personnel. *The notification sent to the complainant shall provide the complainant with an opportunity to submit additional information, either orally or in writing, about the allegations in the complaint.* The notification sent by the SEA complaint officer to the LEA shall include:

- a. A copy of the complaint;
- b. An offer of technical assistance in resolving the complaint; and
- c. Request for written response to the complaint within 10 administrative days of the ~~date~~ receipt of the letter or notification.

5. If a reply from the LEA is not filed with the ~~SEA complaint officer~~ Superintendent of Public Instruction or designee within 10 administrative days of the receipt of the notice, then the ~~SEA complaint officer~~ Superintendent of Public Instruction or designee shall send a second notice to the LEA advising that failure to respond within seven administrative days of the date of such notice will result in ~~the complaint being transmitted to review by~~ the Superintendent of Public Instruction for action regarding appropriate sanctions.

6. The ~~SEA complaint officer~~ Superintendent of Public Instruction or designee shall take action with respect to the response as follows:

- a. Review the complaint and reply filed by the LEA to determine if further investigation or corrective action needs to be taken. If no further investigation or action is necessary, then the ~~SEA complaint officer~~ Superintendent of Public Instruction or designee shall notify both parties, in writing, stating the grounds for such finding.
- b. Conduct an investigation of the complaint which shall include a complete review of all *relevant* documentation ~~presented~~ and may include an independent on-site investigation, if necessary.
- c. Consider all facts and issues presented and the applicable requirements specified in law, regulations, or standards.
- d. Make a determination of compliance or noncompliance based upon the facts and applicable

Proposed Regulations

law and notify the parties, in writing, of the findings and the bases for such findings. A time limit of 60 calendar days shall be allowed, after the written complaint is received, to carry out the investigation and to resolve the complaints. An extension of the 60 calendar days time limit may occur if exceptional circumstances exist with respect to a particular complaint. Both parties to the complaint will be notified in writing by the SEA complaint officer ~~Superintendent of Public Instruction or designee~~ whenever exceptional circumstances exist and specify the extended time limit.

e. Report findings of noncompliance and corresponding recommendations to the party designated by the Superintendent of Public Instruction for review, or where appropriate, directly to the Superintendent of Public Instruction for further action.

~~7. The party designated by the Superintendent of Public Instruction shall report recommendations for action to the Superintendent of Public Instruction for all complaints received from the SEA complaint officer.~~

~~8. The Superintendent of Public Instruction shall take formal action within five administrative days of receiving recommendations from the party designated by the Superintendent of Public Instruction or the SEA complaint officer and~~

~~7. The Superintendent of Public Instruction or designee will notify the parties in writing of such any needed corrective actions and the specific steps which must be taken by the LEA to bring it into compliance. The LEA will be given 15 administrative days from the date of notice of noncompliance to respond and initiate voluntary corrective action.~~

~~9. 8. Where the LEA develops a plan of action to correct the violations, such plan shall include timelines to correct violations not to exceed 30 administrative days. The plan of action will also include a description of all changes contemplated and shall be subject to approval of the SEA.~~

~~10. 9. If the LEA does not come into compliance within the period of time set forth in the notification, then the matter will be referred by the Superintendent of Public Instruction to the Board of Education for a hearing.~~

~~11. 10. If the Superintendent of Public Instruction, after reasonable notice and opportunity for a hearing by the Board of Education, finds that the LEA has failed to comply with applicable laws and regulations, and determines that compliance cannot be secured by voluntary means, then he shall issue a decision in writing stating that state and federal funds for the education of ~~handicapped~~ children with disabilities~~

shall not be made available to that LEA until there is no longer any failure to comply with the applicable law or regulation.

~~12. 11. Parties to the complaint procedure shall have the right to request the United States Secretary of Education to review the final decision of the Superintendent of Public Instruction .~~

~~§ 3.6. § 3.5. Requirements for establishing surrogate parent procedures for local school divisions LEAs and applicable state agencies and institutions.~~

A. Role of surrogate parent.

The surrogate parent requirement in both state and federal laws and regulations is intended to ensure appropriate decision making in educational matters. The surrogate parent is an advocate acting to serve the best educational interests of a child who is suspected of being ~~having~~, or is determined to be ~~have~~, ~~handicapped a disability~~. State and federal regulations require that the surrogate parent represent the child in all matters relating to:

1. The identification, evaluation, or educational placement of the child; or
2. The provision of a free appropriate public education to the child.

B. Appointment of surrogate parents.

1. Children (ages two to 21, inclusive) who are suspected of being or determined to be ~~handicapped~~ ~~have disabilities~~, whose natural parent(s) or guardian(s) have allowed relatives or private individuals to act as parents to the child, do not require a surrogate parent.

A surrogate parent shall be appointed for a child, ages two to 21, inclusive, who is suspected of being ~~having~~ or determined to be ~~handicapped~~ ~~have a disability~~ when:

- a. No parent or person who has been allowed to act as a parent by the natural parent(s) or guardian(s) can be identified;
- b. The LEA, after reasonable efforts, cannot discover the location of a parent; or
- c. ~~Legal custody of the child and all parental rights and responsibilities for the care and custody of the child have been terminated by court order or permanent entrustment agreement pursuant to applicable law~~ ~~The child is a ward of the state~~ .

2. Each LEA shall establish procedures for identifying children in its jurisdiction who are in need of surrogate parents according to the definition.

Proposed Regulations

3. Each LEA shall establish procedures for assigning a surrogate parent to an eligible child. The surrogate parent shall be appointed by the LEA superintendent or designee.

a. The appointment having been effected, the LEA shall notify in writing:

(1) The ~~handicapped~~ child *with a disability* (ages two to 21, inclusive), as appropriate to the ~~handicap~~ *disability*;

(2) The surrogate parent-appointee;

(3) The person charged with responsibility for the child;

(4) The public agency charged with responsibility for the child, when the child is a ward of the state;

(5) The SEA.

b. LEAs are required to send parents' copy of notice to child's guardian or custodial state agency *or both*. In instances where the LEA has not been able to locate the present whereabouts of the parent(s), a letter to the parents' last known address is evidence of the LEA's good faith effort to effect this requirement.

c. The surrogate parent shall serve during, or for the duration of, the school year for which he is appointed.

(1) When it has been determined that the child requires a differentiated instructional program as delineated in the IEP, the surrogate parent shall be appointed to serve for the duration of that current document.

(2) Should a child require the services of a surrogate parent during the summer months, the LEA shall extend the appointment as needed, consistent with timelines required by law.

d. At the conclusion of each school year, appointment of surrogate parents shall be renewed or not renewed following a review by the LEA.

4. Each LEA shall establish procedures which include conditions and methods for changing or terminating the assignment of a surrogate parent before his appointment has expired. Established procedures shall provide the right to request a hearing to challenge the qualifications or termination if the latter occurs prior to the end of the term of appointment. The assignment of a surrogate parent may be terminated only when one or more of the circumstances occur as follows:

a. The child reaches the age of majority (except

those persons who are of the age of majority but who are determined to be legally dependent and subject to a guardianship);

b. The child is found no longer eligible for special education services (except when termination of special education services is being contested);

c. Legal guardianship responsible for the child is transferred to a person who is able to carry out the role of the parent;

d. A parent, who was previously unknown or unavailable, is now known or available; or

e. The appointed surrogate parent is no longer eligible (see "Qualifications for Surrogate Parent).

C. Identification and recruitment of surrogate parents.

1. The LEA shall develop and maintain a list of individuals within its jurisdiction who are qualified to serve as surrogate parents. It may be necessary for LEAs to go beyond jurisdictional limits in generating a list of potentially qualified surrogate parents. It should be noted, however, that geographic proximity is essential to the ~~surrogate parent/handicapped child~~ *relationship between the child with a disability and the surrogate parent*.

2. Individuals who are not on the LEA list may be eligible to serve as surrogate parents, subject to the LEA's discretion. In such situations, the needs of the individual child and the availability of qualified persons who are familiar with the child and who would otherwise qualify shall be considerations in the LEA's determination of surrogate eligibility. Other factors which warrant the LEA's attention are as follows:

a. Consideration of the appointment of a relative to serve as surrogate parent;

b. Consideration of the appointment of a foster parent who has the knowledge and skills to represent the child adequately;

c. Consideration of the appointment of a qualified person of the same racial, cultural, and linguistic background as the child who is suspected of ~~being having~~ *having* or has been identified as ~~being handicapped~~ *having a disability*; and

d. The appropriateness of the child's participation in the selection of his surrogate parent.

D. Qualifications of surrogate parents.

Each LEA shall ensure that a person appointed a surrogate:

Proposed Regulations

1. Has no interest that conflicts with the interest of the child he represents;
2. Has knowledge and skills that ensure adequate representation of the child. The prospective surrogate parent must have completed an SEA approved training session prior to representing the child. The LEA shall provide training, at least annually, for surrogate parents to ensure that they possess knowledge of special education and related services for ~~handicapped~~ children *with disabilities*, as well as knowledge of the legal requirements necessary to represent the children effectively.
3. Is not an employee of a public agency which is involved in the education or care of the child;
4. Is an adult and legal citizen of the United States; and
5. Resides in the same general geographic area as the child, whenever possible.

A person who otherwise qualifies to be a surrogate parent is not an employee of the agency solely because he is paid by the agency to serve as a surrogate parent.

E. Rights of surrogate parents.

The surrogate parent, when representing the child's educational interest, has the same rights as those accorded to parents of children determined or suspected to be ~~handicapped~~ *have disabilities*.

§ 3-7. § 3.6. Administration and governance.

A. Plans, applications and reports.

1. Each LEA is required to prepare and submit to the appropriate state authority the following:
 - a. To the SEA, by such data as the board may specify, acceptable annual special education plan/report and funding applications ~~which~~ *that* :
 - (1) Specify plans for providing free appropriate education and related services to all ~~handicapped~~ children *with disabilities* for the following year; and
 - (2) Report on the extent to which the plan for the preceding year has been implemented.
 - b. To the SEA, an application for funding under Part B of Public Law 94-142, as amended, or Public Law 89-313, as amended, containing assurances of compliance in accordance with various procedures outlined by the SEA.
2. Each LEA shall include the following provisions and assurances in the annual special education plan/report and funding applications:

- a. A free appropriate public education will be available for each ~~handicapped~~ child *with a disability*, ages two to 21, inclusive.
 - b. All children, ages two to 21, inclusive, residing in the LEA who are ~~handicapped~~ *have disabilities* and need special education and related services are identified, located, evaluated, and placed in an appropriate educational program.
 - c. ~~Handicapped~~ Children *with disabilities* and their parents or guardians are guaranteed procedural safeguards in the process of identification, evaluation, or educational placement, or the provision of a free appropriate public education.
 - d. To the maximum extent appropriate, ~~handicapped~~ children *with disabilities* will be educated with children who are ~~not handicapped~~ *nondisabled*.
 - e. Confidential records of ~~handicapped~~ children *with disabilities* shall be properly maintained.
 - f. Testing and evaluative materials used for the purpose of classifying and placing ~~handicapped~~ children *with disabilities* are selected and administered so as not to be racially or culturally discriminatory.
 - g. An individualized education program will be maintained for each ~~handicapped~~ child *with a disability*.
 - h. A comprehensive system of personnel development to include the in-service training of general and special education instructional and support personnel related to the needs of the ~~handicapped~~ children *with disabilities* is provided.
 - i. There will be ongoing parent consultation.
 - j. A full educational opportunity goal is provided for all ~~handicapped~~ children *with disabilities*, from birth to age 21, inclusive, including appropriate career education, prevocational education, and vocational education.
 - k. ~~Handicapped~~ children *Children with disabilities* must be given the right of participating in the Literacy Testing Program (LTP).
3. Each LEA shall make the plan, application, and all related documents available to parents and the general public at least 30 calendar days before adoption by the local school board or appropriate authorities. Such notice shall be published or announced in newspapers and other media and procedures shall be established to provide individuals an opportunity to respond to these documents.
4. 3. Each LEA shall also ensure that all required

Proposed Regulations

special education plans, applications, reports, and program evaluations are public information available for public inspection.

B. Personnel development.

Each LEA shall establish a program and procedures for the development and implementation of a comprehensive system of personnel development which shall include:

1. In-service training for all general and special education instructional, related services, and support personnel; and
2. Procedures to ensure that all personnel who are responsible for the instructional programs or delivery of related or support services to ~~handicapped~~ children with disabilities are properly certified and endorsed.

C. Local advisory committee.

1. There shall be a local advisory committee for special education appointed by each local school board to advise the school board through the division superintendent. *The composition of the committee shall include parents of children with disabilities.*

2. ~~Local school division personnel shall serve only as consultants to the committee.~~

3. ~~Parents of handicapped children and youth shall serve on the local advisory committee.~~

4. ~~The functions of the local advisory committee shall be as follows:~~

a. ~~Advise the local school division of unmet needs in the education of handicapped children;~~

b. ~~Assist the local school division in the formulation and development of long-range plans designed to provide needed educational services for handicapped children;~~

c. ~~Participate in the development of priorities and strategies for meeting the identified needs of handicapped children;~~

d. ~~Submit periodic reports and recommendations regarding the education of handicapped children to the division superintendent for transmission to the local school board; and~~

e. ~~Assist the local school division in interpreting plans to the community for meeting the special needs of handicapped children for educational services.~~

5. ~~Public notice shall be published annually listing the names of committee members and including a description of ways in which interested parties may~~

~~express their views to the committee.~~

6. ~~Committee meetings shall be held at least quarterly and shall be open to the public.~~

7. ~~Public notice of each meeting shall be made at least two weeks prior to the date of the meeting.~~

8. ~~One meeting shall be designated specifically for the review of the annual special education plan/report and funding applications 30 calendar days prior to submission to the local school board.~~

D. Regional programs.

1. Where it becomes necessary for local school divisions to develop regional or cooperative programs to serve their ~~handicapped~~ children with disabilities, such regional programs shall be provided in accordance with least restrictive environment requirements.

2. ~~Where local school divisions LEAs elect to participate in 60% reimbursements of costs established under the rules of the Interdepartmental Committee on Rate-Setting. The Joint Regulations on Rate-Setting for Children's Facilities of the Board of Education, the Board of Social Services and the Board of Corrections an approved regional program for the provision of special education and related services for certain handicapped children with disabilities, a joint board shall be established to manage and control the jointly owned or operated program, center or school. Establishment of the joint board, and administration of the jointly operated program shall be conducted in accordance with the Board of Education regulations governing such programs.~~

3. The annual special education plan/report and funding applications of each LEA participating in a regional program shall contain a description of its program, activities and supervisory involvement as prescribed by the SEA. Each joint board may submit a composite annual special education plan/report and funding applications which is composed of excerpts from each of the participating LEAs.

4. Each joint board shall appoint a qualified director who shall be the administrative head of the cooperative unit. The director shall be responsible for the administration of programs and services which are approved by the governing body.

PART IV. FUNDING.

§ 4.1. ~~Reimbursement to local school divisions LEAs and state-operated programs.~~

A. ~~State and federal funds administered by the SEA are disbursed to local school divisions LEAs and state-operated~~

Proposed Regulations

programs in accordance with the following requirements:

1. Compliance with regulations of the Board of Education including those for accreditation ;
2. Education programs for the *handicapped children with disabilities* shall be operated pursuant to an approved annual special education plan/report and funding applications;
3. Special education teachers, speech pathologists, school psychologists, visiting teachers, school social workers, and supervisors of special education shall meet fully the Board of Education certification and endorsement requirements for such employment;
4. Class enrollments and case loads shall not exceed the maximum number of *handicapped children* as prescribed by special education program requirements;
5. Where unusual or extenuating circumstances exist, the LEA may apply to the Superintendent of Public Instruction for a waiver of certain regulations relating to certification, endorsement and program modification. All such requests shall be in writing and include documentation of the LEA's attempt to achieve compliance, shall state the rationale for requesting the waiver, and shall specify the corrective action to be taken to achieve compliance by the beginning of the next school year;
6. 4. All disbursement is subject to the availability of funds. In the event of insufficient state funds, disbursement will be prorated accordingly *may be prorated pursuant to provisions of the appropriation act* .

§ 4.2. State funds.

A. State funds to assist local school divisions with the cost of providing special education and related services for *handicapped children with disabilities* are provided through the SEA's appropriation as follows:

1. *Handicapped Children with disabilities* enrolled in programs operated by a local school board:
 - a. Day school programs. In addition to the funds received for each pupil from basic aid, ~~local school divisions~~ LEAs will receive payment to support the state share of the number of special education teachers and aides required by the Standards of Quality.
 - b. Homebound instruction. ~~Local school divisions~~ LEAs shall be reimbursed 60% of the hourly payment to teachers employed to provide homebound instruction to eligible children. Such reimbursement shall not exceed 60% of an established hourly rate determined annually by the department, and shall be in addition to basic aid.

c. Transportation. *Handicapped Children with disabilities* , ages two to 21, inclusive, transported on approved school buses or on public transit buses to public schools or approved private schools pursuant to their IEPs are funded in accordance with pupil transportation regulations.

2. *Handicapped Children with disabilities* enrolled in regional special education programs:

a. Reimbursement is available for ~~60%~~ *a portion of the tuition costs not to exceed 60% of the maximum rate established under the Rules of the Interdepartmental Committee on Rate-Setting: The Joint Regulations on Rate-Setting for Children's Facilities of the Board of Education, the Board of Social Services and the Board of Corrections for based on the local composite index computed at 60%. Rates will be approved following procedures established by the Board of Education.* Regional special education programs operated by a joint board, or for LEAs operating a residential program accepting eligible *handicapped children with disabilities* from other local school divisions(s) who are have :

- (1) ~~Severely and profoundly handicapped;~~ *A severe and profound disability.*
- (2) ~~Seriously emotionally disturbed;~~ *A serious emotional disturbance.*
- (3) ~~Autistic;~~ *Autism.*
- (4) ~~Multihandicapped;~~ *Multiple disabilities.*
- (5) ~~Deaf;~~ *Deafness.*
- (6) ~~Hard of hearing;~~ *or A hearing impairment.*
- (7) ~~Deaf-blind;~~ *Deaf-blindness.*
- (8) *A traumatic brain injury.*

b. Such reimbursement shall be in lieu of the per pupil basic operation cost and other state aid otherwise available for each child. Decisions regarding the determination of reasonable tuition costs and other reasonable charges may be appealed under procedures prescribed in the Rules of the Interdepartmental Committee on Rate-Setting: The Joint Regulations on Rate-Setting for Children's Facilities of the Board of Education, the Board of Social Services and the Board of Corrections.

3. *Handicapped Children with disabilities* enrolled in approved private nonsectarian schools for the *handicapped children with disabilities shall be funded under the provisions of the Comprehensive Services Act for At Risk Children and Families* :

Proposed Regulations

a. Reimbursement for 60% of the tuition cost, not to exceed 60% of the maximum rate established by the Board of Education, is available for special education and related services for eligible handicapped children attending private nonsectarian schools approved under the Rules of the Interdepartmental Committee on Rate-Setting; The Joint Regulations on Rate-Setting for Children's Facilities of the Board of Education; the Board of Social Services and the Board of Corrections. The maximum rate set by the board for any facility may be appealed to the Interdepartmental Committee on Rate-Setting for Children's Facility.

b. When the LEA is unable to provide an appropriate educational program for a handicapped child, and determines that the appropriate placement for the child is in an approved private nonsectarian school for the handicapped, the LEA is responsible for the cost of the placement.

e. When the local departments of social services or the Department of Corrections places a handicapped child in an approved private residential nonsectarian school for the handicapped for reasons other than educational purposes, the LEA shall be responsible for payment of appropriate educational costs. Such costs are reimbursable from the SEA.

d. 1. Reimbursement for handicapped children with disabilities placed in foster care shall be made in accordance with procedures established by the SEA.

e. 2. When a parent unilaterally places a handicapped child with a disability in an approved private nonsectarian school for the handicapped children with disabilities, the LEA shall not be responsible for the cost of the placement unless a hearing officer, or reviewing officer or court determines that such placement, rather than the IEP proposed by the LEA, is appropriate and no appeal is perfected from that decision.

4. Training of special education personnel: Traineeship loans are available to persons who are interested in working with programs for the education of handicapped children to qualify them as special education personnel in the LEAs, as special education teachers, special education supervisors, visiting teachers, school social workers, school psychologists, or speech pathologists. Applicants for such traineeships shall be graduates of a recognized college or university and must meet eligibility requirements set by the Board of Education.

§ 4.3. Federal funds.

A. Federal funds are available under Part B of Public Law 94-142, as amended, to assist local school divisions with the excess cost of providing special education and related services for handicapped children with disabilities

ages two to 21, inclusive. The application for such funds is submitted to the SEA according to applicable federal requirements.

B. In order to qualify for Part B funds, a local school division LEA must spend as much in state and local funds on elementary handicapped children with disabilities as on elementary nonhandicapped nondisabled children, and as much on secondary handicapped children with disabilities as on secondary nonhandicapped nondisabled children.

C. Part B funds may not be used to supplant state and local expenditures for special education and related services.

D. The entitlement of Part B funds for each local school division LEA is based upon the unduplicated number of handicapped children with disabilities certified by the division superintendent as receiving special education and related services on December 1 of the prior year.

E. Handicapped Children with disabilities transferred from state operated programs to local school divisions LEAs may be served with funds applied for in accordance with the provisions of Public Law 89-313, as amended. However, no child included in the count for Public Law 94-142, as amended, is eligible to be counted for funding under Public Law 89-313, as amended.

§ 4.4. Funds to assist with the education of handicapped children with disabilities residing in state-operated facilities are available as follows:

A. Children in state mental health facilities.

State funds for special education and related services for children in state mental health facilities are appropriated to the Department of Education. Local funds for such education shall be an amount equal to the required local per pupil expenditure for the period during which a local school division has a child in residence at a state mental health facility. Such amount shall be transferred by the Department of Education from the local school division's basic aid funds. Federal funds are available under the provisions of Public Law 89-313, as amended.

B. Children in state training centers for the mentally retarded.

State funds for special education and related services for children in state training centers for the mentally retarded are appropriated to the Department of Mental Health, Mental Retardation and Substance Abuse Services. Local funds for such education shall be an amount equal to the required local per pupil expenditure for the period during which a local school division has a child in residence at a state mental retardation facility. Such amount shall be transferred by the Department of Education from the local school division's basic aid funds. Federal funds are available under the provisions of Public Law 89-313, as amended.

Proposed Regulations

C. Children in ~~short-term~~ state medical facilities.

State funds are provided for special education and related services in the special education appropriation. *Federal* funds are available under the provisions of Public Law 89-313, as amended.

D. Children in Woodrow Wilson Rehabilitation Center.

State funds for special education and related services are derived from the special education appropriation. *Federal* funds are available under the provisions of Public Law 89-313, as amended.

E. Children in regional juvenile detention homes.

State funds for special education services are available from the special education appropriation.

F. State-operated diagnostic clinics.

State funds for the employment of educational consultants assigned to child development and other specialty clinics operated by the state ~~Health~~ Department of Health are derived from the special education appropriation.

G. Virginia Department of Correctional Education.

State funds for the education of children, including ~~handicapped~~ children with disabilities, are appropriated to the Virginia Department of Correctional Education for the education of all children residing in state operated correctional facilities. *Federal* funds are available under the provisions of Public Law 94-142, as amended.

§ 4.5. Funding, withholding, and recovery of funds.

A. The SEA shall disburse funds to LEAs for the education of ~~handicapped~~ children with disabilities (ages two to 21, inclusive) when they provide documentation of compliance with state and federal laws and regulations.

B. Where documentation of compliance is not submitted or is inadequate, the Superintendent of Public Instruction shall notify the LEA that state and federal funds will not be available for reimbursement for special education programs and services.

1. The notification shall include the substance of the alleged violation, and the LEA shall be given an opportunity to submit a written response; and

2. The LEA shall have the right to appeal to the Board of Education under § 4.6 of this part.

C. If the Superintendent of Public Instruction, after reasonable notice and opportunity for a hearing under § 4.6 of this part, finds that an LEA has failed to comply with the Board of Education regulations and determines that compliance cannot be secured by voluntary means,

then the superintendent shall issue a decision in writing stating that state and federal funds for the education of ~~handicapped~~ children with disabilities shall not be made available to that LEA until it complies with the Board of Education regulations.

D. Where there is evidence that a child has been erroneously classified and thereby counted as eligible for state and federal special education funds and such evidence is challenged by the LEA, the foregoing due process procedures shall apply.

E. Where it is determined that such funds have been erroneously claimed, the SEA shall bill the LEA for the amount of funds improperly received or withhold an equal amount of state or federal funds for the following year.

§ 4.6. Appeal of administrative decision.

A. The SEA recommendation to disapprove an LEA annual special education plan/report and funding applications or to withhold special education funds may be appealed by an LEA.

B. The procedures for the appeal of administrative decisions are as follows:

1. The LEA must request, in writing, a hearing by the SEA within 30 administrative working days from the receipt of notification from the Superintendent of Public Instruction;

2. Within 10 administrative working days from the date of request for a hearing, the Superintendent of Public Instruction shall notify the LEA in writing of the date, time and location of the hearing;

3. The hearing shall transpire within 15 administrative working days from the date of notification;

4. The hearing board shall be composed of the following persons:

a. Two persons from the SEA who were not participants in the contested decision; these persons shall be appointed by the Superintendent of Public Instruction; and

b. Two members of the State Special Education Advisory Committee to be appointed by the chairman of the committee;

5. Witnesses and attorneys may be present and testify for the SEA or the LEA;

6. A written or electronic verbatim record shall be kept of all proceedings of the hearing;

7. The hearing board shall review all pertinent evidence presented and shall make a written recommendation to the Board of Education which will

Proposed Regulations

render a decision; and

8. The decision made by the Board of Education is final, unless a party appeals to a state court of competent jurisdiction or federal district court.

PART V. ADDITIONAL RESPONSIBILITIES OF STATE BOARDS, AGENCIES, AND INSTITUTIONS FOR EDUCATION AND TRAINING OF ~~HANDICAPPED~~ CHILDREN AND YOUTH WITH DISABILITIES IN RESIDENCE OR CUSTODY.

§ 5.1. *Provision of special education to children with disabilities in residence or custody.*

Each state board, agency, and institution having ~~handicapped~~ children with disabilities in residence or custody shall provide education pursuant to standards, policies and procedures established by the Board of Education. The procedures outlined in Part III, Responsibilities of ~~Local School Divisions~~ LEAs and State Agencies, of these regulations are applicable to each state board, agency and institution having ~~handicapped~~ children and youth with disabilities in residence and custody.

§ 5.2. *Annual plan.*

Each state board, agency, and institution having responsibility for providing such education and training shall submit annually to the SEA for approval by the Board of Education its program plan for the education and training for ~~handicapped~~ children with disabilities in residence or custody. This program plan, to be submitted by the date and in the manner specified by the Board of Education, shall include the provisions and assurances as specified in § ~~3-7~~ § 3.6 of these regulations. In addition, the program plan shall include the following:

1. The educational objectives of the state board, agency, or institution ; .
2. Strategies for achieving the educational objectives, including an organized program for staff development ; .
3. A system of communication between educational and other personnel, including treatment and residential care staff, to ensure coordination of program objective(s) ; .
4. A system of communication to assure service continuity in the transition of the student into and out of the educational program of the facility ; .
5. An assessment plan for determining the extent to which the objectives have been achieved including, where practicable, follow-up studies of former students to assist in annual program evaluation ; .
6. A system of communication between the state

board, agency, or institution and its employees, whereby the views of all educational employees may be received in an orderly and constructive manner in matters of concern to them ; .

7. A cooperatively developed procedure for the evaluation of educational personnel ; .

8. The grievance procedures regarding educational personnel as prescribed by the state or the appropriate local agency or board ; .

9. A comprehensive system of personnel development to include the in-service training of general and special education instructional and support personnel related to the educational needs of children and youth in residence is provided ; .

10. At least 5-1/2 hours of education/training per school day or 27-1/2 per school week is available for each student to implement his IEP.

11. A waiver statement is on file for each student whose medical or physical condition requires modification of the school schedule. This waiver statement shall document the physical or mental condition of the individual student which requires significant modification of this schedule, and there shall be on file statements of concurrence by the principal, supervisor or educational director and other personnel as follows:

- a. ~~Mental health and mental retardation~~ Department of Mental Health, Mental Retardation and Substance Abuse facilities - attending physician;
- b. Department of Correctional Education - treatment team;
- c. School for the deaf and the blind - physician, staffing committee and principal;
- d. Woodrow Wilson Rehabilitation Center - center counselor upon recommendation of the staffing committee;
- e. State medical facilities - attending physician(s);
- f. Juvenile detention homes - detention superintendent or designee.

12. Each state school for the deaf and blind shall provide a planned dormitory and a student-life program for each age group of children, including social and daily living skills, recreation, and cultural activities.

§ 5.3. *Staff and facility.*

A. Each state board, agency or institution shall assign personnel to the educational program as follows:

Proposed Regulations

1. Administrative, supervisory, instructional, support and ancillary personnel holding valid professional licenses, certificates and endorsements as appropriate in the area of assignment (national standards may apply in the absence of state licensure or certification requirements).

2. Additional education personnel to provide required related services as delineated in the IEP.

3. Teacher aids must be high school graduates or equivalent.

B. Each state board, agency or institution shall staff the educational program as follows:

1. A principal, supervisor, education director or lead teacher for the educational program provided at each school ; *and institution and except for juvenile detention home homes which must have a principal .*

2. Instructional personnel sufficient to maintain pupil-teacher ratios not to exceed the following:

a. ~~Seriously emotionally disturbed~~ *Serious emotional disturbance* - one teacher for every eight children or one teacher and one aide for every 10 children;

b. ~~Hard of hearing/deaf~~ *Hearing impairment/deafness* - one teacher for every seven children with one aide for every three classroom teachers;

c. ~~Mentally retarded~~ *Mental retardation* - one teacher and one aide for every 10 children;

d. ~~Severely and profoundly handicapped~~ *Severe and profound disability* - one teacher and one aide for every six children or one teacher and two aides for every 10 children;

e. ~~Visually impaired~~ *Visual impairment* - one teacher for every seven children with one aide for every three classroom teachers;

f. Other health ~~impaired~~ *impairment* - one teacher for every eight children or one teacher and one aide for every 10 children;

g. ~~Orthopedically impaired~~ *Orthopedic impairment* - one teacher for every eight children or one teacher and one aide for every 10 children;

h. Specific learning ~~disabled~~ *disability* - one teacher for every eight children or one teacher and one aide for every 10 children;

i. ~~Multihandicapped/deaf-blind~~ *Multiple disabilities/deaf-blindness* - one teacher and one aide for every six students or one teacher and two aides for every 10 students;

j. Department of Correctional Education - no greater than an average of one teacher and one aide for every 10 children;

k. Woodrow Wilson Rehabilitation Center - no greater than an average of one teacher for every 10 children;

l. Other administrative supervisory, instructional, support and ancillary personnel at each state school for the deaf and blind at least in the ratio required by Board of Education accreditation standards;

m. Juvenile detention homes - a student/teacher ratio shall be based on the bed capacity of the detention home: one teacher per 12 beds. Where unusual or extenuating circumstances exist, the agency may apply to the Superintendent of Public Instruction for an exception to the ratio requirements. Such requests shall be supported by sufficient justification.

C. Each facility shall have available adequate and appropriate classroom space, library, and instructional materials and supplies to meet the educational needs of the children.

§ 5.4. Evaluation.

Each state board, agency, or institution shall ensure an annual evaluation of the educational program to determine the extent to which the objectives have been achieved and to make recommendations for program modification of such plan.

PART VI. COMPLIANCE WITH § 504 OF THE REHABILITATION ACT OF 1973, AS AMENDED.

§ 6.1. For those public elementary or secondary education programs operated by the Virginia Department of Education, the department shall:

1. Develop an individualized education program for each person who is handicapped as defined by the Rehabilitation Act of 1973 and its amendments; and
2. Utilize the system of procedural safeguards specified in these regulations to resolve disputes regarding the identification, evaluation or educational placement of persons who are handicapped as defined by the Rehabilitation Act of 1973 and its amendments.

§ 6.2. Local education agencies, as defined by these regulations, other than the Virginia Department of Education, may utilize the system of procedural safeguards due process hearing system specified in these regulations to resolve disputes regarding the identification, evaluation or educational placement of persons who are handicapped as defined by the Rehabilitation Act of 1973 and its amendments.

Proposed Regulations

VIRGINIA HEALTH SERVICES COST REVIEW COUNCIL

Title of Regulation: VR 370-01-001. Rules and Regulations of the Virginia Health Services Cost Review Council.

Statutory Authority: §§ 9-161.1 and 9-164 of the Code of Virginia.

Public Hearing Date: May 25, 1993 - Noon

Written comments may be submitted until May 25, 1993.

(See Calendar of Events section for additional information)

Summary:

Section 9-161.1 of the Code of Virginia requires that the Virginia Health Services Cost Review Council establish a new methodology for the review and measurement of efficiency and productivity of health care institutions. The methodology provides for, but is not limited to, comparison of the health care institution's performance to national and regional data. The amendments conform this regulation to the requirements of the new methodology.

VR 370-01-001. Rules and Regulations of the Virginia Health Services Cost Review Council.

PART I. DEFINITIONS.

§ 1.1. Definitions.

The following words and terms, when used in these regulations, shall have the following meaning:

"Adjusted patient days" means inpatient days divided by the percentage of inpatient revenues to total patient revenues.

"Aggregate cost" means the total financial requirements of an institution which shall be equal to the sum of:

1. The institution's ~~reasonable~~ current operating costs, including ~~reasonable~~ expenses for operating and maintenance of approved services and facilities, ~~reasonable~~ direct and indirect expenses for patient care services, working capital needs and taxes, if any;

2. Financial requirements for allowable capital purposes, including price level depreciation for depreciable assets and ~~reasonable~~ accumulation of funds for approved capital projects;

3. For investor-owned institutions, after tax return on equity at the percentage equal to two times the average of the rates of interest on special issues of public debt obligations issued to the Federal Hospital Insurance Trust Fund for the months in a provider's reporting period, but not less, after taxes, than the

rate or weighted average of rates of interest borne by the individual institution's outstanding capital indebtedness. The base to which the rate of return determined shall be applied is the total net assets, adjusted by paragraph 2 of this section, without deduction of outstanding capital indebtedness of the individual institution for assets required in providing institutional health care services;

4. For investor-owned institutions organized as proprietorships, partnerships, or S-corporations an imputed income tax, for fiscal years ending July 1, 1989, or later, at a combined federal and state income tax rate equal to the maximum tax rates for federal and state income taxes. The combined rate for 1989 is equal to 34% for individuals and 40% for corporations. Such tax computation shall be exclusive of net operating loss carry forwards prior to July 1, 1989. Operating losses incurred after July 1, 1989, may be carried forward no more than five years but may not be carried back prior years. The schedule of imputed income taxes shall be reported as a note to the financial statements or as a supplemental schedule of the certified audited financial statements submitted to the Virginia Health Services Cost Review Council by the institution.

"Certified nursing facility" means any skilled nursing facility, skilled care facility, intermediate care facility, nursing or nursing care facility, or nursing home, whether freestanding or a portion of a freestanding medical care facility, that is certified as a Medicare or Medicaid provider, or both, pursuant to § 32.1-137.

"Council" means the Virginia Health Services Cost Review Council.

"Consumer" means any person (i) whose occupation is other than the administration of health activities or the provision of health services (ii) who has no fiduciary obligation to a health care institution or other health agency or to any organization, public or private, whose principal activity is an adjunct to the provision of health services, or (iii) who has no material financial interest in the rendering of health services.

"Health care institution" means (i) a general hospital, ordinary hospital, or outpatient surgical hospital, nursing home or certified nursing facility licensed or certified pursuant to Article 1 (§ 32.1-123 et seq.) of Chapter 5 of Title 32.1, (ii) a mental or psychiatric hospital licensed pursuant to Chapter 8 (§ 37.1-179 et seq.) of Title 37.1 and (iii) a hospital operated by the University of Virginia or Virginia Commonwealth University. In no event shall such term be construed to include any physician's office, nursing care facility of a religious body which depends upon prayer alone for healing, independent laboratory or outpatient clinic.

"Hospital" means any facility licensed pursuant to §§ 32.1-123, et seq. or 37.1-179 et seq. of the Code of Virginia.

"Late charge" means a fee that is assessed a health care institution that files its budget, annual report, or charge schedule with the council past the due date.

"Nursing home" means any facility or any identifiable component of any facility licensed pursuant to Article 1 (§ 32.1-123 et seq.) of Chapter 5 of Title 32.1, in which the primary function is the provision, on a continuing basis, of nursing services and health-related services for the treatment and inpatient care of two or more nonrelated individuals, including facilities known by varying nomenclature or designation such as convalescent homes, skilled nursing facilities or skilled care facilities, intermediate care facilities, extended care facilities and nursing or nursing care facilities.

"Voluntary cost review organization" means a nonprofit association or other nonprofit entity which has as its function the review of health care institutions' costs and charges but which does not provide reimbursement to any health care institution or participate in the administration of any review process under Chapter 4 of Title 32.1 of the Code of Virginia.

"Patient day" means a unit of measure denoting lodging facilities provided and services rendered to one inpatient, between census-taking-hour on two successive days. The day of admission but not the day of discharge or death is counted a patient day. If both admission and discharge or death occur on the same day, the day is considered a day of admission and counts as one patient day. For purposes of filing fees to the council, newborn patient days would be added. For a medical facility, such as an ambulatory surgery center, which does not provide inpatient services, each patient undergoing surgery during any one 24-hour period will be the equivalent to one patient day.

PART II. GENERAL INFORMATION.

§ 2.1. Authority for regulations.

The Virginia Health Services Cost Review Council, created by §§ 9-156 through 9-166 of the Code of Virginia, is required to collect, analyze and make public certain financial data and findings relating to hospitals which operate within the Commonwealth of Virginia. Section 9-164 of the Code of Virginia directs the council from time to time to make such rules and regulations as may be necessary to carry out its responsibilities as prescribed in the Code of Virginia.

§ 2.2. Purpose of rules and regulations.

The council has promulgated these rules and regulations to set forth an orderly administrative process by which the council may govern its own affairs and require compliance with the provisions of §§ 9-156 through 9-166 of the Code of Virginia.

§ 2.3. Administration of rules and regulations.

These rules and regulations are administered by the Virginia Health Services Cost Review Council.

§ 2.4. Application of rules and regulations.

These rules and regulations have general applicability throughout the Commonwealth. The requirements of the Virginia Administrative Process Act, codified as § 9-6.14:1, et seq. of the Code of Virginia applied to their promulgation.

§ 2.5. Effective date of rules and regulations.

These rules and regulations or any subsequent amendment, modification, or deletion in connection with these rules and regulations shall become effective 30 days after the final regulation is published in The Virginia Register.

§ 2.6. Powers and procedures of regulations not exclusive.

The council reserves the right to authorize any procedure for the enforcement of these regulations that is not inconsistent with the provision set forth herein and the provisions of § 9-156 et seq. of the Code of Virginia.

PART III. COUNCIL PURPOSE AND ORGANIZATION.

§ 3.1. Statement of mission.

The council is charged with the responsibility to promote the economic delivery of high quality and effective institutional health care services to the people of the Commonwealth and to create an assurance that the charges are reasonably related to costs.

The council recognizes that health care institutional costs are of vital concern to the people of the Commonwealth and that it is essential for an effective cost monitoring program to be established which will assist health care institutions in controlling their costs while assuring their financial viability. In pursuance of this policy, it is the council's purpose to provide for uniform measures on a statewide basis to assist in monitoring the costs of health care institutions without sacrifice of quality of health care services and to analyze the same to determine if charges and costs are reasonable.

The council has adopted a mission statement that it will promote cost containment within Virginia's health care institutions by collecting, analyzing, and disseminating information to the public.

§ 3.2. Council chairman.

The council shall annually elect one of its consumer members to serve as chairman. The chairman shall preside at all meetings of the council and shall be responsible for convening the council.

Proposed Regulations

§ 3.3. Vice-chairman.

The council shall annually elect from its membership a vice-chairman who shall assume the duties of the chairman in his absence or temporary inability to serve.

§ 3.4. Expense reimbursement.

Members of the council shall be entitled to be reimbursed in accordance with state regulations for necessary and proper expenses incurred in the performance of their duties on behalf of the council.

§ 3.5. Additional powers and duties.

The council shall exercise such additional powers and duties as may be specified in the Code of Virginia.

PART IV. VOLUNTARY COST REVIEW ORGANIZATIONS.

§ 4.1. Application.

Any organization desiring approval as a voluntary rate review organization may apply for approval by using the following procedure:

1. Open application period. A voluntary cost review organization may apply for designation as an approved voluntary cost review organization to be granted such duties as are prescribed in § 9-162 of the Code of Virginia.
2. Contents of application. An application for approval shall include:
 - a. Documentation sufficient to show that the applicant complies with the requirements to be a voluntary cost review organization, including evidence of its nonprofit status. Full financial reports for the one year preceding its application must also be forwarded. If no financial reports are available, a statement of the projected cost of the applicant's operation with supporting data must be forwarded;
 - b. If any of the organization's directors or officers have or would have a potential conflict of interests affecting the development of an effective cost monitoring program for the council, statements must be submitted with the application to fully detail the extent of the other conflicting interest;
 - c. A detailed statement of the type of reports and administrative procedures proposed for use by the applicant;
 - d. A statement of the number of employees of the applicant including details of their classification; and
 - e. Any additional statements or information which is

necessary to ensure that the proposed reporting and review procedures of the applicant are satisfactory to the council.

§ 4.2. Review of application.

A. Designation.

Within 45 calendar days of the receipt of an application for designation as a voluntary cost review organization, the council shall issue its decision of approval or disapproval. Approval by the council shall take effect immediately.

B. Disapproval.

The council may disapprove any application for the reason that the applicant has failed to comply with application requirements; or that the applicant fails to meet the definition of a cost review organization; or fails to meet the specifications cited in paragraph A above concerning application contents or that the cost and quality of the institutional reporting system proposed by the applicant are unsatisfactory.

C. Reapplication.

An organization whose application has been disapproved by the council may submit a new or amended application to the council within 15 calendar days after disapproval of the initial application. An organization may only reapply for approval on one occasion during any consecutive 12-month period.

§ 4.3. Annual review of applicant.

A. By March 31 of each year, any approved voluntary cost review organization for the calendar year then in progress which desires to continue its designation shall submit an annual review statement of its reporting and review procedures.

B. The annual review statement shall include:

1. Attestation by the applicant that no amendments or modifications of practice contrary to the initially approved application have occurred; or
2. Details of any amendments or modifications to the initially approved application, which shall include justifications for these amendments or modifications.

C. The council may require additional information from the applicant supporting that the applicant's reports and procedures are satisfactory to the council.

§ 4.4. Revocation of approval.

The council may revoke its approval of any cost review organization's approval when the review procedures of that organization are no longer satisfactory to the council or for the reason that the voluntary cost review organization

could be disapproved under § 4.2 B of these regulations.

§ 4.5. Confidentiality.

A voluntary cost review organization approved as such by the council shall maintain the total confidentiality of all filings made with it required by these regulations or law. The contents of filings or reports summaries and recommendations generated in consequence of the council's regulations may be disseminated only to members of the council, the council's staff and the individual health care institution which has made the filings or which is the subject of a particular report.

PART V. CONTRACT WITH VOLUNTARY COST REVIEW ORGANIZATION.

§ 5.1. Purpose.

It is the intention of the council to exercise the authority and directive of § 9-163 of the Code of Virginia whereby the council is required to contract with any voluntary cost review organization for services necessary to carry out the council's activities where this will promote economy and efficiency, avoid duplication of effort, and make best use of available expertise.

§ 5.2. Eligibility.

In order for a voluntary cost review organization to be eligible to contract with the council, it shall have met all other requirements of §§ 4.1 and 4.5 of these regulations relating to voluntary cost review organization and have been approved as such an organization.

§ 5.3. Contents of contract.

The written agreement between the council and any voluntary cost review organization shall contain such provisions which are not inconsistent with these regulations or law as may be agreed to by the parties. Any such contract shall be for a period not to exceed five years.

PART VI IV. FILING REQUIREMENTS AND FEE STRUCTURE.

§ 6.1. § 4.1. Each individual health care institution shall file an annual report of revenues, expenses, other income, other outlays, assets and liabilities, units of service, and related statistics as prescribed in § 9-158 of the Code of Virginia on forms provided by the council together with the certified audited financial statements (or equivalents) as prescribed in § 9-159 of the Code of Virginia. The annual report and the certified audited financial statement shall be received by the council no later than 120 days after the end of the respective applicable health care institution's fiscal year. Extensions of filing times for the annual report or the certified audited financial statement may be granted for extenuating circumstances upon a health care institution's written application for a 30-day

extension. Such request for extension shall be filed no later than 120 days after the end of a health care institution's fiscal year. The requirement for the filing of an annual report and a certified audited financial statement may be waived if a health care institution can show that an extenuating circumstance exists. Examples of an extenuating circumstance include, but are not limited to, involvement by the institution in a bankruptcy proceeding, closure of the institution, or the institution is a new facility that has recently opened.

Each health care institution with licensed nursing home beds or certified nursing facility beds shall exclude all revenues, expenses, other income, other outlays, assets and liabilities, units of service and related statistics directly associated with a hospital, continuing care retirement community, or with home for adult beds in the annual report filed with the council. For those health care institutions that participate in either the Medicare or Medicaid program, the cost allocation methodology required by the Virginia Department of Medical Assistance Services and Medicare for cost reports submitted to it shall be utilized for filings submitted to the council. Any health care institution that does not participate in the Medicare or Medicaid program may develop and utilize an alternative methodology to determine the nursing home portion of its costs if it chooses not to utilize the cost allocation methodology used by the Department of Medical Assistance Services and Medicare. That methodology shall then be approved by the council and the health care institution must continue to utilize that methodology for all subsequent filings unless a subsequent change is approved by the council.

§ 6.2. § 4.2. Each individual health care institution shall file annually a projection (budget) of annual revenues and expenditures as prescribed in § 9-161 B § 9-160 B of the Code of Virginia on forms provided by the council. The institution's projection (budget) shall be received by the council no later than 60 30 days before the beginning of its respective applicable fiscal year. An institution's budget for a given fiscal year will not be accepted for review unless the institution has already filed its annual report and certified audited financial statement for the previous fiscal year. This regulation shall be applicable to nursing homes or certified nursing facilities for each fiscal year starting on or after June 30, 1990. Each health care institution with licensed nursing home beds or certified nursing facility beds shall exclude all revenues, expenses, other income, other outlays, assets and liabilities, units of service and related statistics directly associated with a hospital, continuing care retirement community, or with home for adult beds in the budget filed with the council. For those health care institutions that participate in either the Medicare or Medicaid program, the cost allocation methodology required by the Virginia Department of Medical Assistance Services and Medicare for cost reports submitted to it shall be utilized for filings submitted to the council. Any health care institution that does not participate in the Medicare or Medicaid program may develop and utilize an alternative methodology to

Proposed Regulations

determine the nursing home portion of its costs if it chooses not to utilize the cost allocation methodology used by the Department of Medical Assistance Services and Medicare. That methodology shall then be approved by the council and the health care institution must continue to utilize that methodology for all subsequent filings unless a subsequent change is approved by the council.

~~§ 6-3. § 4.3.~~ Each health care institution shall file annually a schedule of charges to be in effect on the first day of such fiscal year, as prescribed in ~~§ 9-161 D § 9-159 A 4~~ of the Code of Virginia. The institution's schedule of charges shall be received by the council within 10 days after the beginning of its respective applicable fiscal year ~~or within 15 days of being notified by the council of its approval of the charges, whichever is later~~.

Any subsequent amendment or modification to the annually filed schedule of charges shall be filed at least ~~60 30~~ days in advance of its effective date, ~~together with supporting data justifying the need for the amendment~~. An institution's proposed amendment or modification to its annually filed schedule of charges shall not be accepted ~~for review~~ unless the institution has complied with all prior filing requirements contained in ~~§§ 6-1 and 6-2 4.1 and 4.2~~ for previous fiscal years. Changes in charges which will have a minimal impact on revenues are exempt from this requirement. Any change in an institution's charges or cumulative changes in charges that will increase or decrease ~~council-approved~~ budgeted gross patient services revenue by less than 1.0% of annual revenue for the remaining portion of the budgeted fiscal year are considered minimal and need not be reported. All other changes must be reported.

~~§ 6-3-1. § 4.3.1.~~ Each health care institution shall file annually a survey of rates charged. For hospitals, the survey shall consist of up to 30 select charges, including semi-private and private room rates. The survey shall also consist of charges of the most frequently occurring diagnoses or procedures for inpatient and outpatient treatment. The charges shall be calculated by taking an average for one month of all patient bills where the requested CPT or ICD-9 code numbers are indicated as the principal diagnosis or procedure. This information shall be received by the council from each hospital no later than April 30 of each year.

The annual charge survey for nursing homes shall include up to 30 select charges, including semi-private and private room rates. The select charges shall reflect the rates in effect as of the first day of a sample month to be chosen by the council. This information shall be provided to the council no later than March 31 of each year.

~~§ 6-3-2. § 4.3.2.~~ Each hospital or any corporation that controls a hospital shall respond to a survey conducted by the council to determine the extent of commercial diversification by such hospitals in the Commonwealth. The survey shall be in a form and manner prescribed by the council and shall request the information specified in

subdivision a, f, g, h and i below on each hospital or such corporation and, with respect to any tax-exempt hospital or controlling corporation thereof, the information specified in subdivision a through i below for each affiliate of such hospital or corporation, if any:

- a. The name and principal activity;
- b. The date of the affiliation;
- c. The nature of the affiliation;
- d. The method by which each affiliate was acquired or created;
- e. The tax status of each affiliate and, if tax-exempt, its Internal Revenue tax exemption code number;
- f. The total assets;
- g. The total revenues;
- h. The net profit after taxes, or if not-for-profit, its excess revenues; and
- i. The net quality, or if not-for-profit, its fund balance.

~~§ 6-3-3. § 4.3.3.~~ The information specified in ~~§ 6-3-2 § 4.3.2~~ shall relate to any legal controls that exist as of the 1st of July of each calendar year in which the survey is required to be submitted.

~~§ 6-3-4. § 4.3.4.~~ Each hospital or any corporation that controls a hospital and that is required to respond to the survey specified in ~~§ 6-3-2 § 4.3.2~~ shall complete and return the survey to the council by the 31st day of August of each calendar year or 120 days after the hospital's fiscal year end, whichever is later, in which the survey is required to be submitted.

~~§ 6-3-5. § 4.3.5.~~ Each hospital that reports to the council or any corporation which controls a hospital that reports to the council shall submit an audited consolidated financial statement to the council which includes a balance sheet detailing its total assets, liabilities and net worth and a statement of income and expenses and includes information on all such corporation's affiliates.

~~§ 6-4. § 4.4.~~ All filings prescribed in ~~§ 6-1, § 6-2 and § 6-3-2 §§ 4.1, 4.2 and 4.3.2~~ of these regulations will be made to the council ~~for its transmittal to any approved voluntary cost review organization described in Part IV of these regulations~~.

~~§ 6-5. § 4.5.~~ A filing fee based on an adjusted patient days rate shall be set by the council, based on the needs to meet annual council expenses. The fee shall be established and reviewed at least annually and reviewed for its sufficiency at least annually by the council. All fees shall be paid directly to the council. The filing fee shall be no

Proposed Regulations

more than 11 cents per adjusted patient day for each health care institution filing. Prior to the beginning of each new fiscal year, the council shall determine a filing fee for hospitals and a filing fee for nursing homes based upon the council's proportionate costs of operation for review of hospital and nursing home filings in the current fiscal year, as well as the anticipated costs for such review in the upcoming year.

§ 6.6. § 4.6. Fifty percent of the filing fee shall be paid to the council at the same time that the health care institution files its budget under the provisions of § 6.2 § 4.2 of these regulations. The balance of the filing fee shall be paid to the council at the same time the health care institution files its annual report under the provisions of § 6.1 § 4.1 of these regulations. When the council grants the health care institution an extension, the balance of the filing fee shall be paid to the council no later than 120 days after the end of the respective applicable health care institution's fiscal year. During the year of July 1, 1989, through June 30, 1990, each nursing home and certified nursing facility shall pay a fee of 7 cents per adjusted patient day when it files its annual report in order to comply with subdivisions A1 and A2 of § 9-159 of the Code of Virginia. Following June 30, 1990, all nursing homes and certified nursing facilities shall submit payment of the filing fees in the amount and manner as all other health care institutions.

§ 6.7. § 4.7. A late charge of \$10 per working day shall be paid to the council by a health care institution that files its budget, annual report or certified audited financial statement past the due date. The late charge may be waived if a health care institution can show that an extenuating circumstance exists. Examples of extenuating circumstance include, but are not limited to, involvement by the institution in a bankruptcy proceeding, closure of the institution, change of ownership of the institution, or the institution is a new facility that has recently opened.

§ 6.8. § 4.8. A late charge of \$50 shall be paid to the council by the health care institution that files the charge schedule past the due date.

§ 6.9. § 4.9. A late charge of \$25 per working day shall be paid to the council by the reporting entity required to complete the survey required in § 6.3.2 § 4.3.2 or file the audited consolidated financial statement required by § 6.3.5 § 4.3.5 or both.

§ 6.10. § 4.10. A late charge of \$25 per working day shall be paid to the council by the reporting entity required to complete the survey required in § 6.3.1 § 4.3.1.

PART VII V. WORK FLOW AND ANALYSIS.

§ 7.1. § 5.1. The annual report data filed by health care institutions as prescribed in § 6.1 § 4.1 of these regulations shall be analyzed as directed by the council. Hospitals that are part of a hospital system will be analyzed on a

systemwide basis. Summarized analyses and comments shall be reviewed by the council at a scheduled council meeting within approximately 75 days after receipt of properly filed data, after which these summaries and comments, including council recommendations, may be published and disseminated as determined by the council. The health care institution which is the subject of any summary, report, recommendation or comment shall receive a copy of same at least 10 days prior to the meeting at which the same is to be considered by the council.

§ 7.2. § 5.2. The annual schedule of charges and projections (budget) of revenues and expenditures filed by health care institutions as prescribed in § 6.2 § 4.2 of these regulations shall be analyzed as directed by the council. Hospitals that are part of a hospital chain may have their filings reviewed on a consolidated basis. Summarized analyses and comments shall be reviewed by the council at a scheduled council meeting within approximately 75 days after receipt of properly filed data, after which these summaries and comments, including council recommendations will be published and disseminated by the council. Amendments or modifications to the annually filed schedule of charges shall be processed in a like manner and reviewed by the council no later than 50 days after receipt of properly filed amendments or modifications. Any health care institution which is the subject of summaries and findings of the council shall be given upon request an opportunity to be heard before the council.

PART VIII VI. PUBLICATION AND DISSEMINATION OF INFORMATION RELATED TO HEALTH CARE INSTITUTIONS.

§ 8.1. § 6.1. The staff findings and recommendations and related council decisions on individual health care institutions' annual historical data findings will be kept on file at the council office for public inspection. However, the detailed annual historical data filed by the individual health care institutions will be excluded from public inspection in accordance with § 9-159 B, of the Code of Virginia.

§ 8.2. § 6.2. Periodically, but at least annually, the council will publish the rates charged by each health care institution in Virginia for up to 30 of the most frequently used services in Virginia, including each institution's average semiprivate and private room rates. The data will be summarized by geographic area in Virginia, and will be kept on file at the council office for public inspection and made available to the news media. In addition, annual charge schedules and subsequent amendments to these schedules filed under the provisions of § 6.3 § 4.3 of these rules and regulations will be kept on file at the council office for public inspection. Staff findings and recommendations and related council decisions on changes to health care institutions' rates and charges will also be kept on file at the council office for public inspection and

Proposed Regulations

available to the news media.

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~~§ 8.3.~~ § 6.3. Periodically, but at least annually, the council will publish an annual report which will include, but not be limited to the following: cost per admission comparison, cost per patient day comparison, percentage increase in cost per patient day, budget and historical reports reviewed, interim rate changes, excess operating expenses, revenue reduction recommendations, operating profits and losses, deductions from revenue (contractuals, bad debts, and charity care) and hospital utilization.

Title of Regulation: VR 370-01-002. Regulations to Measure the Efficiency and Productivity of Health Care Institutions.

Statutory Authority: §§ 9-161.1 and 9-164 of the Code of Virginia.

Public Hearing Date: May 25, 1993 - noon

Written comments may be submitted until May 25, 1993.

(See Calendar of Events section for additional information)

~~§ 8.3.1.~~ § 6.3.1. The council will also periodically publish and disseminate information which will allow consumers to compare costs and services of hospitals, nursing homes and certified nursing facilities.

Summary:

This regulation establishes a new methodology for the review and measurement of efficiency and productivity of health care institutions. The methodology provides for, but is not limited to, comparisons of a health care institution's performance to national and regional data.

§ 8.4. § 6.4. The staff findings and recommendations and related council decisions on individual health care institutions' annual budget and related rate filings will be kept on file at the council office for public inspection. However, the Detailed annual budget data filed by the individual health care institutions will be excluded from public inspection.

The regulatory package providing for the new methodology contains the following:

§ 8.5. § 6.5. The council may shall release historical financial and statistical data reported by health care institutions to state or federal commissions or agencies based on individual, specific requests, and the merit of such requests. Requests must list the purpose for which the requested data is to be used to permit the council to reach a valid decision on whether or not the data requested will fit the need and should, therefore, be made available pursuant to § 9-159 B of the Code of Virginia . Under no circumstances will data be released which contains "personal information" as defined in § 2.1-379(2) of the Code of Virginia.

1. A basic description of the new methodology;

2. Relevant definitions to be utilized in the new methodology;

3. A matrix for the evaluation of the best performers by hospitals and nursing homes; and

4. New forms and instructions.

§ 8.6. § 6.6. Pursuant to § 9-159 B, the council shall not release prospective (budgeted) financial and statistical data reported by health care institutions to anyone, except for the staff findings and recommendations as provided for in § 8.4 of these regulations .

VR 370-01-002. Regulations to Measure the Efficiency and Productivity of Health Care Institutions.

PART I.
GENERAL INFORMATION.

§ 8.7. No data, beyond that specified in §§ 8.1 through 8.4 of these regulations will be released to other nongovernmental organizations and entities, except that data deemed pertinent by the council in negotiations with third-party payors such as Blue Cross/Blue Shield, commercial insurers, etc. Such pertinent data may be released and used on an exception, as needed, basis.

§ 1.1. Authority for regulations.

Section 9-161.1 of the Code of Virginia directs the Virginia Health Services Cost Review Council ("the council") to develop and adopt a methodology for the review and measurement of the efficiency and productivity of health care institutions.

§ 1.2. Intent of regulations.

These regulations set forth the method of analysis to be used by the council.

§ 8.8. Except for data specified in §§ 8.1 through 8.4 of these regulations available to anyone, the council shall have a right to furnish data, or refuse to furnish data, based on merit of the request and ability to furnish data based on data and staff time availability. The council may levy a reasonable charge to cover costs incurred in furnishing any of the data described in this section of the rules and regulations.

§ 1.3. Administration of regulations.

These regulations are administered by the council.

§ 1.4. Application of regulations.

These regulations have general applicability throughout the Commonwealth.

PART II. GENERAL APPROACH.

§ 2.1. Purpose.

The methodology set forth in these regulations is market oriented. Consumers and buyers of health care will receive information from the council that will allow them to make prudent health care decisions.

§ 2.2. Limitations.

Nothing in these regulations or the actions taken by the council pursuant to any of their provisions shall be construed as constituting approval by the Commonwealth or any of its agencies or officers of the reasonableness of any charges made or costs incurred by any health care institution.

§ 2.3. Activities

The council will collect, analyze, and publish information on health care institutional provider practices relating to efficiency and productivity.

PART III. DATA SYSTEM.

§ 3.1. Filing.

Each health care institution will submit the following filings:

1. Annual Budget Summary Filing. Each health care institution will submit an Annual Budget Summary Filing as prescribed in § 9-160 B of the Code of Virginia. This filing will provide financial and statistical information to assist purchasers, state policy makers, and other consumers develop projections of future charges and costs. The budget filing shall be received by the council at least 30 days prior to the beginning of the health care institution's fiscal year.

2. Annual Historical Performance Filing. Each health care institution will submit an Annual Historical Performance Filing as prescribed in § 9-158 of the Code of Virginia. This filing will be used to collect audited financial information and other information for all of the categories listed in § 3.2. It will provide the basis for the evaluation of the council. The Annual Historical Performance Filing shall be received by the council within 120 days after the close of the health care institution's fiscal year.

3. Quarterly Historical Performance Filings. Only hospitals will submit Quarterly Historical Performance Filings. All other health care institutions are

provisionally exempt from this requirement. Quarterly information will be incorporated into a council data bank so that purchasers may seek current information. The Quarterly Historical Performance Filing shall be received by the council within 45 days after the end of each hospital's fiscal year quarter.

§ 3.2. Categories of information.

Information concerning charges, elements of costs, resource utilization, financial viability, and community support services will be assembled from the filings made pursuant to these regulations.

§ 3.3. Efficiency and productivity indicators.

Individual data elements from the general categories identified in § 3.2 will be used to form ratio indicators. These indicators will be used to evaluate health care institutions and rank health care institutions in relation to their peers.

1. Case mix index. Acute care hospitals shall provide the council with a case mix index for all inpatients when it submits its Annual Historical Performance Filing. The Medicare DRG grouper process shall be utilized by the council.

2. Freestanding (i.e., nonsystem) hospitals with fewer than 100 licensed beds may apply to the council for an exemption to subdivision 1 of § 3.3 for calendar year 1993.

3. Each nursing facility that has received a Patient Intensity Rating System (PIRS) Service Intensity Index (SII) number from the Virginia Department of Medical Assistance Services shall report the four quarterly PIRS SII scores associated with its fiscal year. These scores are to be reported on the institution's Annual Historical Performance Filing.

§ 3.4. Quality indicators.

The Health Care Financing Administration's ("HCFA's") most recent mortality index for each hospital will be included in the institution's Annual Historical Performance Filing. This measure will not be used to measure the relative efficiency and productivity of a hospital in 1993.

§ 3.5. Electronic submission of data.

In a manner approved by the council, information may be submitted electronically, in machine-readable form on computer diskette, or through modem during 1993.

§ 3.6. Public access to data.

The council will publish an annual report which will incorporate the data collected and analysis of the data including, but not limited to, an evaluation of the relative efficiency and productivity of health care institutions. An

Proposed Regulations

electronic data base will be available to the public in 1994.

PART IV.

EVALUATION OF EFFICIENCY AND PRODUCTIVITY.

§ 4.1. Initial measurement.

The performance of each health care institution will be measured using the indicators referenced in § 3.3.

§ 4.2. Ranking.

Unless exempted as provided for in § 4.4, each health care institution will be subject to a ranking procedure.

1. *Regional peer grouping.* Similar types of health care institutions (i.e., all hospitals or all nursing homes) will be grouped into geographical peer groups and ranked in relation to other institutions within their peer group.

2. *Ranking procedure.* Each health care institution will be ranked on each indicator and given a quartile score on each indicator. Each quartile represents 25% of institutions within the peer group. Each institution will be given a score of 1, 2, 3, or 4 on each indicator depending upon the quartile in which they fall. A quartile score of 1 on an indicator means that an institution ranked in the top quartile (top 25%) on that indicator. Quartile scores are summed over all indicators. The total is divided by the number of indicators to get an average quartile score. The top performers will be selected by using the average quartile score and identifying the top 25% of institutions within each peer group.

§ 4.3. Other peer groupings.

Health care institutions may be sorted into other peer groupings (i.e., bed size, urban/rural, system/nonsystem) for purposes of analysis.

§ 4.4. Exemptions from the ranking procedure.

During calendar year 1993, some institutions will be exempt from the ranking procedure as described below:

1. *Small hospitals.* Freestanding (i.e., nonsystem) hospitals with fewer than 100 licensed beds that are exempt pursuant to subdivision 2 of § 3.3.
2. *Psychiatric hospitals.*
3. *Rehabilitation hospitals.*
4. *Ambulatory surgery hospitals.*
5. *Continuing care retirement communities.*

NOTICE: The forms used in administering the Virginia

Health Services Cost Review Council regulations are not being published due to the large number; however, the name of each form is listed below. The forms are available for public inspection at the Virginia Health Services Cost Review Council, 805 E. Broad Street, 6th Floor, Richmond, Virginia, or at the Office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Room 262, Richmond, Virginia.

Ambulatory Surgical Hospital Annual Budget Filing (12/15/92)
Ambulatory Surgery Hospital Annual Historical Filing (2/17/93)
Nursing Home Annual Budget Filing (12/15/92)
Hospital and Nursing Home Reconciliation Worksheet (2/17/93)
Nursing Home Annual Historical Filing (2/17/93)
Nursing Home Data Submission Instructions (2/17/93)
Hospital Data Submission Instructions (2/17/93)
Hospital Annual Budget Filing (12/15/92)
Hospital Quarterly Historical Filing (12/15/92)
Hospital Annual Historical Filing (12/15/92)

STATE COUNCIL OF HIGHER EDUCATION FOR VIRGINIA

REGISTRAR'S NOTICE: The following regulation is exempted from the Administrative Process Act under the provisions of § 9-6.14:4.1 B 4 of the Code of Virginia, which excludes agency action relating to grants of state or federal funds or property. The regulation is being published for informational purposes only.

Title of Regulation: VR 380-03-03. Virginia Scholars Program Regulations. (REPEALING)

Title of Regulation: VR 380-03-03:1. Virginia Scholars Program Regulations.

Statutory Authority: §§ 23-38.53:1, 23-38.53:2, and 23-38.53:3 of the Code of Virginia.

Summary:

Sections 23-38.53:1 through 23-38.53:3 of the Code of Virginia authorize the State Council of Higher Education to develop and promulgate regulations for operation of the Virginia Scholars Program (VSP). The major provisions of the VSP regulations are student eligibility and competition requirements, nominations, award selection, awards, and participating four-year institutions.

VR 380-03-03:1. Virginia Scholars Program Regulations.

PART I. DEFINITIONS.

§ 1.1. Definitions.

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

"Academic year" means the enrollment period which normally extends from late August to May or June.

"Accredited" means an institution approved to confer degrees pursuant to the provisions of § 23-9.5 or §§ 23-265 through 23-276 of the Code of Virginia.

"Award" means the grant to the student specified in these regulations.

"Census date" means the time during an academic year when a count of enrolled students is made for reporting purposes. For semester terms, the census date shall be no sooner than the end of the 14th calendar day from the beginning of the term and no later than the established reporting date. For quarter terms, the census date shall be no sooner than the end of the 10th calendar day from the beginning of the term and no later than the established reporting date. For nonstandard terms, the census date shall be no sooner than the end of the class session that represents the completion of 15% of the class days and no later than the established reporting date.

"Class" means the group of students at the same level (e.g., freshmen) at the university, college, or school within the university or major field of study, as defined by the institution where the student earned academic credits.

"Cost of attendance" means the sum of tuition, fees, room, board, books and supplies, and other education related expenses, as determined by an institution for purposes of calculating a student's financial need and awarding federal campus-based student aid funds.

"Council" means the State Council of Higher Education for Virginia.

"Domiciliary resident" means a student who is determined by the council to meet the definition of a domiciliary resident of Virginia eligible for in-state tuition rates, as specified under § 23-7.4 of the Code of Virginia.

"Eligible institution" means an accredited, degree-granting, public or private, nonprofit four-year institution of higher education in Virginia whose primary purpose is to provide collegiate education and not to provide religious training or theological education. A public institution is a college or university that derives its support primarily from the state and is under the control of publicly elected or appointed officials. A private institution is a college or university that derives its support primarily from private sources and is not under the control of publicly elected or appointed officials. Students attending institutions which operate in Commonwealth of Virginia but which issue degrees from a main campus located outside the Commonwealth are not eligible to receive assistance under the Virginia Scholars

Program.

"Eligible program" means a curriculum of courses at the undergraduate level that leads to a bachelor's degree and requires at least two academic years (60 semester hours or its equivalent) to complete. Programs that provide religious training or theological education are not eligible courses of study under the Virginia Scholars Program. Programs in the 39.xxxx series, as classified in the National Education Center for Educational Statistics' Classification of Instructional Programs (CIP), are not eligible programs.

"Full-time study" normally means enrollment for at least 12 semester or 12 quarter hours of baccalaureate degree credit courses in each term. The total hours counted shall not include courses audited or taken as remedial work.

"Nonprofit institution" means an institution operated by one or more nonprofit corporations or associations no part of the net earnings of which may inure to the benefit of any individual.

"Program" means the Virginia Scholars Program.

PART II. STUDENT ELIGIBILITY AND COMPETITION REQUIREMENTS.

§ 2.1. Student eligibility.

In order to be considered for an award under the program, a two-year college or high school student must:

1. Be a domiciliary resident of Virginia pursuant to § 23-7.4 of the Code of Virginia;
2. Demonstrate scholarship and achievement in a secondary or postsecondary institution, as defined in these regulations; and
3. Intend to be enrolled or be accepted for enrollment for full-time study as a regular student in the fall term of the award year in an eligible program at an eligible institution.

§ 2.2. Competition requirements.

A. To enter the competition, high school students must:

1. Achieve semifinalist or finalist standing in the National Merit Scholarship Program, the National Achievement Scholarship Program for Outstanding Negro Students, or the National Hispanic Scholar Awards Program (after September 1993, the National Hispanic Recognition Program); or
2. Be nominated by the high school principal or the principal's designee. The nomination shall be based primarily on the student's rank in the current year's graduating class and the strength of the student's

Proposed Regulations

high school program (i.e., college preparedness). In the case of ties among prospective nominees, the high school principal or designee may take into account other academic and personal achievements of the prospective nominees. Principals of high schools accredited by the state Department of Education, or their designees, shall be requested by the council to assist eligible students in the preparation and filing of applications; and

3. Have filed or plan to file an application for admission to at least one eligible institution for the next academic year.

B. To enter the competition, public two-year college sophomores must:

1. Be nominated by the college president. The nomination shall be based primarily on the strength of the student's academic program (i.e., preparedness for transfer to a four-year institution) and cumulative grade point average. The student with the strongest academic credentials should receive preference for the nomination. In the case of a tie in grade point averages, the college may consider other academic and personal achievements of the candidates; and

2. Have filed an application for admission to at least one eligible institution for the next academic year.

PART III. NOMINATIONS.

§ 3.1. High schools.

All schools are entitled to submit a minimum of one nomination each year. The maximum number of high school nominations will be based on the number of students in the current year's graduating class, where:

Graduating Class Size	Number of Additional Nominations*
1 - 75	1
76 - 150	2
151 - 225	3
226 - 300	4
300 +	5

* Nominations from high schools shall be in addition to the number of students who qualify to file applications (through the high school) based on their placement as semifinalists or finalists in the three annual national merit competitions.

§ 3.2. Public two-year colleges.

The maximum number of nominees from each public two-year college shall be based on the number of A.A. and A.S. graduates for the preceding year, where:

Number of Graduates	Maximum Number of Nominees
1-50	2
51-100	3
100+	4

§ 3.3. Responsibilities of the parties involved.

The council will provide information about the program and application forms to high schools and public two-year colleges. Each high school or college will ensure that prospective nominees understand the conditions of the award and wish to be nominated before having each student apply. The school or college will complete the institutional section of the application before submitting it with an official transcript to the council.

High school students shall be responsible for securing and completing the student part of the application, submitting the application to the high school, and ensuring that the high school completes and mails the application, together with all required supporting information (e.g., high school transcript, record of ACT or SAT test scores) to the division superintendent before the closing date.

All applications from high school students must be received by the division superintendents, with all required transcripts and test results, no later than the deadline. Likewise, public two-year college nominees must submit applications to the council no later than the deadline. Applications received after the deadlines shall not be considered unless they are postmarked on or before the deadlines. If an individual's application or supporting materials are not received and a claim is entered that they were lost in the mail, a completed certificate of mailing will be required before any substitute application materials will be accepted. Normally, no late application shall be considered once award recipients have been chosen by the Awards Selection Committee.

PART IV. AWARD SELECTION.

§ 4.1. Award selection criteria.

Awards shall be based on criteria to include standards for assessing scholastic and creative ability and recommendations from high schools and public two-year colleges.

High school recipients will be selected based on:

1. Evaluation of the applicant's high school transcript;
2. ACT or SAT test results;
3. Evaluation of the applicant's personal achievement that shall include but not be limited to honors and work experience; and

4. Evaluation of the school's recommendation.

Public two-year college recipients will be selected based on:

1. Evaluation of college and high school transcripts;
2. Evaluation of personal achievement that shall include but not be limited to honors and work experience; and
3. Evaluation of the college's recommendation.

Selection of recipients shall be based on an applicant's academic record, personal achievement, and school recommendation. To the extent possible, identifying data, including information about the applicant's college plans, sex, and race, shall be removed from the applicants' files before the applications are evaluated. Each applicant's evaluation will be scored as noted below:

	High School Nominees	College Nominees
Academic Record	1-75 Points (transcripts and ACT or SAT test results)	1-75 Points (transcripts only)
Personal Achievement (including student essay and school recommendation)	1-25 Points	1-25 Points

§ 4.2. Award selection process.

A. High school nominees.

The seven school division superintendents will act as a prescreening committee to select up to 140 applications to forward to the council for consideration of an award. By no later than the established deadline, each superintendent will forward to the council the applications of up to 20 of the region's best students.

In November, the Awards Selection Committee will meet to determine the high school recipients and alternates. The committee, chaired by a member of the council, shall consist of no more than 10 members, at least eight of whom will be faculty of Virginia's public and private nonprofit four-year colleges and universities. The committee will not evaluate incomplete applications. The committee will give consideration to students whose native tongue is not English by considering TOEFL (Test of English as a Foreign Language) scores.

B. Two-year college nominees.

Applications from two-year college nominees shall be submitted to the council no later than the established deadline. The recipients and alternates will be selected by the Awards Selection Committee described in § 4.2 A of these regulations.

PART V.
AWARDS.

§ 5.1. Number and amount.

The maximum number and amount of individual awards under the program shall be in accordance with funds appropriated by the General Assembly in the Appropriation Act. Up to 10% of the initial scholarships awarded each year shall be set aside for qualified sophomores at accredited public two-year, degree-granting colleges who have filed an application for admission to an eligible four-year institution in Virginia and who will complete the A.A. or A.S. degree by the close of the spring term which precedes the academic year for which the award is made. At least 90% of the initial awards shall be made to qualified high school students.

No award under the program shall exceed \$3,000 per academic year. An award received by a student under the program shall not be reduced by the student's receipt of financial aid from any other source unless the award, when added to other financial aid, would enable the student to receive total assistance in excess of the estimated cost of attendance at the institution the student attends.

§ 5.2. Duration and renewability.

All initial awards shall be made for one academic year and may be renewed annually for no more than three additional years of full-time study except for transfer recipients whose awards may be renewed for only one additional year. Should such funds be available, awards may be renewed an additional year for students enrolled in recognized five-year undergraduate programs. Renewal decisions shall be made by the council no later than July preceding the academic year in which the renewal award is to be received. The standard for renewal shall be either the student's maintenance of a "B" average or rank in the upper quartile of the student's class as of the close of the academic year.

§ 5.3. Terms and conditions.

In order to receive funds, recipients must maintain full-time enrollment on a continuous basis. Normally, students who fail to do so will forfeit their eligibility to be considered for award renewal at the close of the academic year. Exceptions will be made for students who demonstrate that a hardship condition existed which required a temporary reduction in course load and that the condition will not exist by the opening of the next academic year. It is the student's responsibility to advise the council of any hardship condition no later than July preceding the academic year for which award renewal is sought. Discontinuing full-time enrollment during the year (e.g., dropping to part-time enrollment or withdrawing) may result in a full or partial cancellation of the award for the current year, in accordance with the tuition refund policy of the institution.

Proposed Regulations

Students who are suspended, placed on academic probation, or otherwise fail to meet the institution's standard for satisfactory progress as determined by the institution during any term of the academic year shall be required to repay disbursed program funds and forfeit eligibility for renewal awards. Repayment is in proportion to the amount of tuition refund, if any, which is made by the institution to the student. If no tuition refund is owed to the student, no repayment of program funds is required. The institution shall assist the council in recovering from the student any unauthorized disbursements.

If a student recipient has continuously enrolled full time at an institution (excluding summer sessions) but is enrolled for less than full-time study in the term immediately preceding graduation, the student may be certified as full time by the institution and be eligible to receive that term's portion of his award.

§ 5.4. Use of awards.

Scholarships shall be used only for payment for the costs of attendance for the academic year for which the award is made. Awards are transferable among participating institutions if the student notifies the council of the transfer prior to enrollment. Recipients who attend classes full time at another institution as part of an exchange program may receive program funds if all the credits earned at the other institution are credited towards the baccalaureate degree from the Virginia institution.

PART VI. PARTICIPATING FOUR-YEAR INSTITUTIONS.

§ 6.1. Responsibilities of participating four-year institutions.

Participating four-year institutions shall:

1. Certify student eligibility;
2. Act, with the student's authorization, as the student's agent to receive and hold program funds for the student; and
3. Maintain individual recipient records and furnish periodic reports and other pertinent information as may be required by the council.

The institution's chief executive officer shall designate one individual at the institution to act as the primary representative of the institution in all matters pertaining to the administration of the program. If there is a change in the primary representative, the chief executive officer shall designate another individual and notify the council within 30 days, in writing, of the change.

After the census date for each term of the academic year, the institution will verify which recipients are

enrolled as full-time undergraduate students. Funds for any term in which a recipient does not enroll for full-time study shall not be disbursed. Funds for these students, if already received by the institution in its capacity as the student's fiscal agent, shall be reported to the council as unused funds. Unused funds shall be refunded at the close of the academic year or at the request of the council, whichever occurs earlier.

The representative shall be responsible for securing institutional certifications of each recipient's continuous full-time enrollment, satisfactory academic progress, and end-of-year grade point average (for purposes of determining eligibility for award renewal). The representative shall also be responsible for funds received by the institution in its capacity as the student's fiscal agent.

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES (BOARD OF)

REGISTRAR'S NOTICE: Section 3.6 of the Nursing Home Payment System concerning dispute resolution for state-operated nursing facilities was promulgated by the Director of the Department of Medical Assistance Services to become effective July 1, 1992. Although the text was filed by the Department, § 3.6 was inadvertently omitted from The Virginia Register proposed and final publications. The text of § 3.6, with proposed amendments, is included in this publication of the regulation.

Title of Regulation: State Plan for Medical Assistance Relating to Interim Settlement/Prospective Rate Time Frames, Audited Financial Statements, and Appeal Notice Requirements.

VR 460-03-4.1940:1. Nursing Home Payment System Patient Intensity Rating System.

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

Public Hearing Date: N/A – Written comments may be submitted through May 21, 1993.

(See Calendar of Events section for additional information)

Summary:

The purpose of this proposal is to promulgate permanent regulations to supersede emergency regulations which change from 90 to 180 days the time frame within which cost reports filed pursuant to the Nursing Home Payment System are interim settled and a prospective rate set. In addition, the proposed amendments will require nursing facilities to file audited financial statements and related information as part of their annual cost report, and will change the appeal time frames from calendar days to business days, and from receipt of a notice or decision to date of a notice or decision.

Interim Settlement/Prospective Rate Time Frames: Before the adoption of emergency regulations effective August 3, 1992, DMAS regulations and policy required that providers' cost reports be interim settled and a prospective rate set within 90 days after an acceptable cost report is received. The following explains why emergency regulations were adopted.

Providers, prompted in part by changes in the Internal Revenue Code, were increasingly changing their fiscal year periods to a calendar year cost reporting period. In the summer of 1992, 40% of all providers, and, due to recent changes by major chains, 51% of all nursing facilities were reporting using a calendar year period. As a result, approximately 42% of the total cost reports had to be interim settled and have prospective rates set during the second calendar quarter of each year, with an additional 29% during the fourth calendar quarter. Conversely, only 11% were required during the third calendar quarter, and 18% during the first calendar quarter.

Despite increasing the Cost Settlement staff in recent years, DMAS was unable to meet regulatory and policy timelines in the face of the increasingly lopsided filing periods. After review, DMAS concluded that adding more staff to meet a seasonal workload would not be a cost effective use of resources. However, the Auditor of Public Accounts had issued an audit point on timeliness and providers and their attorneys had expressed concerns about the failure to meet regulatory mandates.

Medicare regulations at 42 CFR 405.1803 and 405.1835(c) define a reasonable period of time for issuing notices of amount of program reimbursement as within 12 months of receiving an acceptable cost report. DMAS did not believe it needed to go that far, instead its review indicated that extending the time frames an additional 90 days would be a reasonable solution. This extension of time was expected to permit DMAS to even out the workload by moving some of it from the peak workload periods during the second and fourth calendar quarters to the lower workload periods in the third and first calendar quarters. The amendment was also expected to increase provider confidence in the rate-setting process and enhance staff morale.

Audited Financial Statements: The cost reports filed annually by nursing facilities are currently required to be accompanied by financial statements. In addition, a home office report must be filed, if applicable.

DMAS has long believed that financial statements which are audited provide a stronger assurance that a provider's accounting procedures and records are properly capturing and reporting financial transactions. In addition, DMAS could rely on data developed by the independent auditors, thereby

reducing DMAS' audit procedures. However, in the past, concern has been expressed that audited financial statements would generally not be available until after the cost report is submitted, and that it would not be cost effective for small facilities or those with low Medicaid utilization to obtain audits of their financial statements.

Providers are now required to file audited financial statements with the Virginia Health Services Cost Review Council. Accordingly, it would impose no burden on providers to require that they supply the same information to DMAS, and would enhance DMAS' performance of its mission.

In addition, information such as schedules of restricted cash funds and of investments are not currently provided on the cost report, but are necessary for DMAS to perform a complete review of the filings. Providers normally prepare this information as part of their fiscal year end process, so it should not be burdensome.

Appeal Notice Requirements: Since 1986, DMAS has used certified mail to nursing facilities to advise them of deadlines or actions DMAS will take if a response is not received by a specific date, for example, due dates for noting appeals, or rate reductions for failure to file cost reports on time. As a result of an employee suggestion and a review of the program's experience, certified mail will no longer be used for nursing facilities (except for final decisions signed by the DMAS Director).

Without the receipt of mail being certified, it is difficult to determine when such correspondence was received. Therefore, all time frames (which are currently found in Part III, Appeals, of the Nursing Home Payment System) will run from the date of correspondence or action. To compensate for the earlier start of the timeclock, time will be measured by business days instead of calendar days.

VR 460-03-4.1940:1. Nursing Home Payment System Patient Intensity Rating System.

PART I. INTRODUCTION.

§ 1.1. Effective October 1, 1990, the payment methodology for Nursing Facility (NF) reimbursement by the Virginia Department of Medical Assistance Services (DMAS) is set forth in the following document. The formula provides for incentive payments to efficiently operated NFs and contains payment limitations for those NFs operating less efficiently. A cost efficiency incentive encourages cost containment by allowing the provider to retain a percentage of the difference between the prospectively determined operating cost rate and the ceiling.

§ 1.2. Three separate cost components are used: plant cost,

Proposed Regulations

operating cost and nurse aide training and competency evaluation program and competency evaluation program (NATCEPs) costs. The rates, which are determined on a facility-by-facility basis, shall be based on annual cost reports filed by each provider.

§ 1.3. In determining the ceiling limitations, there shall be direct patient care medians established for NFs in the Virginia portion of the Washington DC-MD-VA Metropolitan Statistical Area (MSA), the Richmond-Petersburg Metropolitan Statistical Area (MSA), and in the rest of the state. There shall be indirect patient care medians established for NFs in the Virginia portion of the Washington DC-MD-VA MSA, and in the rest of the state. The Washington DC-MD-VA MSA and the Richmond-Petersburg MSA shall include those cities and counties as listed and changed from time to time by the Health Care Financing Administration (HCFA). A NF located in a jurisdiction which HCFA adds to or removes from the Washington DC-MD-VA MSA or the Richmond-Petersburg MSA shall be placed in its new peer group, for purposes of reimbursement, at the beginning of its next fiscal year following the effective date of HCFA's final rule.

§ 1.4. Institutions for mental diseases providing nursing services for individuals age 65 and older shall be exempt from the prospective payment system as defined in §§ 2.6, 2.7, 2.8, 2.19, and 2.25, as are mental retardation facilities. All other sections of this payment system relating to reimbursable cost limitations shall apply. These facilities shall continue to be reimbursed retrospectively on the basis of reasonable costs in accordance with Medicare and Medicaid principles of reimbursement. Reimbursement to Intermediate Care Facilities for the Mentally Retarded (ICF/MR) shall be limited to the highest rate paid to a state ICF/MR institution, approved each July 1 by DMAS.

§ 1.5. Except as specifically modified herein, Medicare principles of reimbursement, as amended from time to time, shall be used to establish the allowable costs in the rate calculations. Allowable costs must be classified in accordance with the DMAS uniform chart of accounts (see VR 460-03-4.1941, Uniform Expense Classification) and must be identifiable and verified by contemporaneous documentation.

All matters of reimbursement which are part of the DMAS reimbursement system shall supercede Medicare principles of reimbursement. Wherever the DMAS reimbursement system conflicts with Medicare principles of reimbursement, the DMAS reimbursement system shall take precedence. Appendices are a part of the DMAS reimbursement system.

PART II. RATE DETERMINATION PROCEDURES.

Article 1. Plant Cost Component.

§ 2.1. Plant cost.

A. Plant cost shall include actual allowable depreciation, interest, rent or lease payments for buildings and equipment as well as property insurance, property taxes and debt financing costs allowable under Medicare principles of reimbursement or as defined herein.

B. To calculate the reimbursement rate, plant cost shall be converted to a per diem amount by dividing it by the greater of actual patient days or the number of patient days computed as 95% of the daily licensed bed complement during the applicable cost reporting period.

C. For NFs of 30 beds or less, to calculate the reimbursement rate, the number of patient days will be computed as not less than 85% of the daily licensed bed complement.

D. Costs related to equipment and portions of a building/facility not available for patient care related activities are nonreimbursable plant costs.

§ 2.2. New nursing facilities and bed additions.

A. 1. Providers shall be required to obtain three competitive bids when (i) constructing a new physical plant or renovating a section of the plant when changing the licensed bed capacity, and (ii) purchasing fixed equipment or major movable equipment related to such projects.

2. All bids must be obtained in an open competitive market manner, and subject to disclosure to DMAS prior to initial rate setting. (Related parties see § 2.10.)

B. Reimbursable costs for building and fixed equipment shall be based upon the 3/4 (25% of the surveyed projects with costs above the median, 75% with costs below the median) square foot costs for NFs published annually in the R.S. Means Building Construction Cost Data as adjusted by the appropriate R.S. Means Square Foot Costs "Location Factor" for Virginia for the locality in which the NF is located. Where the specific location is not listed in the R.S. Means Square Foot Costs "Location Factor" for Virginia, the facility's zip code shall be used to determine the appropriate locality factor from the U.S. Postal Services National Five Digit Zip Code for Virginia and the R.S. Means Square Foot Costs "Location Factors." The provider shall have the option of selecting the construction cost limit which is effective on the date the Certificate of Public Need (COPN) is issued or the date the NF is licensed. Total cost shall be calculated by multiplying the above 3/4 square foot cost by 385 square feet (the average per bed square footage). Total costs for building additions shall be calculated by multiplying the square footage of the project by the applicable components of the construction cost in the R.S. Means Square Foot Costs, not to exceed the total per bed cost for a new NF. Reasonable limits for renovations shall be determined by the

appropriate costs in the R.S. Means Repair and Remodeling Cost Data, not to exceed the total R.S. Means Building Construction Cost Data 3/4 square foot costs for nursing homes.

C. New NFs and bed additions to existing NFs must have prior approval under the state's Certificate of Public Need Law and Licensure regulations in order to receive Medicaid reimbursement.

D. However in no case shall allowable reimbursed costs exceed 110% of the amounts approved in the original COPN, or 100% of the amounts approved in the original COPN as modified by any "significant change" COPN, where a provider has satisfied the requirements of the State Department of Health with respect to obtaining prior written approval for a "significant change" to a COPN which has previously been issued.

§ 2.3. Major capital expenditures.

A. Major capital expenditures include, but are not limited to, major renovations (without bed increase), additions, modernization, other renovations, upgrading to new standards, and equipment purchases. Major capital expenditures shall be any capital expenditures costing \$100,000 or more each, in aggregate for like items, or in aggregate for a particular project. These include purchases of similar type equipment or like items within a one calendar year period (not necessarily the provider's reporting period).

B. Providers (including related organizations as defined in § 2.10) shall be required to obtain three competitive bids and if applicable, a Certificate of Public Need before initiating any major capital expenditures. All bids must be obtained in an open competitive manner, and subject to disclosure to the DMAS prior to initial rate setting. (Related parties see § 2.10.)

C. Useful life shall be determined by the American Hospital Association's Estimated Useful Lives of Depreciable Hospital Assets (AHA). If the item is not included in the AHA guidelines, reasonableness shall be applied to determine useful life.

D. Major capital additions, modernization, renovations, and costs associated with upgrading the NF to new standards shall be subject to cost limitations based upon the applicable components of the construction cost limits determined in accordance with § 2.2 B.

§ 2.4. Financing.

A. The DMAS shall continue its policy to disallow cost increases due to the refinancing of a mortgage debt, except when required by the mortgage holder to finance expansions or renovations. Refinancing shall also be permitted in cases where refinancing would produce a lower interest rate and result in a cost savings. The total net aggregate allowable costs incurred for all cost

reporting periods related to the refinancing cannot exceed the total net aggregate costs that would have been allowable had the refinancing not occurred.

1. Refinancing incentive. Effective July 1, 1991, for mortgages refinanced on or after that date, the DMAS will pay a refinancing incentive to encourage nursing facilities to refinance fixed-rate, fixed-term mortgage debt when such arrangements would benefit both the Commonwealth and the providers. The refinancing incentive payments will be made for the 10-year period following an allowable refinancing action, or through the end of the refinancing period should the loan be less than 10 years, subject to a savings being realized by application of the refinancing calculation for each of these years. The refinancing incentive payment shall be computed on the net savings from such refinancing applicable to each provider cost reporting period. Interest expense and amortization of loan costs on mortgage debt applicable to the cost report period for mortgage debt which is refinanced shall be compared to the interest expense and amortization of loan costs on the new mortgage debt for the cost reporting period.

2. Calculation of refinancing incentive. The incentive shall be computed by calculating two index numbers, the old debt financing index and the new debt financing index. The old debt financing index shall be computed by multiplying the term (months) which would have been remaining on the old debt at the end of the provider's cost report period by the interest rate for the old debt. The new debt index shall be computed by multiplying the remaining term (months) of the new debt at the end of the cost reporting period by the new interest rate. The new debt index shall be divided by the old debt index to achieve a savings ratio for the period. The savings ratio shall be subtracted from a factor of 1 to determine the refinancing incentive factor.

3. Calculation of net savings. The gross savings for the period shall be computed by subtracting the allowable new debt interest for the period from the allowable old debt interest for the period. The net savings for the period shall be computed by subtracting allowable new loan costs for the period from allowable gross savings applicable to the period. Any remaining unamortized old loan costs may be recovered in full to the extent of net savings produced for the period.

4. Calculation of incentive amount. The net savings for the period, after deduction of any unamortized old loan and debt cancellation costs, shall be multiplied by the refinancing incentive factor to determine the refinancing incentive amount. The result shall be the incentive payment for the cost reporting period, which shall be included in the cost report settlement, subject to per diem computations under § 2.1 B, 2.1 C, and 2.14 A.

Proposed Regulations

5. Where a savings is produced by a provider refinancing his old mortgage for a longer time period, the DMAS shall calculate the refinancing incentive and payment in accordance with §§ 2.4 A 1 through 2.4 A 4 for the incentive period. Should the calculation produce both positive and negative incentives, the provider's total incentive payments shall not exceed any net positive amount for the entire incentive period. Where a savings is produced by refinancing with either a principal balloon payment at the end of the refinancing period, or a variable interest rate, no incentive payment will be made, since the true savings to the Commonwealth cannot be accurately computed.

6. All refinancings must be supported by adequate and verifiable documentation and allowable under DMAS regulations to receive the refinancing savings incentive.

B. Interest rate upper limit.

Financing for all NFs and expansions which require a COPN and all renovations and purchases shall be subject to the following limitations:

1. Interest expenses for debt financing which is exempt from federal income taxes shall be limited to:

The average weekly rates for Baa municipal rated bonds as published in *Cragie Incorporated Municipal Finance Newsletter* as published weekly (Representative reoffering from general obligation bonds), plus one percentage point (100 basis points), during the week in which commitment for construction financing or closing for permanent financing takes place.

2. a. Effective on and after July 1, 1990, the interest rate upper limit for debt financing by NFs that are subject to prospective reimbursement shall be the average of the rate for 10-year and 30-year U.S. Treasury Constant Maturities, as published in the weekly Federal Reserve Statistical Release (H.15), plus two percentage points (200 basis points).

This limit (i) shall apply only to debt financing which is not exempt from federal income tax, and (ii) shall not be available to NF's which are eligible for such tax exempt financing unless and until a NF has demonstrated to the DMAS that the NF failed, in a good faith effort, to obtain any available debt financing which is exempt from federal income tax. For construction financing, the limit shall be determined as of the date on which commitment takes place. For permanent financing, the limit shall be determined as of the date of closing. The limit shall apply to allowable interest expenses during the term of the financing.

b. The new interest rate upper limit shall also apply, effective July 1, 1990, to construction

financing committed to or permanent financing closed after December 31, 1986, but before July 1, 1990, which is not exempt from federal income tax. The limit shall be determined as of July 1, 1990, and shall apply to allowable interest expenses for the term of the financing remaining on or after July 1, 1990.

3. Variable interest rate upper limit.

a. The limitation set forth in §§ 2.4 B 1 and 2.4 B 2 shall be applied to debt financing which bears a variable interest rate as follows. The interest rate upper limit shall be determined on the date on which commitment for construction financing or closing for permanent financing takes place, and shall apply to allowable interest expenses during the term of such financing as if a fixed interest rate for the financing period had been obtained. A "fixed rate loan amortization schedule" shall be created for the loan period, using the interest rate cap in effect on the date of commitment for construction financing or date of closing for permanent financing.

b. If the interest rate for any cost reporting period is below the limit determined in subdivision 3 a above, no adjustment will be made to the providers interest expense for that period, and a "carryover credit" to the extent of the amount allowable under the "fixed rate loan amortization schedule" will be created, but not paid. If the interest rate in a future cost reporting period is above the limit determined in subdivision 3 a above, the provider will be paid this "carryover credit" from prior period(s), not to exceed the cumulative carryover credit or his actual cost, whichever is less.

c. The provider shall be responsible for preparing a verifiable and auditable schedule to support cumulative computations of interest claimed under the "carryover credit," and shall submit such a schedule with each cost report.

4. The limitation set forth in § 2.4 B 1, 2, and 3 shall be applicable to financing for land, buildings, fixed equipment, major movable equipment, working capital for construction and permanent financing.

5. Where bond issues are used as a source of financing, the date of sale shall be considered as the date of closing.

6. The aggregate of the following costs shall be limited to 5.0% of the total allowable project costs:

a. Examination Fees

b. Guarantee Fees

c. Financing Expenses (service fees, placement fees, feasibility studies, etc.)

d. Underwriters Discounts

e. Loan Points

7. The aggregate of the following financing costs shall be limited to 2.0% of the total allowable project costs:

a. Legal Fees

b. Cost Certification Fees

c. Title and Recording Costs

d. Printing and Engraving Costs

e. Rating Agency Fees

C. DMAS shall allow costs associated with mortgage life insurance premiums in accordance with § 2130 of the HCFA-Pub. 15, Provider Reimbursement Manual (PRM-15).

D. Interest expense on a debt service reserve fund is an allowable expense if required by the terms of the financing agreement. However, interest income resulting from such fund shall be used by DMAS to offset interest expense.

§ 2.5. Purchases of nursing facilities (NF).

A. In the event of a sale of a NF, the purchaser must have a current license and certification to receive DMAS reimbursement as a provider.

B. The following reimbursement principles shall apply to the purchase of a NF:

1. The allowable cost of a bona fide sale of a facility (whether or not the parties to the sale were, are, or will be providers of Medicaid services) shall be the lowest of the sales price, the replacement cost value determined by independent appraisal, or the limitations of Part XVI - Revaluation of Assets. Revaluation of assets shall be permitted only when a bona fide sale of assets occurs.

2. Notwithstanding the provisions of § 2.10, where there is a sale between related parties (whether or not they were, are or will be providers of Medicaid services), the buyer's allowable cost basis for the nursing facility shall be the seller's allowable depreciated historical cost (net book value), as determined for Medicaid reimbursement.

3. For purposes of Medicaid reimbursement, a "bona fide" sale shall mean a transfer of title and possession for consideration between parties which are not related. Parties shall be deemed to be "related" if they are related by reasons of common ownership or control. If the parties are members of an immediate family, the sale shall be presumed to be between related parties if the ownership or control by

immediate family members, when aggregated together, meets the definitions of "common ownership" or "control." See § 2.10 C for definitions of "common ownership," "control," "immediate family," and "significant ownership or control."

4. The useful life of the fixed assets of the facility shall be determined by AHA guidelines.

5. The buyer's basis in the purchased assets shall be reduced by the value of the depreciation recapture due the state by the provider-seller, until arrangements for repayment have been agreed upon by DMAS.

6. In the event the NF is owned by the seller for less than five years, the reimbursable cost basis of the purchased NF to the buyer, shall be the seller's allowable historical cost as determined by DMAS.

C. An appraisal expert shall be defined as an individual or a firm that is experienced and specializes in multi-purpose appraisals of plant assets involving the establishing or reconstructing of the historical cost of such assets. Such an appraisal expert employs a specially trained and supervised staff with a complete range of appraisal and cost construction techniques; is experienced in appraisals of plant assets used by providers, and demonstrates a knowledge and understanding of the regulations involving applicable reimbursement principles, particularly those pertinent to depreciation; and is unrelated to either the buyer or seller.

D. At a minimum, appraisals must include a breakdown by cost category as follows:

1. Building; fixed equipment; movable equipment; land; land improvements.

2. The estimated useful life computed in accordance with AHA guidelines of the three categories, building, fixed equipment, and movable equipment must be included in the appraisal. This information shall be utilized to compute depreciation schedules.

E. Depreciation recapture.

1. The provider-seller of the facility shall make a retrospective settlement with DMAS in instances where a gain was made on disposition. The department shall recapture the depreciation paid to the provider by Medicaid for the period of participation in the Program to the extent there is gain realized on the sale of the depreciable assets. A final cost report and refund of depreciation expense, where applicable, shall be due within 30 days from the transfer of title (as defined below).

2. No depreciation adjustment shall be made in the event of a loss or abandonment.

Proposed Regulations

F. Reimbursable depreciation.

1. For the purpose of this section, "sale or transfer" shall mean any agreement between the transferor and the transferee by which the former, in consideration of the payment or promise of payment of a certain price in money, transfers to the latter the title and possession of the property.

2. Upon the sale or transfer of the real and tangible personal property comprising a licensed nursing facility certified to provide services to DMAS, the transferor or other person liable therein shall reimburse to the Commonwealth the amount of depreciation previously allowed as a reasonable cost of providing such services and subject to recapture under the provisions of the State Plan for Medical Assistance. The amount of reimbursable depreciation shall be paid to the Commonwealth within 30 days of the sale or transfer of the real property unless an alternative form of repayment, the term of which shall not exceed one year, is approved by the director.

3. Prior to the transfer, the transferor shall file a written request by certified or registered mail to the director for a letter of verification that he either does not owe the Commonwealth any amount for reimbursable depreciation or that he has repaid any amount owed the Commonwealth for reimbursable depreciation or that an alternative form of repayment has been approved by the director. The request for a letter of verification shall state:

- a. That a sale or transfer is about to be made;
- b. The location and general description of the property to be sold or transferred;
- c. The names and addresses of the transferee and transferor and all such business names and addresses of the transferor for the last three years; and
- d. Whether or not there is a debt owing to the Commonwealth for the amount of depreciation charges previously allowed and reimbursed as a reasonable cost to the transferor under the Virginia Medical Assistance Program.

4. Within 90 days after receipt of the request, the director shall determine whether or not there is an amount due to the Commonwealth by the nursing facility by reason of depreciation charges previously allowed and reimbursed as a reasonable cost under DMAS and shall notify the transferor of such sum, if any.

5. The transferor shall provide a copy of this section and a copy of his request for a letter of verification to the prospective transferee via certified mail at least

30 days prior to the transfer. However, whether or not the transferor provides a copy of this section and his request for verification to the prospective transferee as required herein, the transferee shall be deemed to be notified of the requirements of this law.

6. After the transferor has made arrangements satisfactory to the director to repay the amount due or if there is no amount due, the director shall issue a letter of verification to the transferor in recordable form stating that the transferor has complied with the provisions of this section and setting forth the term of any alternative repayment agreement. The failure of the transferor to reimburse to the Commonwealth the amount of depreciation previously allowed as a reasonable cost of providing service to DMAS in a timely manner renders the transfer of the nursing facility ineffective as to the Commonwealth.

7. Upon a finding by the director that such sale or transfer is ineffective as to the Commonwealth, DMAS may collect any sum owing by any means available by law, including devising a schedule for reducing the Medicaid reimbursement to the transferee up to the amount owed the Commonwealth for reimbursable depreciation by the transferor or other person liable therein. Medicaid reimbursement to the transferee shall continue to be so reduced until repayment is made in full or the terms of the repayment are agreed to by the transferor or person liable therein.

8. In the event the transferor or other person liable therein defaults on any such repayment agreement the reductions of Medicaid reimbursement to the transferee may resume.

An action brought or initiated to reduce the transferee's Medicaid reimbursement or an action for attachment or levy shall not be brought or initiated more than six months after the date on which the sale or transfer has taken place unless the sale or transfer has been concealed or a letter of verification has not been obtained by the transferor or the transferor defaults on a repayment agreement approved by the director.

Article 2. Operating Cost Component.

§ 2.6. Operating cost.

A. Operating cost shall be the total allowable inpatient cost less plant cost and NATCEPs costs. See Part VII for rate determination procedures for NATCEPs costs. To calculate the reimbursement rate, operating cost shall be converted to a per diem amount by dividing it by the greater of actual patient days, or the number of patient days computed as 95% of the daily licensed bed complement during the applicable cost reporting period.

B. For NFs of 30 beds or less, to calculate the

reimbursement rate the number of patient days will continue to be computed as not less than 85% of the daily licensed bed complement.

§ 2.7. Nursing facility reimbursement formula.

A. Effective on and after October 1, 1990, all NFs subject to the prospective payment system shall be reimbursed under a revised formula entitled "The Patient Intensity Rating System (PIRS)." PIRS is a patient based methodology which links NF's per diem rates to the intensity of services required by a NF's patient mix. Three classes were developed which group patients together based on similar functional characteristics and service needs.

1. Any NF receiving Medicaid payments on or after October 1, 1990, shall satisfy all the requirements of § 1919(b) through (d) of the Social Security Act as they relate to provision of services, residents' rights and administration and other matters.

2. In accordance with § 1.3, direct patient care operating cost peer groups shall be established for the Virginia portion of the Washington DC-MD-VA MSA, the Richmond-Petersburg MSA and the rest of the state. Direct patient care operating costs shall be as defined in VR 460-03-1491. Indirect patient care operating cost peer groups shall be established for the Virginia portion of the Washington DC-MD-VA MSA and for the rest of the state. Indirect patient care operating costs shall include all other operating costs, not defined in VR 460-03-4.1941 as direct patient care operating costs and NATCEPs costs.

3. Each NF's Service Intensity Index (SII) shall be calculated for each semiannual period of a NF's fiscal year based upon data reported by that NF and entered into DMAS' Long Term Care Information System (LTCIS). Data will be reported on the multidimensional assessment form prescribed by DMAS (now DMAS-95) at the time of admission and then twice a year for every Medicaid recipient in a NF. The NF's SII, derived from the assessment data, will be normalized by dividing it by the average for all NF's in the state.

See VR 460-03-4.1944 for the PIRS class structure, the relative resource cost assigned to each class, the method of computing each NF's facility score and the methodology of computing the NF's semiannual SIIs.

4. The normalized SII shall be used to calculate the initial direct patient care operating cost peer group medians. It shall also be used to calculate the direct patient care operating cost prospective ceilings and direct patient care operating cost prospective rates for each semiannual period of a NF's subsequent fiscal years.

a. The normalized SII, as determined during the

quarter ended September 30, 1990, shall be used to calculate the initial direct patient care operating cost peer group medians.

b. A NF's direct patient care operating cost prospective ceiling shall be the product of the NF's peer group direct patient care ceiling and the NF's normalized SII for the previous semiannual period. A NF's direct patient care operating cost prospective ceiling will be calculated semiannually.

c. An SSI rate adjustment, if any, shall be applied to a NF's prospective direct patient care operating cost base rate for each semiannual period of a NF's fiscal year. The SII determined in the second semiannual period of the previous fiscal year shall be divided by the average of the previous fiscal year's SIIs to determine the SII rate adjustment, if any, to the first semiannual period of the subsequent fiscal year's prospective direct patient care operating cost base rate. The SII determined in the first semiannual period of the subsequent fiscal year shall be divided by the average of the previous fiscal year's SIIs to determine the SII rate adjustment, if any, to the second semiannual period of the subsequent fiscal year's prospective direct patient care operating cost base rate.

d. See VR 460-03-4.1944 for an illustration of how the SII is used to adjust direct patient care operating ceilings and the semiannual rate adjustments to the prospective direct patient care operating cost base rate.

5. An adjustment factor shall be applied to both the direct patient care and indirect patient care peer group medians to determine the appropriate initial peer group ceilings.

a. The DMAS shall calculate the estimated gross NF reimbursement required for the forecasted number of NF bed days during fiscal year 1991 under the prospective payment system in effect through September 30, 1990, as modified to incorporate the estimated additional NF reimbursement mandated by the provisions of § 1902(a)(13)(A) of the Social Security Act as amended by § 4211(b)(1) of the Omnibus Budget Reconciliation Act of 1987.

b. The DMAS shall calculate the estimated gross NF reimbursement required for the forecasted number of NF bed days during FY 1991 under the PIRS prospective payment system.

c. The DMAS shall determine the differential between a and b above and shall adjust the peer group medians within the PIRS as appropriate to reduce the differential to zero.

d. The adjusted PIRS peer group medians shall become the initial peer group ceilings.

Proposed Regulations

B. The allowance for inflation shall be based on the percentage of change in the moving average of the Skilled Nursing Facility Market basket of Routine Service Costs, as developed by Data Resources, Incorporated, adjusted for Virginia, determined in the quarter in which the NF's most recent fiscal year ended. NFs shall have their prospective operating cost ceilings and prospective operating cost rates established in accordance with the following methodology:

1. The initial peer group ceilings established under § 2.7 A shall be the final peer group ceilings for a NF's first full or partial fiscal year under PIRS and shall be considered as the initial "interim ceilings" for calculating the subsequent fiscal year's peer group ceilings. Peer group ceilings for subsequent fiscal years shall be calculated by adjusting the initial "interim" ceilings by a "percentage factor" which shall eliminate any allowances for inflation after September 30, 1990, calculated in both §§ 2.7 A 5 a and 2.7 A 5 c. The adjusted initial "interim" ceilings shall be considered as the final "interim ceiling." Peer group ceilings for subsequent fiscal years shall be calculated by adjusting the final "interim" ceiling, as determined above, by 100% of historical inflation from October 1, 1990, to the beginning of the NFs next fiscal year to obtain new "interim" ceilings, and 50% of the forecasted inflation to the end of the NFs next fiscal year.

2. A NF's average allowable operating cost rates, as determined from its most recent fiscal year's cost report, shall be adjusted by 50% of historical inflation and 50% of the forecasted inflation to calculate its prospective operating cost base rates.

C. The PIRS method shall still require comparison of the prospective operating cost rates to the prospective operating ceilings. The provider shall be reimbursed the lower of the prospective operating cost rates or prospective operating ceilings.

D. Nonoperating costs.

1. Allowable plant costs shall be reimbursed in accordance with Part II, Article 1. Plant costs shall not include the component of cost related to making or producing a supply or service.

2. NATCEPs cost shall be reimbursed in accordance with Part VII.

E. The prospective rate for each NF shall be based upon operating cost and plant cost components or charges, whichever is lower, plus NATCEPs costs. The disallowance of nonreimbursable operating costs in any current fiscal year shall be reflected in a subsequent year's prospective rate determination. Disallowances of nonreimbursable plant costs and NATCEPs costs shall be reflected in the year in which the nonreimbursable costs are included.

F. For those NFs whose operating cost rates are below the ceilings, an incentive plan shall be established whereby a NF shall be paid, on a sliding scale, up to 25% of the difference between its allowable operating cost rates and the peer group ceilings under the PIRS.

1. The table below presents four incentive examples under the PIRS:

Peer Group Ceilings	Allowable Cost Per Day	Difference % of Ceiling	Sliding Scale	Scale % Dif ference	
\$30.00	\$27.00	3.00	10%	\$.30	10%
30.00	22.50	7.50	25%	1.88	25%
30.00	20.00	10.00	33%	2.50	25%
30.00	30.00	0		0	

2. Separate efficiency incentives shall be calculated for both the direct and indirect patient care operating ceilings and costs.

G. Quality of care requirement.

A cost efficiency incentive shall not be paid to a NF for the prorated period of time that it is not in conformance with substantive, nonwaived life, safety, or quality of care standards.

H. Sale of facility.

In the event of the sale of a NF, the prospective base operating cost rates for the new owner's first fiscal period shall be the seller's prospective base operating cost rates before the sale.

I. Public notice.

To comply with the requirements of § 1902(a)(28)(c) of the Social Security Act, DMAS shall make available to the public the data and methodology used in establishing Medicaid payment rates for nursing facilities. Copies may be obtained by request under the existing procedures of the Virginia Freedom of Information Act.

§ 2.8. Phase-in period.

A. To assist NFs in converting to the PIRS methodology, a phase-in period shall be provided until June 30, 1992.

B. From October 1, 1990, through June 30, 1991, a NF's prospective operating cost rate shall be a blended rate calculated at 33% of the PIRS operating cost rates determined by § 2.7 above and 67% of the "current" operating rate determined by subsection D below.

C. From July 1, 1991, through June 30, 1992, a NF's prospective operating cost rate shall be a blended rate calculated at 67% of the PIRS operating cost rates determined by § 2.7 above and 33% of the "current" operating rate determined by subsection D below.

D. The following methodology shall be applied to

calculate a NF's "current" operating rate:

1. Each NF shall receive as its base "current" operating rate, the weighted average prospective operating cost per diems and efficiency incentive per diems if applicable, calculated by DMAS to be effective September 30, 1990.

2. The base "current" operating rate established above shall be the "current" operating rate for the NF's first partial fiscal year under PIRS. The base "current" operating rate shall be adjusted by appropriate allowance for historical inflation and 50% of the forecasted inflation based on the methodology contained in § 2.7 B at the beginning of each of the NF's fiscal years which starts during the phase-in period, October 1, 1990, through June 30, 1992, to determine the NF's prospective "current" operating rate. See VR 460-03-4.1944 for example calculations.

§ 2.8. Nursing facility rate change.

For the period beginning July 1, 1991, and ending June 30, 1992, the per diem operating rate for each NF shall be adjusted. This shall be accomplished by applying a uniform adjustment factor to the rate of each NF.

Article 3. Allowable Cost Identification.

§ 2.9. Allowable costs.

Costs which are included in rate determination procedures and final settlement shall be only those allowable, reasonable costs which are acceptable under the Medicare principles of reimbursement, except as specifically modified in the Plan and as may be subject to individual or ceiling cost limitations and which are classified in accordance with the DMAS uniform chart of accounts (see VR 460-03-4.1941, Uniform Expense Classification).

A. Certification.

The cost of meeting all certification standards for NF requirements as required by the appropriate state agencies, by state laws, or by federal legislation or regulations.

B. Operating costs.

1. Direct patient care operating costs shall be defined in VR 460-03-4.1941.

2. Allowable direct patient care operating costs shall exclude (i) personal physician fees, and (ii) pharmacy services and prescribed legend and nonlegend drugs provided by nursing facilities which operate licensed in-house pharmacies. These services shall be billed directly to DMAS through separate provider agreements and DMAS shall pay directly in

accordance with subsections e and f of Attachment 4.19 B of the State Plan for Medical Assistance (VR 460-02-4.1920).

3. Indirect patient care operating costs include all other operating costs, not identified as direct patient care operating costs and NATCEPs costs in VR 460-03-4.1941, which are allowable under the Medicare principles of reimbursement, except as specifically modified herein and as may be subject to individual cost or ceiling limitations.

C. Allowances/goodwill.

Bad debts, goodwill, charity, courtesy, and all other contractual allowances shall not be recognized as an allowable cost.

§ 2.10. Purchases/related organizations.

A. Costs applicable to services, facilities, and supplies furnished to the provider by organizations related to the provider by common ownership or control shall be included in the allowable cost of the provider at the cost to the related organization, provided that such costs do not exceed the price of comparable services, facilities or supplies. Purchases of existing NFs by related parties shall be governed by the provisions of § 2.5 B 2.

Allowable cost applicable to management services furnished to the provider by organizations related to the provider by common ownership or control shall be lesser of the cost to the related organization or the per patient day ceiling limitation established for management services cost. (See VR 460-03-4.1943, Cost Reimbursement Limitations.)

B. Related to the provider shall mean that the provider is related by reasons of common ownership or control by the organization furnishing the services, facilities, or supplies.

C. Common ownership exists when an individual or individuals or entity or entities possess significant ownership or equity in the parties to the transaction. Control exists where an individual or individuals or entity or entities have the power, directly or indirectly, significantly to influence or direct the actions or policies of the parties to the transaction. Significant ownership or control shall be deemed to exist where an individual is a "person with an ownership or control interest" within the meaning of 42 CFR 455.101. If the parties to the transaction are members of an immediate family, as defined below, the transaction shall be presumed to be between related parties if the ownership or control by immediate family members, when aggregated together, meets the definitions of "common ownership" or "control," as set forth above. Immediate family shall be defined to include, but not be limited to, the following: (i) husband and wife, (ii) natural parent, child and sibling, (iii) adopted child and adoptive parent, (iv) step-parent,

Proposed Regulations

step-child, step-sister, and step-brother, (v) father-in-law, mother-in-law, sister-in-law, brother-in-law, son-in-law and daughter-in-law, and (vi) grandparent and grandchild.

D. Exception to the related organization principle.

1. Effective with cost reports having fiscal years beginning on or after July 1, 1986, an exception to the related organization principle shall be allowed. Under this exception, charges by a related organization to a provider for goods or services shall be allowable cost to the provider if all four of the conditions set out below are met.

2. The exception applies if the provider demonstrates by convincing evidence to the satisfaction of DMAS that the following criteria have been met:

a. The supplying organization is a bona fide separate organization. This means that the supplier is a separate sole proprietorship, partnership, joint venture, association or corporation and not merely an operating division of the provider organization.

b. A substantial part of the supplying organization's business activity of the type carried on with the provider is transacted with other organizations not related to the provider and the supplier by common ownership or control and there is an open, competitive market for the type of goods or services furnished by the organization. In determining whether the activities are of similar type, it is important to also consider the scope of the activity.

For example, a full service management contract would not be considered the same type of business activity as a minor data processing contract. The requirement that there be an open, competitive market is merely intended to assure that the item supplied has a readily discernible price that is established through arms-length bargaining by well informed buyers and sellers.

c. The goods or services shall be those which commonly are obtained by institutions such as the provider from other organizations and are not a basic element of patient care ordinarily furnished directly to patients by such institutions. This requirement means that institutions such as the provider typically obtain the good or services from outside sources rather than producing the item internally.

d. The charge to the provider is in line with the charge for such services, or supplies in the open market and no more than the charge made under comparable circumstances to others by the organization for such goods or services. The phrase "open market" takes the same meaning as "open, competitive market" in subdivision b above.

3. Where all of the conditions of this exception are met, the charges by the supplier to the provider for such goods or services shall be allowable as costs.

4. This exception does not apply to the purchase, lease or construction of assets such as property, buildings, fixed equipment or major movable equipment. The terms "goods and services" may not be interpreted or construed to mean capital costs associated with such purchases, leases, or construction.

E. Three competitive bids shall not be required for the building and fixed equipment components of a construction project outlined in § 2.2. Reimbursement shall be in accordance with § 2.10 A with the limitations stated in § 2.2 B.

§ 2.11. Administrator/owner compensation.

A. Administrators' compensation, whether administrators are owners or non-owners, shall be based on a schedule adopted by DMAS and varied according to facility bed size. The compensation schedule shall be adjusted annually to reflect cost-of-living increases and shall be published and distributed to providers annually. The administrator's compensation schedule covers only the position of administrator and assistants and does not include the compensation of owners employed in capacities other than the NF administrator (see VR 460-03-4.1943, Cost Reimbursement Limitations).

B. Administrator compensation shall mean remuneration paid regardless of the form in which it is paid. This includes, but shall not be limited to, salaries, professional fees, insurance premiums (if the benefits accrue to the employer/owner or his beneficiary) director fees, personal use of automobiles, consultant fees, management fees, travel allowances, relocation expenses in excess of IRS guidelines, meal allowances, bonuses, pension plan costs, and deferred compensation plans. Management fees, consulting fees, and other services performed by owners shall be included in the total compensation if they are performing administrative duties regardless of how such services may be classified by the provider.

C. Compensation for all administrators (owner and nonowner) shall be based upon a 40 hour week to determine reasonableness of compensation.

D. Owner/administrator employment documentation.

1. Owners who perform services for a NF as an administrator and also perform additional duties must maintain adequate documentation to show that the additional duties were performed beyond the normal 40 hour week as an administrator. The additional duties must be necessary for the operation of the NF and related to patient care.

2. Services provided by owners, whether in employee capacity, through management contracts, or through

home office relationships shall be compared to the cost and services provided in arms-length transactions.

3. Compensation for such services shall be adjusted where such compensation exceeds that paid in such arms-length ~~transaction~~ transactions or where there is a duplication of duties normally rendered by an administrator. No reimbursement shall be allowed for compensation where owner services cannot be documented and audited.

§ 2.12. Depreciation.

The allowance for depreciation shall be restricted to the straight line method with a useful life in compliance with AHA guidelines. If the item is not included in the AHA guidelines, reasonableness shall be applied to determine useful life.

§ 2.13. Rent/Leases.

Rent or lease expenses shall be limited by the provisions of VR 460-03-4.1942, Leasing of Facilities.

§ 2.14. Provider payments.

A. Limitations.

1. Payments to providers, shall not exceed charges for covered services except for (i) public providers furnishing services free of charge or at a nominal charge (ii) nonpublic provider whose charges are 60% or less of the allowable reimbursement represented by the charges and that demonstrates its charges are less than allowable reimbursement because its customary practice is to charge patients based on their ability to pay. Nominal charge shall be defined as total charges that are 60% or less of the allowable reimbursement of services represented by these charges. Providers qualifying in this section shall receive allowable reimbursement as determined in this Plan.

2. Allowable reimbursement in excess of charges may be carried forward for payment in the two succeeding cost reporting periods. A new provider may carry forward unreimbursed allowable reimbursement in the five succeeding cost reporting periods.

3. Providers may be reimbursed the carry forward to a succeeding cost reporting period (i) if total charges for the services provided in that subsequent period exceed the total allowable reimbursement in that period (ii) to the extent that the accumulation of the carry forward and the allowable reimbursement in that subsequent period do not exceed the providers' direct and indirect care operating ceilings plus allowable plant cost.

B. Payment for service shall be based upon the rate in effect when the service was rendered.

C. For cost reports filed on or after August 1, 1992, an interim settlement shall be made by DMAS within 90 180 days after receipt and review of the cost report. The 180-day time frame shall similarly apply to cost reports filed but not interim settled as of August 1, 1992. The word "review," for purposes of interim settlement, shall include verification that all financial and other data specifically requested by DMAS is submitted with the cost report. Review shall also mean examination of the cost report and other required submission for obvious errors, inconsistency, inclusion of past disallowed costs, unresolved prior year cost adjustments and a complete signed cost report that conforms to the current DMAS requirements herein.

However, an interim settlement shall not be made when one of the following conditions exists.

1. Cost report filed by a terminated provider;
2. Insolvency of the provider at the time the cost report is submitted;
3. Lack of a valid provider agreement and decertification;
4. Moneys owed to DMAS;
5. Errors or inconsistencies in the cost report; or
6. Incomplete/nonacceptable cost report.

§ 2.15. Legal fees/accounting.

A. Costs claimed for legal/accounting fees shall be limited to reasonable and customary fees for specific services rendered. Such costs must be related to patient care as defined by Medicare principles of reimbursement and subject to applicable regulations herein. Documentation for legal costs must be available at the time of audit.

B. Retainer fees shall be considered an allowable cost up to the limits established in VR 460-03-4.1943, Cost Reimbursement Limitations.

C. As mandated by the Omnibus Budget Reconciliation Act of 1990, effective November 5, 1990, reimbursement of legal expenses for frivolous litigation shall be denied if the action is initiated on or after November 5, 1990. Frivolous litigation is any action initiated by the nursing facility that is dismissed on the basis that no reasonable legal ground existed for the institution of such action.

§ 2.16. Documentation.

Adequate documentation supporting cost claims must be provided at the time of interim settlement, cost settlement, audit, and final settlement.

§ 2.17. Fraud and abuse.

Proposed Regulations

Previously disallowed costs which are under appeal and affect more than one cost reporting period shall be disclosed in subsequent cost reports if the provider wishes to reserve appeal rights for such subsequent cost reports. The reimbursement effect of such appealed costs shall be computed by the provider and submitted to DMAS with the cost report. Where such disclosure is not made to DMAS, the inclusion of previously disallowed costs may be referred to the Medicaid Fraud Control Unit of the Office of the Attorney General.

Article 4. New Nursing Facilities.

§ 2.18. Interim rate.

A. For all new or expanded NFs the 95% occupancy requirement shall be waived for establishing the first cost reporting period interim rate. This first cost reporting period shall not exceed 12 months from the date of the NF's certification.

B. Upon a showing of good cause, and approval of the DMAS, an existing NF that expands its bed capacity by 50% or more shall have the option of retaining its prospective rate, or being treated as a new NF.

C. The 95% occupancy requirement shall be applied to the first and subsequent cost reporting periods' actual costs for establishing such NF's second and future cost reporting periods' prospective reimbursement rates. The 95% occupancy requirement shall be considered as having been satisfied if the new NF achieved a 95% occupancy at any point in time during the first cost reporting period.

D. A new NF's interim rate for the first cost reporting period shall be determined based upon the lower of its anticipated allowable cost determined from a detailed budget (or pro forma cost report) prepared by the provider and accepted by the DMAS, or the appropriate operating ceilings or charges.

E. Any NF receiving reimbursement under new NF status shall not be eligible to receive the blended phase-in period rate under § 2.8.

F. During its first semiannual period of operation, a newly constructed or newly enrolled NF shall have an assigned SII based upon its peer group's average SII for direct patient care. An expanded NF receiving new NF treatment, shall receive the SII calculated for its last semiannual period prior to obtaining new NF status.

§ 2.19. Final rate.

The DMAS shall reimburse the lower of the appropriate operating ceilings, charges or actual allowable cost for a new NF's first cost reporting period of operation, subject to the procedures outlined above in § 2.18 A, C, E, and F.

Upon determination of the actual allowable operating

cost for direct patient care and indirect patient care the per diem amounts shall be used to determine if the provider is below the peer group ceiling used to set its interim rate. If costs are below those ceilings, an efficiency incentive shall be paid at settlement of the first year cost report.

This incentive will allow a NF to be paid up to 25% of the difference between its actual allowable operating cost and the peer group ceiling used to set the interim rate. (Refer to § 2.7 F.)

Article 5. Cost Reports.

§ 2.20. Cost report submission.

A. 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, it is considered delinquent. The cost report shall be deemed complete *for the purpose of cost settlement* when DMAS has received 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. *a. The provider's audited financial statements including, but not limited to, a balance sheet, a statement of income and expenses, a statement of retained earnings (or fund balance), and a statement of cash flows, footnotes to the financial statements, and the management report. Multi-facility providers not having individual facility financial statements shall submit the "G" series schedules from the cost report plus a statement of changes in cash flow and corporate consolidated financial statements; shall be governed by § 2.20 A 6;*
b. Schedule of restricted cash funds that identify the purpose of each fund and the amount;
c. Schedule of investments by type (stock, bond, etc.), amount, and current market value;
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 NF's which are part of a chain organization must also file:~~
 - a. Home office cost report;*
 - b. Audited consolidated financial statements of the chain organization including the management report and footnotes to the financial statements;*

c. The NF's financial statements including, but not limited to, a balance sheet, a statement of income and expenses, a statement of retained earnings (or fund balance), and a statement of cash flows;

d. Schedule of restricted cash funds that identify the purpose of each fund and the amount;

e. Schedule of investments by type (stock, bond, etc.), amount, and current market value; and

7. Such other analytical information or supporting documents requested documentation that may be required by DMAS when the cost reporting forms are sent to the provider .

B. When cost reports are delinquent, the provider's interim rate shall be reduced by 20% the first month and an additional 20% of the original interim rate for each subsequent month the report has not been submitted. DMAS shall notify the provider of the schedule of reductions which shall start on the first day of the following month. For example, for a September 30 fiscal year end, notification will be mailed in early January stating that payments will be reduced starting with the first payment in February.

C. After the overdue cost report is received, desk reviewed, and a new prospective rate established, the amounts withheld shall be computed and paid. If the provider fails to submit a complete cost report within 180 days after the fiscal year end, a penalty in the amount of 10% of the balance withheld shall be forfeited to DMAS.

§ 2.21. Reporting form.

All cost reports shall be submitted on uniform reporting forms provided by the DMAS, or by Medicare if applicable. Such cost reports, subsequent to the initial cost report period, shall cover a 12-month period. Any exceptions must be approved by the DMAS.

§ 2.22. Accounting method.

The accrual method of accounting and cost reporting is mandated for all providers.

§ 2.23. Cost report extensions.

A. Extension for submission of a cost report may be granted if the provider can document extraordinary circumstances beyond its control.

B. Extraordinary circumstances do not include:

1. Absence or changes of chief finance officer, controller or bookkeeper;
2. Financial statements not completed;
3. Office or building renovations;

4. Home office cost report not completed;

5. Change of stock ownership;

6. Change of intermediary;

7. Conversion to computer; or

8. Use of reimbursement specialist.

§ 2.24. Fiscal year changes.

All fiscal year end changes must be approved 90 days prior to the beginning of a new fiscal year.

Article 6. Prospective Rates.

§ 2.25. Time frames.

A. For cost reports filed on or after August 1, 1992, a prospective rate shall be determined by DMAS within 90 days of the receipt of a complete cost report. (See § 2.20 A.) The 180-day time frame shall similarly apply to cost reports filed but for which a prospective rate has not been set as of August 1, 1992. Rate adjustments shall be made retroactive to the first day of the provider's new cost reporting year. Where a field audit is necessary to set a prospective rate, the DMAS shall have an additional 90 days to determine any appropriate adjustments to the prospective rate as a result of such field audit. This time period shall be extended if delays are attributed to the provider.

B. Subsequent to establishing the prospective rate DMAS shall conclude the desk audit of a providers' cost report and determine if further field audit activity is necessary. The DMAS will seek repayment or make retroactive settlements when audit adjustments are made to costs claimed for reimbursement.

Article 7. Retrospective rates.

§ 2.26. The retrospective method of reimbursement shall be used for Mental Health/Mental Retardation facilities.

§ 2.27. (reserved)

Article 8. Record Retention.

§ 2.28. Time frames.

A. All of the NF's accounting and related records, including the general ledger, books of original entry, and statistical data must be maintained for a minimum of five years, or until all affected cost reports are final settled.

B. Certain information must be maintained for the duration of the provider's participation in the DMAS and

Proposed Regulations

until such time as all cost reports are settled. Examples of such information are set forth in § 2.29.

§ 2.29. Types of records to be maintained.

Information which must be maintained for the duration of the provider's participation in the DMAS includes, but is not limited to:

1. Real and tangible property records, including leases and the underlying cost of ownership;
2. Itemized depreciation schedules;
3. Mortgage documents, loan agreements, and amortization schedules;
4. Copies of all cost reports filed with the DMAS together with supporting financial statements.

§ 2.30. Record availability.

The records must be available for audits by DMAS staff. Where such records are not available, costs shall be disallowed.

Article 9. Audits.

§ 2.31. Audit overview.

Desk audits shall be performed to verify the completeness and accuracy of the cost report, and reasonableness of costs claimed for reimbursement. Field audits, as determined necessary by the DMAS, shall be performed on the records of each participating provider to determine that costs included for reimbursement were accurately determined and reasonable, and do not exceed the ceilings or other reimbursement limitations established by the DMAS.

§ 2.32. Scope of audit.

The scope of the audit includes, but shall not be limited to: trial balance verification, analysis of fixed assets, indebtedness, selected revenues, leases and the underlying cost of ownership, rentals and other contractual obligations, and costs to related organizations. The audit scope may also include various other analyses and studies relating to issues and questions unique to the NF and identified by the DMAS. Census and related statistics, patient trust funds, and billing procedures are also subject to audit.

§ 2.33. Field audit requirements.

Field audits shall be required as follows:

1. For the first cost report on all new NF's.
2. For the first cost report in which costs for bed

additions or other expansions are included.

3. When a NF is sold, purchased, or leased.

4. As determined by DMAS desk audit.

§ 2.34. Provider notification.

The provider shall be notified in writing of all adjustments to be made to a cost report resulting from desk or field audit with stated reasons and references to the appropriate principles of reimbursement or other appropriate regulatory cites.

§ 2.35. Field audit exit conference.

A. The provider shall be offered an exit conference to be executed within 15 days following completion of the on-site audit activities, unless other time frames are mutually agreed to by the DMAS and provider. Where two or more providers are part of a chain organization or under common ownership, DMAS shall have up to 90 days after completion of all related on-site audit activities to offer an exit conference for all such NFs. The exit conference shall be conducted at the site of the audit or at a location mutually agreeable to the DMAS and the provider.

B. The purpose of the exit conference shall be to enable the DMAS auditor to discuss such matters as the auditor deems necessary, to review the proposed field audit adjustments, and to present supportive references. The provider will be given an opportunity during the exit conference to present additional documentation and agreement or disagreement with the audit adjustments.

C. All remaining adjustments, including those for which additional documentation is insufficient or not accepted by the DMAS, shall be applied to the applicable cost report(s) regardless of the provider's approval or disapproval.

D. The provider shall sign an exit conference form that acknowledges the review of proposed adjustments.

E. After the exit conference the DMAS shall perform a review of all remaining field audit adjustments. Within a reasonable time and after all documents have been submitted by the provider, the DMAS shall transmit in writing to the provider a final field audit adjustment report (FAAR), which will include all remaining adjustments not resolved during the exit conference. The provider shall have 15 days from the date of the letter which transmits the FAAR, to submit any additional documentation which may affect adjustments in the FAAR.

§ 2.36. Audit delay.

In the event the provider delays or refuses to permit an audit to occur or to continue or otherwise interferes with the audit process, payments to the provider shall be reduced as stated in § 2.20 B.

§ 2.37. Field audit time frames.

A. If a field audit is necessary after receipt of a complete cost report, such audit shall be initiated within three years following the date of the last notification of program reimbursement and the on site activities, including exit conferences, shall be concluded within 180 days from the date the field audit begins. Where audits are performed on cost reports for multiple years or providers, the time frames shall be reasonably extended for the benefit of the DMAS and subject to the provisions of § 2.35.

B. Documented delays on the part of the provider will automatically extend the above time frames to the extent of the time delayed.

C. Extensions of the time frames shall be granted to the department for good cause shown.

D. Disputes relating to the timeliness established in §§ 2.35 and 2.37, or to the grant of extensions to the DMAS, shall be resolved by application to the Director of the DMAS or his designee.

PART III. APPEALS.

§ 3.1. Dispute resolution for nonstate operated nursing facilities.

A. NF's have the right to appeal the DMAS's interpretation and application of state and federal Medicaid and applicable Medicare principles of reimbursement in accordance with the Administrative Process Act, § 9-6.14.1 et seq. and § 32.1-325.1 of the Code of Virginia.

B. Nonappealable issues.

1. The use of state and federal Medicaid and applicable Medicare principles of reimbursement.
2. The organization of participating NF's into peer groups according to location as a proxy for cost variation across facilities with similar operating characteristics. The use of individual ceilings as a proxy for determining efficient operation within each peer group.
3. Calculation of the initial peer group ceilings using the most recent cost settled data available to DMAS that reflects NF operating costs inflated to September 30, 1990.
4. The use of the moving average of the Skilled Nursing Facility market basket of routine service costs, as developed by Data Resources, Incorporated, adjusted for Virginia, as the prospective escalator.
5. The establishment of separate ceilings for direct

operating costs and indirect operating costs.

6. The use of Service Intensity Indexes to identify the resource needs of given NFs patient mix relative to the needs present in other NFs.

7. The development of Service Intensity Indexes based on:

- a. Determination of resource indexes for each patient class that measures relative resource cost.
- b. Determination of each NF's average relative resource cost index across all patients.
- c. Standardizing the average relative resource cost indexes of each NF across all NF's.

8. The use of the DMAS Long Term Care Information System (LTCIS), assessment form (currently DMAS-95), Virginia Center on Aging Study, the State of Maryland Time and Motion Study of the Provision of Nursing Service in Long Term Care Facilities, and the KPMG Peat Marwick Survey of Virginia long-term care NF's nursing wages to determine the patient class system and resource indexes for each patient class.

9. The establishment of payment rates based on service intensity indexes.

§ 3.2. Conditions for appeal.

A. An appeal shall not be heard until the following conditions are met:

1. Where appeals result from desk or field audit adjustments, the provider shall have received a notification of program reimbursement (NPR) in writing from the DMAS.
2. Any and all moneys due to DMAS shall be paid in full, unless a repayment plan has been agreed to by the Director of the Division of Cost Settlement and Audit.
3. All first level appeal requests shall be filed in writing with the DMAS within 90 days following the receipt date of a DMAS notice of program reimbursement that adjustments have been made to a specific cost report.

§ 3.3. Appeal procedure.

A. There shall be two levels of administrative appeal.

B. Informal appeals shall be decided by the Director of the Division of Cost Settlement and Audit after an informal fact finding conference is held. The decision of the Director of Cost Settlement and Audit shall be sent in writing to the provider within 30 *business* days following conclusion of the informal fact finding conference.

Proposed Regulations

C. If the provider disagrees with such initial decision the provider may, at its discretion, file a notice of appeal to the Director of the DMAS. Such notice shall be in writing and filed within 30 *business* days of ~~receipt~~ *the date of* the initial decision.

D. Within 30 *business* days of the ~~receipt date~~ of such notice of appeal, the director shall appoint a hearing officer to conduct the proceedings, to review the issues and the evidence presented, and to make a written recommendation.

E. The director shall notify the provider of his final decision within 45 *business* days of ~~receipt the date of~~ the appointed hearing officer's written recommendation, or after the parties have filed exceptions to the recommendations, whichever is later.

F. The director's final written decision shall conclude the provider's administrative appeal.

§ 3.4. Formal hearing procedures.

Formal hearing procedures, as developed by DMAS, shall control the conduct of the formal administrative proceedings.

§ 3.5. Appeals time frames.

Appeal time frames noted throughout this section may be extended for the following reasons:

A. The provider submits a written request prior to the due date requesting an extension for good cause and the DMAS approves the extension.

B. Delays on the part of the NF documented by the DMAS shall automatically extend DMAS's time frame to the extent of the time delayed.

C. Extensions of time frames shall be granted to the DMAS for good cause shown.

D. When appeals for multiple years are submitted by a NF or a chain organization or common owners are coordinating appeals for more than one NF, the time frames shall be reasonably extended for the benefit of the DMAS.

E. Disputes relating to the time lines established in § 3.3 B or to the grant of extensions to the DMAS shall be resolved by application to the Director of the DMAS or his designee.

§ 3.6. Dispute resolution for state-operated NFs.

A. Definitions.

"DMAS" means the Department of Medical Assistance Services.

"Division director" means the director of a division of DMAS.

"State-operated provider" means a provider of Medicaid services which is enrolled in the Medicaid program and operated by the Commonwealth of Virginia.

B. Right to request reconsideration.

1. A state-operated provider shall have the right to request a reconsideration for any issue which would be otherwise administratively appealable under the State Plan by a nonstate operated provider. This shall be the sole procedure available to state-operated providers.

2. The appropriate DMAS division must receive the reconsideration request within 30 ~~calendar~~ *business* days after the ~~provider receives its~~ *date of a DMAS* Notice of Amount of Program Reimbursement, notice of proposed action, findings letter, or other DMAS notice giving rise to a dispute.

C. Informal review.

The state-operated provider shall submit to the appropriate DMAS division written information specifying the nature of the dispute and the relief sought. If a reimbursement adjustment is sought, the written information must include the nature of the adjustment sought; the amount of the adjustment sought; and the reasons for seeking the adjustment. The division director or his designee shall review this information, requesting additional information as necessary. If either party so requests, they may meet to discuss a resolution. Any designee shall then recommend to the division director whether relief is appropriate in accordance with applicable law and regulations.

D. Division director action.

The division director shall consider any recommendation of his designee and shall render a decision.

E. DMAS director review.

A state-operated provider may, within 30 *business* days after ~~receiving the date of~~ the informal review decision of the division director, request that the DMAS Director or his designee review the decision of the division director. The DMAS Director shall have the authority to take whatever measures he deems appropriate to resolve the dispute.

F. Secretarial review.

If the preceding steps do not resolve the dispute to the satisfaction of the state-operated provider, within 30 *business* days after ~~receipt the date of~~ the decision of the DMAS Director, the provider may request the DMAS director to refer the matter to the Secretary of Health and Human Resources and any other cabinet secretary as

appropriate. Any determination by such secretary or secretaries shall be final.

PART IV. INDIVIDUAL EXPENSE LIMITATION.

In addition to operating costs being subject to peer group ceilings, costs are further subject to maximum limitations as defined in VR 460-03-4.1943, Cost Reimbursement Limitations.

PART V. COST REPORT PREPARATION INSTRUCTIONS.

Instructions for preparing NF cost reports will be provided by the DMAS.

PART VI. STOCK TRANSACTIONS.

§ 6.1. Stock acquisition.

The acquisition of the capital stock of a provider does not constitute a basis for revaluation of the provider's assets. Any cost associated with such an acquisition shall not be an allowable cost. The provider selling its stock continues as a provider after the sale, and the purchaser is only a stockholder of the provider.

§ 6.2. Merger of unrelated parties.

A. In the case of a merger which combines two or more unrelated corporations under the regulations of the Code of Virginia, there will be only one surviving corporation. If the surviving corporation, which will own the assets and liabilities of the merged corporation, is not a provider, a Certificate of Public Need, if applicable, must be issued to the surviving corporation.

B. The nonsurviving corporation shall be subject to the policies applicable to terminated providers, including those relating to gain or loss on sales of NFs.

§ 6.3. Merger of related parties.

The statutory merger of two or more related parties or the consolidation of two or more related providers resulting in a new corporate entity shall be treated as a transaction between related parties. No revaluation shall be permitted for the surviving corporation.

PART VII. NURSE AIDE TRAINING AND COMPETENCY EVALUATION PROGRAM AND COMPETENCY EVALUATION PROGRAMS (NATCEPs).

§ 7.1. The Omnibus Budget Reconciliation Act of 1989 (OBRA 89) amended § 1903(a)(2)(B) of the Social Security Act to fund actual NATCEPs costs incurred by NFs separately from the NF's medical assistance services reimbursement rates.

§ 7.2. NATCEPs costs.

A. NATCEPs costs shall be as defined in VR 460-03-4.1941.

B. To calculate the reimbursement rate, NATCEPs costs contained in the most recently filed cost report shall be converted to a per diem amount by dividing allowable NATCEPs costs by the actual number of NF's patient days.

C. The NATCEPs interim reimbursement rate determined in § 7.2 B shall be added to the prospective operating cost and plant cost components or charges, whichever is lower, to determine the NF's prospective rate. The NATCEPs interim reimbursement rate shall not be adjusted for inflation.

D. Reimbursement of NF costs for training and competency evaluation of nurse aides must take into account the NF's use of trained nurse aides in caring for Medicaid, Medicare and private pay patients. Medicaid shall not be charged for that portion of NATCEPs costs which are properly charged to Medicare or private pay services. The final retrospective reimbursement for NATCEPs costs shall be the reimbursement rate as calculated from the most recently filed cost report by the methodology in § 7.2 B times the Medicaid patient days from the DMAS MMR-240.

E. Disallowance of nonreimbursable NATCEPs costs shall be reflected in the year in which the nonreimbursable costs were claimed.

F. Payments to providers for allowable NATCEPs costs shall not be considered in the comparison of the lower allowable reimbursement or charges for covered services, as outlined in § 2.14 A.

PART VIII. (Reserved)

PART IX. USE OF MMR-240.

All providers must use the data from computer printout MMR-240 based upon a 60-day accrual period.

PART X. COMMINGLED INVESTMENT INCOME.

DMAS shall treat funds commingled for investment purposes in accordance with PRM-15, § 202.6.

PART XI. PROVIDER NOTIFICATION.

DMAS shall notify providers of State Plan changes affecting reimbursement 30 days prior to the enactment of such changes.

PART XII.

Proposed Regulations

START-UP COSTS AND ORGANIZATIONAL COSTS.

§ 12.1. Start-up costs.

A. In the period of developing a provider's ability to furnish patient care services, certain costs are incurred. The costs incurred during this time of preparation are referred to as start-up costs. Since these costs are related to patient care services rendered after the time of preparation, they shall be capitalized as deferred charges and amortized over a 60-month time frame.

B. Start-up costs may include, but are not limited to, administrative and nursing salaries; heat, gas, and electricity; taxes, insurance; employee training costs; repairs and maintenance; housekeeping; and any other allowable costs incident to the start-up period. However, any costs that are properly identifiable as operating costs must be appropriately classified as such and excluded from start-up costs.

C. Start-up costs that are incurred immediately before a provider enters the Program and that are determined by the provider, subject to the DMAS approval, to be immaterial need not be capitalized but rather may be charged to operations in the first cost reporting period.

D. Where a provider incurs start-up costs while in the Program and these costs are determined by the provider, subject to the DMAS approval, to be immaterial, these costs shall not be capitalized but shall be charged to operations in the periods incurred.

§ 12.2. Applicability.

A. Start-up cost time frames.

1. Start-up costs are incurred from the time preparation begins on a newly constructed or purchased building, wing, floor, unit, or expansion thereof to the time the first patient (whether Medicaid or non-Medicaid) is admitted for treatment, or where the start-up costs apply only to nonrevenue producing patient care functions or nonallowable functions, to the time the areas are used for their intended purposes.

2. If a provider intends to prepare all portions of its entire facility at the same time, start-up costs for all portions of the facility shall be accumulated in a single deferred charge account and shall be amortized when the first patient is admitted for treatment.

3. If a provider intends to prepare portions of its facility on a piecemeal basis (i.e., preparation of a floor or wing of a provider's facility is delayed), start-up costs shall be capitalized and amortized separately for the portion or portions of the provider's facility prepared during different time periods.

4. Moreover, if a provider expands its NF by constructing or purchasing additional buildings or

wings, start-up costs shall be capitalized and amortized separately for these areas.

B. Depreciation time frames.

1. Costs of the provider's facility and building equipment shall be depreciated using the straight line method over the lives of these assets starting with the month the first patient is admitted for treatment.

2. Where portions of the provider's NF are prepared for patient care services after the initial start-up period, those asset costs applicable to each portion shall be depreciated over the remaining lives of the applicable assets. If the portion of the NF is a nonrevenue-producing patient care area or nonallowable area, depreciation shall begin when the area is opened for its intended purpose. Costs of major movable equipment, however, shall be depreciated over the useful life of each item starting with the month the item is placed into operation.

§ 12.3. Organizational costs.

A. Organizational costs are those costs directly incident to the creation of a corporation or other form of business. These costs are an intangible asset in that they represent expenditures for rights and privileges which have a value to the enterprise. The services inherent in organizational costs extend over more than one accounting period and thus affect the costs of future periods of operations.

B. Allowable organizational costs shall include, but not be limited to, legal fees incurred in establishing the corporation or other organization (such as drafting the corporate charter and by-laws, legal agreements, minutes of organizational meeting, terms of original stock certificates), necessary accounting fees, expenses of temporary directors and organizational meetings of directors and stockholders and fees paid to states for incorporation.

C. The following types of costs shall not be considered allowable organizational costs: costs relating to the issuance and sale of shares of capital stock or other securities, such as underwriters fees and commissions, accountant's or lawyer's fees, cost of qualifying the issues with the appropriate state or federal authorities, stamp taxes, etc.

D. Allowable organization costs shall generally be capitalized by the organization. However, if DMAS concludes that these costs are not material when compared to total allowable costs, they may be included in allowable indirect operating costs for the initial cost reporting period. In all other circumstances, allowable organization costs shall be amortized ratably over a period of 60 months starting with the month the first patient is admitted for treatment.

PART XIII.
DMAS AUTHORIZATION.

§ 13.1 Access to records.

A. DMAS shall be authorized to request and review, either through a desk or field audit, all information related to the provider's cost report that is necessary to ascertain the propriety and allocation of costs (in accordance with Medicare and Medicaid rules, regulations, and limitations) to patient care and nonpatient care activities.

B. Examples of such information shall include, but not be limited to, all accounting records, mortgages, deeds, contracts, meeting minutes, salary schedules, home office services, cost reports, and financial statements.

C. This access also applies to related organizations as defined in § 2.10 who provide assets and other goods and services to the provider.

PART XIV. HOME OFFICE COSTS.

§ 14.1. General.

Home office costs shall be allowable to the extent they are reasonable, relate to patient care, and provide cost savings to the provider.

§ 14.2. Purchases.

Provider purchases from related organizations, whether for services, or supplies, shall be limited to the lower of the related organizations actual cost or the price of comparable purchases made elsewhere.

§ 14.3. Allocation of home office costs.

Home office costs shall be allocated in accordance with § 2150.3, PRM-15.

§ 14.4. Nonrelated management services.

Home office costs associated with providing management services to nonrelated entities shall not be recognized as allowable reimbursable cost.

§ 14.5. Allowable and nonallowable home office costs.

Allowable and nonallowable home office costs shall be recognized in accordance with § 2150.2, PRM-15.

§ 14.6. Equity capital.

Item 398 D of the 1987 Appropriation Act (as amended), effective April 8, 1987, eliminated reimbursement of return on equity capital to proprietary providers for periods or portions thereof on or after July 1, 1987.

PART XV. REFUND OF OVERPAYMENTS.

§ 15.1. 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 audit, 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' determination of the overpayment.

§ 15.2. 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 be used to reduce the balance of the overpayment.

§ 15.3. Payment schedule.

A. 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 in writing 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 in writing an extended repayment schedule.

B. 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 DMAS may approve a repayment schedule of up to 36 months.

C. A provider shall have no more than one extended repayment schedule in place at one time. If subsequent audits identify 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 amounts.

D. If, during the time an extended repayment schedule is in effect, the provider ceases to be a participating provider or fails to file a cost report in a timely manner, the outstanding balance shall become immediately due and payable.

E. When a repayment schedule is used to recover only part of an overpayment, the remaining amount shall be recovered from interim payments to the provider or by lump sum payments.

§ 15.4. Extension request documentation.

In the written request for an extended repayment schedule, the provider shall document the need for an extended (beyond 30 days) repayment and submit a

Proposed Regulations

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.

§ 15.5. Interest charge on extended repayment.

A. 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.

B. 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.

C. 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 fact finding 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.

PART XVI REVALUATION OF ASSETS.

§ 16.1. Change of ownership.

A. Under the Consolidated Omnibus Budget Reconciliation Act of 1985, Public Law 99-272, reimbursement for capital upon the change of ownership of a NF is restricted to the lesser of:

1. One-half of the percentage increase (as measured from the date of acquisition by the seller to the date of the change of ownership), in the Dodge Construction Cost Index applied in the aggregate with respect to those facilities that have undergone a change of ownership during the fiscal year, or

2. One-half of the percentage increase (as measured from the date of acquisition by the seller to the date of the change of ownership) in the Consumer Price Index for All Urban Consumers (CPI-U) applied in the aggregate with respect to those facilities that have

undergone a change of ownership during the fiscal year.

B. To comply with the provisions of COBRA 1985, effective October 1, 1986, the DMAS shall separately apply the following computations to the capital assets of each facility which has undergone a change of ownership:

1. One-half of the percentage increase (as measured from the date of acquisition by the seller to the date of the change of ownership), in the Dodge Construction Cost Index, or

2. One-half of the percentage increase (as measured from the date of acquisition by the seller to the date of the change of ownership) in the Consumer Price Index for All Urban Consumers (CPI-U).

C. Change of ownership is deemed to have occurred only when there has been a bona fide sale of assets of a NF (See § 2.5 B 3 for the definition of "bona fide" sale).

D. Reimbursement for capital assets which have been revalued when a facility has undergone a change of ownership shall be limited to the lesser of:

1. The amounts computed in subsection B above;
2. Appraised replacement cost value; or
3. Purchase price.

E. Date of acquisition is deemed to have occurred on the date legal title passed to the seller. If a legal titling date is not determinable, date of acquisition shall be considered to be the date a certificate of occupancy was issued by the appropriate licensing or building inspection agency of the locality where the nursing facility is located.

DEPARTMENT OF SOCIAL SERVICES (STATE BOARD OF)

Title of Regulation: VR 615-80-01. Human Subject Research Regulations.

Statutory Authority: §§ 63.1-25 and 63.1-25.01 of the Code of Virginia.

Public Hearing Date: N/A – Written comments may be submitted through May 21, 1993.

(See Calendar of Events section for additional information)

Summary:

The proposed regulations require the establishment of a department human research review committee for use by the Department of Social Services, local social service agencies, or any facilities or other entity funded or licensed by the department that is

conducting or proposing to conduct or authorize human research. The proposed regulations also define requirements for obtaining informed consent and require annual reporting of human research committee to the commissioner. Human research which is subject to federal regulations is exempt from the regulations.

VR 615-80-01. Human Subject Research Regulations.

§ 1. Definitions.

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

"Affiliated with the department" means any individual employed, either on a paid or volunteer basis, by the Virginia Department of Social Services, by a local department of social services, or by an agency licensed by the Virginia Department of Social Services.

"Authorized" means to permit the implementation or conducting of research.

"Board" means the Virginia State Board of Social Services.

"Commissioner" means the Commissioner of the Virginia Department of Social Services or his designee.

"Committee" means a human research review committee which reviews and approves human research activities.

"Contractor" means agencies, organizations, or individuals receiving funds or under contract with the department or a local agency including, but not limited to, foster homes and day care homes.

"Department" means the Virginia Department of Social Services.

"Discomforts, risks, and benefits" means the expected advantages and disadvantages to the participant for participating in the research.

"Facility" means any agency licensed by the department including, but not limited to, adult and child day and residential facilities.

"Human participant" or "participant" means any individual, customer or employee, who is the subject of research conducted or authorized by the department, facility, local agency, or contractor.

"Human research" or "research" means any formal and structured evaluation utilizing human subjects in a special project, program, or study.

"Informed consent" means the knowing and voluntary

agreement of the participant exercising free choice, without undue inducement or any element of force, fraud, deceit, duress, or other form of constraint or coercion.

"Legally authorized representative" means a person with authority to consent on behalf of a prospective participant to include (i) the parent or parents having custody, (ii) the legal guardian, or (iii) any person or judicial or other person/body authorized by law or regulation, including an attorney in fact appointed under a durable power of attorney, to the extent the power grants the authority to make a decision related to human research. The attorney in fact shall not be employed by the person or department conducting the human research. No official or employee of the department, facility or local agency conducting or authorizing the research shall be qualified to act as a legally authorized representative.

"Local agency" means any local department of social services or department of welfare.

"Minimal risk" means that the risks of harm to the prospective participant anticipated in the proposed research are not greater, considering probability and magnitude, than those ordinarily encountered in daily life or during the performance of routine physical or psychological examinations or tests.

§ 2. Applicability.

These regulations shall apply to the Virginia Department of Social Services, to local departments of social services or departments of welfare, to facilities licensed by the department, and to contractors (providing goods or services to or receiving funds from the department or a local agency) that authorize, conduct, or propose to conduct or authorize any human research.

§ 3. Research exempt from regulations.

Research activities in which the only involvement of human participants will be in one or more of the following categories are exempt from these regulations unless the research is covered by other sections of these regulations:

1. Research conducted in established or commonly accepted educational settings involving commonly used educational practices, provided that participants cannot be identified, directly or through identifiers, for:

a. Regular and special education instructional strategies;

b. The effectiveness of or the comparison among instructional techniques, curriculum or classroom management methods; or

c. Educational tests.

Proposed Regulations

2. Research involving solely the observation of public behavior or survey or interview procedures, unless observations or responses are recorded in such a manner that participants can be identified directly or through identifiers linked to the participants, and either:

a. The participant's responses, if they became known outside the research, could reasonably place the participant at risk of criminal or civil liability or be damaging to the participant's financial standing or employability; or

b. The research deals with sensitive aspects of the participant's own behavior, such as sexual behavior, drug or alcohol use or illegal conduct.

3. Research involving survey or interview procedures, when the respondents are elected or appointed public officials or candidates for public office.

4. Research involving solely the collection or study of existing data, documents, or records, if these sources are publicly available or if the information taken from these sources is recorded in such a manner that participants cannot be identified directly or through identifiers linked to the participants.

5. Research and demonstration projects which are conducted by or subject to the approval of the commissioner, and which are designed to study, evaluate, or otherwise examine (i) public benefit or service programs; (ii) procedures for obtaining benefits or services under those programs; (iii) possible changes in or alternatives to those programs or procedures; or (iv) possible changes in methods or levels of payment for benefits or services under those programs when such projects are covered by Title 45 Code of Federal Regulations 46.101 (b)(5) are exempt from these regulations.

§ 4. Policy.

A. Each human research activity shall be approved by a committee composed of representatives of varied backgrounds. The committee shall ensure the competent, complete, and professional review of human research activities conducted, authorized, or proposed to be conducted or authorized by the department, local agencies, facilities, or contractor. The committee shall ensure the participants' rights to privacy are maintained.

B. Every person engaged in the conduct of human research or proposing to conduct human research shall affiliate himself with an agency having a committee, and the human research which he conducts or proposes to conduct shall be subject to review and approval by such committee in the manner set forth in these regulations.

C. Every person or organization engaged in a human research project that requires an allowable variance or

other approval related to department regulations must obtain approval for such from the department prior to requesting the committee's review and approval of the proposed research.

D. Prior to the initiation of any human research, each participant or his legally authorized representative must be informed in writing of the following:

1. Procedure(s) to be utilized, their purposes, and any expected discomforts, risks, and benefits;

2. Instruction that the person may withdraw his consent and discontinue participation in the human research at any time without loss of services or benefits to which the participant is otherwise entitled.

3. Explanation of any costs or benefits which may accrue to the participant or the participant's family.

4. An offer to answer any inquiries by the participant concerning the procedures, use of the results, and assurance of confidentiality.

5. Statement describing the extent to which confidentiality of records identifying the participant will be maintained.

6. Expected duration of participation.

E. Where the human research activity exposes to risk others not participating, all must give their signed voluntary informed consent.

§ 5. Informed consent.

A. No human research may be conducted without a signed voluntary informed consent, signed by the participant or by the participant's legally authorized representative, except as provided for in subsection C of this section. If the participant is a minor otherwise capable of rendering voluntary informed consent, the consent shall be signed by both the minor and his legally authorized representative. A researcher shall seek such consent only under circumstances that provide the prospective participant or the representative sufficient opportunity to consider whether or not to participate and that minimize the possibility of coercion or undue influence. The information that is given to the participant or the representative shall be in language understandable to the participant or the representative.

B. The committee may approve a consent procedure which omits or alters basic elements of informed consent or may waive the requirements to obtain informed consent provided the committee finds and documents that:

1. The research involves no more than minimal risk to the participants;

2. The waiver or alteration will not adversely affect

the rights and welfare of the participants;

3. The research could not practicably be carried out without the waiver; and

4. Whenever appropriate, the participants will be provided with additional pertinent information after participation.

C. The committee may waive the requirement for the researcher to obtain a signed consent form for some or all participants if it finds that the only record linking the participant and the research would be the consent document and the principal risk would be potential harm resulting from a breach of confidentiality. Each participant will be asked whether he wants documentation linking him with the research, and the participant's wishes will govern. In cases where the documentation requirement is waived, the committee may require the investigator to provide participants with a written statement regarding the research.

§ 6. Human research review committee.

A. The department shall establish a department committee, consisting of seven members, appointed by the commissioner. The department committee is authorized (i) to determine if a proposed project is human subject research; and (ii) to review and approve any human research proposed, authorized, or conducted by the department, by any local agency, by any facility, or by any contractor.

B. All human research conducted or authorized by the department, local agency, facility, or contractor must be reviewed and approved by the department committee, except local agencies, facilities, or contractors collaborating with another organization on a research project may instead elect to utilize that organization's research review committee.

C. Members of the committee will be appointed to ensure the competent, complete, and professional review of human research. No member of the committee shall be directly involved in the proposed human research project or have administrative approval authority over the proposed research, except in connection with his responsibilities as a member of the committee. At least two members of the committee must be individuals whose primary concerns are in nonscientific or ethical areas (e.g., the clergy, lawyers).

D. The committee shall include at least two members who are not affiliated with and are not immediate family members of persons who are affiliated with the department.

E. No member of the committee shall participate in the committee's initial or continuing review of any project in which the member has a conflicting interest, except to provide information requested by the committee. The

committee has responsibility for determining whether a member has a conflict of interest. If necessary, the committee size shall be maintained by the appointment of a substitute representative to review a project where a member has a conflicting interest.

F. A committee may, at its discretion, invite individuals with competence in special areas to assist in the review of complex issues which require expertise beyond or in addition to that available on the committee. These individuals may not vote with the committee.

G. A quorum of the committee shall consist of a majority of its members.

H. The committee shall establish procedures and rules of operations necessary to fulfill the requirements of these regulations.

§ 7. Reporting

A. The department's research review committee shall report by December 15 of each year to the commissioner on activities of the committee during the year. The report shall include:

1. A description of each human research project reviewed and approved or disapproved;

2. Any significant deviations from proposals as approved;

3. A list of committee members, their qualifications for service on the committee, and their affiliation with the department, local agency, or facility; and

4. A copy of the minutes of any committee meetings conducted.

B. A local agency, facility or contractor participating in a human subject research project reviewed by another agency's research review committee shall report by December 15 of each year on such participation. The report shall include:

1. A description of each human research project in which the agency participated; and

2. A report on the results of the research after its conclusion.

C. The chairman of the department's committee shall report as soon as possible to the commissioner any violation of the research protocol which led the committee to either suspend or terminate the research.

D. The commissioner shall report at least annually to the Governor and General Assembly on the human research projects authorized or conducted by the department, local agency, facility, or contractor.

Proposed Regulations

E. Other reports may be required by the committee, as indicated in § 8 F.

§ 8. Review process.

A. Prior to the initiation of a human research project, a description of the proposed human research project shall be submitted to the department committee for review and approval, except for projects reviewed by another organization's committee. The description shall include a statement of the purpose of the proposed project and justification thereof, the criteria for inclusion of a participant in the research project, a description of what will be done to the participants, and the proposed informed consent statement.

B. No human research shall be conducted or authorized by the department unless the department committee has reviewed and approved the proposed human research project giving consideration to:

1. The necessity and utility of the research;
2. The adequacy of the description of the potential benefits and risks involved and the adequacy of the methodology of the research;
3. Whether the research presents more than a minimal risk to the subject;
4. Whether the rights and welfare of the participants involved are adequately protected;
5. Whether the risks to the participants are outweighed by the potential benefits to them;
6. Whether the voluntary informed consent is obtained by methods (including the written consent form) that are adequate and appropriate considering the participants' educational level and language of greatest fluency;
7. Whether the people proposing to supervise or conduct the research are appropriately competent and qualified; and
8. Whether the criteria for selection of participants is equitable.

C. The committee shall consider research proposals within 45 days after submission to the committee. In order for the research to be approved, it shall receive the approval of a majority of those members present at a meeting in which a quorum exists. A committee shall notify investigators in writing of its decision to approve or disapprove the proposed research activity or of modifications required to secure committee approval.

D. During the committee review of research projects, no personal identifiers of present or potential participants shall be presented or discussed.

E. A committee shall require a written description of the procedure to be followed when a participant has a complaint about a research project in which he is participating or has participated. All complaints shall be referred to the committee to determine if there has been a violation of the established protocol.

F. The committee shall require reports from approved research projects at least annually to ensure conformity with the approved proposal. The frequency of such reports shall be consistent with the nature and degree of risk of each research project. The committee shall also require a report from the research project at the conclusion of the project.

§ 9. Expedited review of human research participants.

A. The committee is authorized to conduct an expedited review of a human research project which involves no more than minimal risk to the participants if:

1. Another committee affiliated with another state department, local agency, licensed facility or institution has reviewed and approved the project; or
2. The review involves only minor changes in previously approved research and the changes occur during the approved project period.

B. The committee shall adopt a method for keeping all members advised of research proposals which have been approved under the procedure.

§ 10. Committee records.

A. Documentation of all committee activities shall be prepared and maintained and shall include the following:

1. Copies of all research proposals reviewed, evaluations that may accompany the proposals, approved sample consent documents, progress reports submitted by researchers, reports of injuries to participants, and correspondence related to the research project.
2. Minutes of committee meetings shall be in sufficient detail to show attendance at the meetings; actions taken by the committee; the vote on these actions, including the number of members voting for, against, and abstaining; the basis for requiring changes in or disapproving research and a written summary of the discussion of controversial issues and their resolution;
3. Records of continuing review activities;
4. A list of committee members; and
5. Written procedures for the committee.

§ 11. Applicability of federal policies.

Human research which is subject to policies and regulations for the protection of human subjects promulgated by any agency of the federal government shall be exempt from the provisions of these regulations, except for §§ 4 C and 7 B.

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 MEDICAL ASSISTANCE SERVICES (BOARD OF)

REGISTRAR'S NOTICE: This regulation is excluded from Article 2 of the Administrative Process Act in accordance with § 9-6.14:4.1 C 2 of the Code of Virginia, which excludes regulations that establish or prescribe agency organization, internal practice or procedures, including delegations of authority. The Department of Medical Assistance Services will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: VR 460-03-4.1921. Pediatric and Obstetric Services Maximum Payments.

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

Effective Date: July 1, 1993.

Summary:

The purpose of this plan amending action is to incorporate technical changes which have resulted from coding changes of the AMA and which conform to the Congressional mandate of OBRA '89 § 6402.

The section of the State Plan for Medical Assistance affected by this action is Attachment 4.19 B, Supplement 1.

Section 6402 of OBRA 89 mandated that states include the amounts of payments for certain obstetric and pediatric procedures in their state plans. Each state establishes its own payment levels for Medicaid services; however, Medicaid regulations (42 CFR 447.204) provide that payments must be sufficient to enlist enough providers so that covered services will be available to Medicaid beneficiaries to at least the extent that such services are available to the general population.

Attachment 4.19 B of the plan contains reimbursement methodologies for all covered services except for inpatient hospital and long-term care, which are covered in other plan attachments. This amendment modifies Supplement 1 to Attachment 4.19 B, providing obstetric and pediatric payment rates, in conformance with the OBRA 89 requirement.

In addition, DMAS uses the American Medical Association's (AMA) Physician's Current Procedural Terminology coding system for bills for physicians'

services. In order to conform its plan to the AMA coding structure, DMAS must technically modify the procedure codes' concomitant descriptions as contained in Supplement 1 to Attachment 4.19 B.

This regulatory action makes no fee changes but merely changes the coding convention used by DMAS. This amendment has no fiscal impact because the formula used in establishing the rates for the new codes allows for budget neutral application of fees for the evaluation and management codes. Current policy which requires that payments for immunizations not exceed the Medicaid fee on file for the drug at the time of the service remains in effect.

VR 460-03-4.1921. Pediatric and Obstetric Services Maximum Payments.

PEDIATRIC SERVICES

CPT-4 Code	Description	Payment
1. Evaluation and Management Services - Physician Services performed in a physician's office or in an outpatient facility		
NEW PATIENT		
99201	Problem focused history, examination, and straightforward medical decision making	\$ 24.00
99202	Expanded problem focused history, examination, straightforward medical decision making	28.00
99203	Detailed history, examination and straightforward medical decision making of moderate complexity	33.00
99204	Comprehensive history, examination, and medical decision making of moderate complexity	46.75
99205	Comprehensive history, examination and medical decision of high complexity	50.00
ESTABLISHED PATIENT		
99211	Minimal presenting problems	\$ 10.00
99212	Problem focused history, or examination, and straightforward medical decision making	19.00

Final Regulations

99213	Expanded problem focused history or examination, and medical decision of low complexity	26.50	shall not exceed the Medicaid fee on file for the drug at time of service.)
			** Vaccine supplied under contract with manufacturer.
99214	Detailed history, or examination, and medical decision making of moderate complexity	35.00	4. Preventive Medicine
			NEW PATIENT
99215	Comprehensive history, or examination and medical decision of high complexity	45.00	99381 Initial evaluation and management of a healthy individual requiring a comprehensive history, a comprehensive examination, the identification of risk factors, and the ordering of appropriate laboratory/diagnostic procedures; infant (age under 1 year) \$35.00
	2. Emergency Department Services for emergency care		
	NEW OR ESTABLISHED PATIENT		
99281	Problem focused history, examination and straightforward medical decision making	\$ 26.60	99382 Early childhood (age 1 through 4 years) 39.00
99282	Expanded problem focused history examination and medical decision making of low complexity	46.60	99383 Late childhood (age 5 through 11 years) 39.00
99283	Expanded problem focused history, examination, and medical making decision of low to moderate complexity	49.60	99384 Adolescent (age 12 through 17 years) 35.00
			ESTABLISHED PATIENT
99284	Detailed history, examination, and medical decision making of moderate complexity	57.30	99391 Periodic evaluation and management of a healthy individual requiring a comprehensive history, a comprehensive examination, the identification of risk factors, and the ordering of appropriate laboratory/diagnostic procedures; infant (age under 1 year) \$35.00
99285	Comprehensive history Comprehensive examination Medical decision making of high complexity	81.40	99392 Early childhood (age 1 through 4 years) 36.00
	3. Immunization Injections*		99393 Late childhood (age 5 through 11 years) 36.00
90701	Immunization, active; diphtheria and tetanus toxoids and pertussis vaccine (DTP)	\$ drug cost	99394 Adolescent (age 12 through 17 years) 31.00
90702	Diphtheria and tetanus toxoids (DT)	\$ drug cost	
			OBSTETRICAL SERVICES
90704	Mumps virus vaccine, live	\$ drug cost	1. Maternity Care and Delivery
90705	Measles virus vaccine, live, attenuated	\$ drug cost	INCISION
90706	Rubella virus vaccine, live	\$ drug cost	59020 Fetal oxytocin street test \$60.00
90707	** Measles, mumps and rubella virus vaccine, live	\$ drug cost	59025 Fetal non-stress test 50.00
90708	Measles and rubella virus vaccine, live	\$ drug cost	59030 Fetal scalp blood sampling 66.00
90709	Rubella and mumps virus vaccine, live	\$ drug cost	59050 Initiation and/or supervision of internal fetal monitoring during labor by consultant 50.00
90712	Poliovirus vaccine, live, oral (any type(s))	\$ drug cost	REPAIR
90737	Hemophilus influenza B	\$ drug cost	59300 Episiotomy or vaginal repair, by other than attending physician \$250.00
			DELIVERY, ANTEPARTUM AND POSTPARTUM CARE
	* (Note: Appropriate office visit may be billed in addition to the above immunization injections. Payment for immunizations		59400 Total ob. care (all-inclusive, "global" care) includes antepartum \$1,200.00

Final Regulations

care, vaginal delivery (with or without episiotomy, and/or forceps or breech delivery) and postpartum care

real time with image documentation (2D) with or without M-mode recording

59410 Vaginal delivery only (with or without episiotomy, forceps or breech delivery) including in-hospital postpartum care (separate procedure) 864.00

OBSTETRICAL SERVICES

59412 External cephalic version, with or without tocolysis \$250.00

59420 Antepartum care only (separate procedure) (will also accept appropriate evaluation and management codes) 300.00

59430 Postpartum care only (separate procedure) 36.00

CESAREAN SECTION

59510 Routine obstetric care including antepartum care, cesarean delivery, and postpartum care \$1,441.00

59515 Cesarean delivery only including postpartum care 1,134.00

59525 Subtotal or total hysterectomy after cesarean delivery 383.00

ABORTION

59812 Treatment of spontaneous abortion, any trimester, completed surgically \$475.00

59820 Treatment of missed abortion, completed surgically; first trimester 442.00

59830 Treatment of septic abortion completed surgically 229.15

2. Diagnostic Ultrasound

PELVIS

76805 Echography, pregnant uterus, B-scan and/or real time with image documentation; complete (complete fetal and maternal evaluation) \$90.00

76810 Complete (complete fetal and maternal evaluation), multiple gestation, after the first trimester 180.00

76815 Limited (gestation age,) heart beat, placental location, fetal position, or emergency in the delivery room) 60.00

76816 Follow-up or repeat 45.00

76818 Fetal biophysical profile 75.00

76825 Echocardiography, fetal, 90.00

DEPARTMENT OF SOCIAL SERVICES (STATE BOARD OF)

Title of Regulation: VR 615-01-48. General Relief Program - Deeming Income from Alien Sponsors.

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

Effective Date: April 21, 1993.

Summary:

This regulation requires that in determining sponsored aliens' eligibility for General Relief, the previously disregarded income and resources of sponsors be considered as available to the sponsored aliens for a period of three years following the aliens' entry into the United States as permanent residents.

VR 615-01-48. General Relief Program - Deeming Income from Alien Sponsors.

PART I. DEFINITIONS.

§ 1.1. Definitions.

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

"Affidavit of support" means a statement of a sponsor's income, resources, and willingness to support. It (Form I-134 or similar form) is filed with the Immigration and Naturalization Service by a United States resident who sponsors an alien seeking admission to the United States as a permanent resident. The affidavit is made for the purpose of assuring the United States government that the sponsored alien will not become a public charge in the United States.

"Aid to Families with Dependent Children" means the federal program administered by the Virginia Department of Social Services that provides support to a relative for eligible children.

"General Relief" means an optional program financed by state and local funds to provide maintenance or emergency assistance to individuals who do not qualify for aid in a federal category. The program is supervised by the state Department of Social Services and administered by local agencies.

"Immigration and Naturalization Service" means a branch of the United States Department of Justice delegated authority to enforce the Immigration and Nationality Act and all other laws relating to the

immigration and naturalization of aliens.

"Permanent resident status" means having been lawfully accorded the privilege of residing permanently in the United States as an immigrant.

"Sponsor" means a person, or any public or private agency or organization, that executed an affidavit of support or similar agreement on behalf of an alien as a condition of the alien's entry into the United States as a permanent resident.

"Sponsored alien" means an immigrant who, due to the likelihood of his becoming a public charge, would have been excluded from lawful admission into the United States. As a condition of this immigrant's admission, a person or public or private agency or organization executed an affidavit of support or similar agreement guaranteeing the federal, state, and local governments that the immigrant would not become a public charge.

"Standard of assistance" means the amount of reimbursable assistance based on the size of the assistance unit and the local department of social services group. Local agencies are placed in one of three groups based on shelter expenses in the area.

"Supplemental Security Income" means Title XVI of the Social Security Act which provides benefits to an aged, blind, or disabled individual based on financial need.

PART II. DEEMING OF SPONSOR'S INCOME AND RESOURCES.

§ 2.1. Three-year limit.

For a period of three years from the month the Immigration and Naturalization Service grants the alien permanent resident status, the income and resources of the sponsor and the sponsor's spouse, if they are living together, shall be considered to be the unearned income of the alien.

The spouse's income and resources will be counted even if the sponsor and spouse married after the agreement to sponsor was signed.

§ 2.2. Program ineligibility.

Any alien sponsored by a public or private agency or organization shall be ineligible for General Relief for a period of three years following entry unless the sponsored alien can provide documentation that the sponsor no longer exists or is unable to meet the alien's needs.

If a sponsored alien has been found ineligible for Aid to Families with Dependent Children or Supplemental Security Income due to sponsorship, eligibility for General Relief does not exist.

§ 2.3. Responsibility of alien.

A sponsored alien is responsible for obtaining the cooperation of his sponsor and supplying the local department of social services with any information and documentation necessary to determine the alien's eligibility for General Relief benefits.

§ 2.4. Income of sponsor deemed to a sponsored alien.

The gross amount (with certain deductions) of earned and unearned income of the sponsor and the sponsor's spouse, if living together, shall be considered available as unearned income available to the alien(s) being sponsored. Items that will be deducted from the sponsor's income are:

1. 20% of net earned income not exceeding \$175;
2. The standard of assistance (at 100% of need) for the sponsor and those individuals living in the household who the sponsor claims as dependents on his federal income tax statement excluding any members of the assistance unit;
3. Any amounts paid by the sponsor or the sponsor's spouse to individuals not living in the household who are claimed by him as dependents on his federal income tax statement; and
4. Any payments of alimony or child support for individuals not living in the household.

§ 2.5. Resources of sponsor deemed to a sponsored alien.

The resources of the sponsor and the sponsor's spouse determined to be available to the alien shall be the total amount of their nonexempt resources, as defined in the General Relief Program policy, reduced by \$1,500.

§ 2.6. Exception to deeming.

The deeming of a sponsor's income and resources is not applicable to any alien who:

1. Applied for General Relief prior to July 1, 1993;
2. Entered the United States as a refugee, parolee, or political asylee;
3. Is a Cuban or Haitian entrant;
4. Is sponsored by a person receiving Aid to Families with Dependent Children, Supplemental Security Income, or General Relief;
5. Is an Amerasian from Vietnam; or
6. Is the spouse of the sponsor.

§ 2.7. Sponsorship of more than one alien.

Final Regulations

If a person is the sponsor of two or more aliens, the income and resources of the sponsor and the sponsor's spouse, to the extent that they would be deemed the income and resources of any one of the aliens, shall be divided into equal shares among the sponsored aliens regardless of whether they are living together.

STATE CORPORATION COMMISSION

February 24, 1993

Administrative Letter 1993-5

TO: ALL COMPANIES LICENSED TO WRITE PRIVATE PASSENGER AUTOMOBILE AND/OR HOMEOWNERS INSURANCE IN VIRGINIA

RE: REVISIONS TO VA CP-19(2/93) AND VA CP-20(2/93)/ REVISIONS TO FILING PROCEDURES OF VA CP-12(12/90), VA CP-19 (2/93) AND VA CP-20(2/93)

In the early 1980s, the State Corporation Commission Bureau of Insurance (Bureau of Insurance) developed Competitive Pricing Forms to establish a rate level index system for private passenger automobile and homeowners insurance. Administrative letters have been issued to update and revise these forms as needed throughout the subsequent years. Premium information received is published in our Automobile and Homeowners Consumer's Guides.

At this time, we are amending Competitive Pricing Forms VA CP-19 and VA CP-20 to reflect certain editorial changes. The amended forms have a February 1993 edition date. The attached copies are to be reproduced for current and future use.

Administrative Letter 1990-21 dated December 19, 1990, established a procedure for submitting Competitive Pricing Forms annually. The Bureau of Insurance has now established the following new procedures to be effective immediately:

FILING PROCEDURES FOR RATES EFFECTIVE ON OR BEFORE APRIL 1, 1993

This letter is to notify you that the Bureau of Insurance is designating the next competitive pricing report to be due April 1, 1993. The enclosed transmittal form must be submitted on or before April 1, 1993 and must reflect rates for policies effective on and after April 1, 1993.

FILING PROCEDURES FOR RATES EFFECTIVE ON AND AFTER APRIL 2, 1993

With this letter, the Bureau of Insurance is withdrawing the procedures for annual submission of these forms.

Insurers will now be required to submit Competitive Pricing Forms with each rate filing. (The submission of the Transmittal Form will no longer be required).

Private passenger automobile and homeowners rate filings with policy effective dates on and after April 2, 1993, must include as part of the filing the applicable Competitive Pricing Form(s).

The Bureau of Insurance intends to publish interim supplements to the Sample Insurance Premium Tables in the Automobile Insurance Consumer's Guide, thus

continuing our commitment to consumer awareness and education.

We are not presently planning to publish a supplement to the Homeowners Consumer's Guide since only a small percentage of insurers offer homeowners policies with terms of less than one year.

However, to maintain consistency in filing procedures, we are requiring that all Competitive Pricing Forms be included with each rate filing made for policies effective on and after April 2, 1993.

/s/ Steven T. Foster
Commissioner of Insurance

RECEIVED
FEB 25 1993

Transmittal Form

Date: _____

*Rates Effective: _____

Company Name: _____

NAIC No.: _____

RE: VA CP-12 (12/90), VA CP-19 (2/93) and VA CP-20 (2/93)

Please return the completed VA CP-12 (12/90) and the VA CP-19 (2/93) and/or VA CP-20 (2/93) NO LATER THAN APRIL 1, 1993 TO:

Priscilla Gaulden
Senior Insurance Market Examiner
State Corporation Commission
Bureau of Insurance
Box 1157
Richmond, Virginia 23209
(804) 786-2460

*Use the effective date of your rates currently on file with the Bureau of Insurance

State Corporation Commission

COMPANY
VIRGINIA PRIVATE PASSENGER AUTOMOBILE INSURANCE PREMIUMS
RATES EFFECTIVE

*MODEL YEAR USED _____
OCN/SYMBOL USED _____

CLASSIFICATION RATING FACTORS	TERRITORY/CODE	BODILY INJURY	PROPERTY DAMAGE	MEDICAL EXPENSE BENEFITS	UNINSURED MOTORIST	COMPREHENSIVE	COLLISION	TOTAL
<u>Alexandria/</u>								
_____	Married Adult-Age 45							
_____	Unmarried Male-Age 20							
_____	Unmarried Female-Age 20							
<u>Norfolk/</u>								
_____	Married Adult-Age 45							
_____	Unmarried Male-Age 20							
_____	Unmarried Female-Age 20							
<u>Richmond/</u>								
_____	Married Adult-Age 45							
_____	Unmarried Male-Age 20							
_____	Unmarried Female-Age 20							
<u>Roanoke/</u>								
_____	Married Adult-Age 45							
_____	Unmarried Male-Age 20							
_____	Unmarried Female-Age 20							
<u>Charlotte County/</u>								
_____	Married Adult-Age 45							
_____	Unmarried Male-Age 20							
_____	Unmarried Female-Age 20							

(See Reverse Hereof for Instructions)
(Complete both sides)

* Use current model year. (Remember, model year changes October 1 to the next year. Any exception to the October 1 model year change should be clearly noted.)

VA CP-20 (2/93)

INSTRUCTIONS:

Report ANNUAL premiums for minimum liability coverage required by Virginia's financial responsibility laws; i.e., Bodily Injury limits of \$25,000/\$50,000, Property Damage limits of \$20,000, Uninsured Motorists coverage at minimum limits and Medical Expense Benefits coverage of \$2,000. Report ANNUAL physical damage premiums for a new, standard performance intermediate class car (OCN \$12,000, Age Group 1), with Bumper Discount, where applicable. Report Comprehensive premiums with a \$50 deductible. Report Collision premiums with a \$100 deductible.

Report premiums for risks who are owners or principal operators, who are accident and conviction free for the preceding three years, who have had driver training, who do not use their vehicles for business, who drive 12,000 miles a year and who drive to or from work 9 miles each way. (Report the married adult premiums for a risk whose vehicle is customarily operated by no one other than the named insured or spouse.) Do not apply any other rating rules or procedures.

- NOTE:
- IF THE COMPANY DOES NOT PROVIDE THE SPECIFIC COVERAGE REQUESTED, PLEASE CLEARLY NOTE THIS FACT BELOW* AND REPORT THE PREMIUM CHARGED FOR THE POLICY MOST NEARLY COMPARABLE TO THE ONE FOR WHICH PREMIUM DATA IS REQUESTED. FOR EXAMPLE, IF THE COMPANY DOES NOT OFFER A \$50 DEDUCTIBLE COMPREHENSIVE OR MINIMUM LIABILITY COVERAGE, REPORT THE PREMIUMS FOR THE MOST COMPARABLE DEDUCTIBLE OR LIMIT.
 - INCLUDE, BY SEPARATE ATTACHMENT, A SPECIFIC EXAMPLE OF THE METHOD OF CALCULATION USED TO COMPUTE THESE PREMIUMS. THE EXAMPLE SHOULD INCLUDE ALL THE STEPS NECESSARY TO COMPUTE THE FINAL PREMIUM, SUCH AS ROUNDING, APPLICATION OF FACTORS, ETC.

***COMPANY'S EXCEPTIONS:**

Form completed by: _____ Signature _____ Date Completed _____
_____ Title _____ Phone: _____

VA CP-20 (2/93)

State Corporation Commission

COMPANY
 VIRGINIA SPECIAL PACKAGE AUTOMOBILE POLICY INSURANCE PREMIUMS
 RATES EFFECTIVE

*MODEL YEAR USED _____
 DCN/SYMBOL USED _____

CLASSIFICATION RATING FACTORS	TERRITORY/CODE	SPECIAL PACKAGE AUTOMOBILE POLICY	UNINSURED MOTORISTS	COMPREHENSIVE	COLLISION	TOTAL
	<u>Alexandria/</u>					
_____		Married Adult-Age 45				
_____		Unmarried Male-Age 20				
_____		Unmarried Female-Age 20				
	<u>Norfolk/</u>					
_____		Married Adult-Age 45				
_____		Unmarried Male-Age 20				
_____		Unmarried Female-Age 20				
	<u>Richmond/</u>					
_____		Married Adult-Age 45				
_____		Unmarried Male-Age 20				
_____		Unmarried Female-Age 20				
	<u>Roanoke/</u>					
_____		Married Adult-Age 45				
_____		Unmarried Male-Age 20				
_____		Unmarried Female-Age 20				
	<u>Charlotte County/</u>					
_____		Married Adult-Age 45				
_____		Unmarried Male-Age 20				
_____		Unmarried Female-Age 20				

(See Reverse Hereof for Instructions)
 (Complete both sides)

* Use current model year. (Remember, model year changes October 1 to the next year. Any exception to the October 1 model year change should be clearly noted.)

VA CP-19 (2/93)

INSTRUCTIONS:

Report ANNUAL premiums for minimum Special Package Automobile Policy liability coverage required by Virginia's financial responsibility laws; i.e., SPAP-\$70,000 Single Limit with \$2,000 Medical Expense Benefits and \$1,000 Death Benefit and Uninsured Motorists coverage at minimum limits. Report ANNUAL Special Package Automobile Policy physical damage premiums for a new, standard performance Intermediate class car (DCN \$12,000, Age Group 1), with Bumper Discount, where applicable. Report Comprehensive premiums with a \$50 deductible. Report Collision premiums with a \$100 deductible.

Report premiums for risks who are owners or principal operators, who are accident and conviction free for the preceding three years, who have had driver training, who do not use their vehicles for business, who drive 12,000 miles a year and who drive to or from work 9 miles each way. (Report the married adult premium for a risk whose vehicle is customarily operated by no one other than the named insured or spouse.) Do not apply any other rating rules or procedures.

- NOTE:
1. IF THE COMPANY DOES NOT PROVIDE THE SPECIFIC COVERAGE REQUESTED, PLEASE CLEARLY NOTE THIS FACT BELOW AND REPORT THE PREMIUM CHARGED FOR THE POLICY MOST NEARLY COMPARABLE TO THE ONE FOR WHICH PREMIUM DATA IS REQUESTED. FOR EXAMPLE, IF THE COMPANY DOES NOT OFFER A \$50 DEDUCTIBLE COMPREHENSIVE, REPORT THE PREMIUMS FOR THE MOST COMPARABLE DEDUCTIBLE.
 2. INCLUDE, BY SEPARATE ATTACHMENT, A SPECIFIC EXAMPLE OF THE METHOD OF CALCULATION USED TO COMPUTE THESE PREMIUMS. THE EXAMPLE SHOULD INCLUDE ALL THE STEPS NECESSARY TO COMPUTE THE FINAL PREMIUM, SUCH AS ROUNDING, APPLICATION OF FACTORS, ETC.

***COMPANY'S EXCEPTIONS:**

Form completed by: _____ Signature _____ Date Completed: _____
 _____ Title _____ Phone: _____

VA CP-19 (2/93)

State Corporation Commission

* * * * *

AT RICHMOND, FEBRUARY 19, 1993

COMMONWEALTH OF VIRGINIA

At the relation of the CASE NO. MCA900050

STATE CORPORATION COMMISSION

Ex Parte: In re, Promulgation
of regulations relating to Road
Tax on Motor Carriers

DISMISSAL ORDER

IT APPEARING to the State Corporation Commission that the passage of the Intermodal Surface Transportation Efficiency Act of 1991 ("ISTEA") and requirements thereunder may conflict with various rules proposed in this case and further action on motor carrier road tax regulations should await the implementation of the mandated federal requirements; accordingly,

IT IS ORDERED:

(1) That this case be, and the same is hereby, dismissed; and

(2) That an attested copy of this Order be mailed by the Clerk of the Commission to all parties who have filed written responses, comments, objections or requests for hearings in this proceeding, as shown by Appendix A attached hereto.

* * * * *

AT RICHMOND, FEBRUARY 22, 1993

COMMONWEALTH OF VIRGINIA

At the relation of the CASE NO. PUE900070

STATE CORPORATION COMMISSION

Ex Parte: In re, Investigation of
conservation and load management programs

ORDER INVITING COMMENT

On March 27, 1992 the Commission issued a Final Order pursuant to its investigation of conservation and load management ("CLM") programs. Therein, among other things, the Commission found that the test or tests which should be applied to judge whether a conservation or load management program is cost effective was a fundamental question which needed to be addressed. The Commission observed that it must adopt uniform measures against which to evaluate programs designed to conserve energy or better balance a utility's load. However, the Commission found that the advantages and disadvantages of various assessment methods was not adequately developed in the

record amassed at that point. Accordingly, the Commission directed the Staff to organize a working group to develop recommendations on an appropriate cost/benefit method or methods to estimate the effectiveness of CLM programs and further directed that the Staff should submit an interim report to the Commission on or before July 31, 1992. That interim report was submitted and identified the task force which had been organized by the Staff to facilitate the required analysis. Staff also identified the approach it intended to take to conduct that study.

The Staff submitted its Report on the Cost/Benefit Analysis of Demand Side Management Programs on February 9, 1993. Therein the Staff stated that a multi-perspective approach to determining the cost and benefits of demand side management programs is needed in order to evaluate the full impact of programs on a utility and its customers. Staff stated that estimates of costs and benefits from many different perspectives will be needed by the Commission to make its determination of whether a particular program or set of programs is in the public interest. Staff proposed that the quantitative cost/benefit analysis be made from at least four perspectives and should accompany all applications for approval of programs. Staff stated that programs should thus be evaluated from the perspective of the program participant, the non-participant, the utility and all ratepayers.

Staff also suggested minimum guidelines for data development and modeling assumptions to be used in preparing cost/benefit tests. Staff addressed the circumstances in which the effects on alternative energy suppliers should be considered. Staff stressed the importance of verification of program impacts and encouraged the development of state-of-the-art techniques to verify the savings and load impacts associated with programs. Staff also proposed that utility experiments or pilot programs, other than those involving promotional allowances or having associated rates, should be allowed to proceed without formal Commission approval.

NOW THE COMMISSION having considered the Staff report and the attached comments of the task force members is of the opinion and finds that all parties to this proceeding should be invited to comment on the Staff report and that an oral argument should be scheduled. Accordingly,

IT IS ORDERED:

(1) That any person may file written comments on the Staff report of cost/benefit analysis of demand side management programs provided an original and fifteen (15) copies of the comments are filed no later than March 26, 1993;

(2) That any participant which files written comments may also participate in oral argument provided its intent to participate therein is expressed in its written comments; and

(3) That an oral argument on the recommendations contained in that report shall and hereby is scheduled for April 15, 1993 at 10:00 a.m. in the Commission's Courtroom on the 2nd Floor of the Tyler Building, 1300 East Main Street, Richmond, Virginia.

Commissioner Moore is not participating in this proceeding.

AN ATTESTED COPY of this order shall be mailed by the Clerk of the Commission to Edward L. Petrini, Office of the Attorney General, 101 North 8th Street, Richmond, Virginia 23219; Allen Glover, Esquire, Appalachian Power Company, P.O. Box 14125, Roanoke, Virginia 24038-4125; Robert M. Hewett, Vice President, Old Dominion Power Company, One Quality Street, Lexington, Kentucky 40507; Robert B. Murdock, Esquire, Potomac Edison Company, Downsville Pike, Hagerstown, Maryland 21740; A. Hays Butler, Esquire, Delmarva Power and Light Company, P.O. Box 231, Wilmington, Delaware 19899; Kendrick R. Riggs, Esquire, Virginia Electric and Power Company, P.O. Box 26666, Richmond, Virginia 23261; Donald A. Fickennscher, Virginia Natural Gas, 5010 E. Virginia Beach Boulevard, Norfolk, Virginia 23502-3488; Donald R. Hayes, Esquire, Northern Virginia Natural Gas, 6801 Industrial Road, Springfield, Virginia 22151; Mark G. Thessin, United Cities Gas Company, 5300 Maryland Way, Brentwood, Tennessee 37027; Stephen H. Watts, II, Esquire, McGuire, Woods, Battle & Boothe, One James Center, Richmond, Virginia 23219; Kenworth E. Lion, Jr., Esquire, Virginia-Maryland-Delaware Association, 4201 Dominion Boulevard, Suite 200, Glen Allen, Virginia 23060; Richard A. Parrish, Southern Environmental Law Center, 201 West Main Street, Suite 14, Charlottesville, Virginia 22901; Mark J. Lafratta, Esquire, Mays & Valentine, P.O. Box 1122, Richmond, Virginia 23208-1122; Elizabeth H. Haskell, Commonwealth of Virginia, Office of the Governor, Richmond, Virginia 23219; James C. Dimitri, Esquire, Virginia Committee for Fair Utility Act, 1200 Mutual Building, Richmond, Virginia 23219; Douglas A. Ames, Transphase Systems, Inc., 800 MidAtlantic Drive, Suite 2015, Mount Laurel, New Jersey 08054; S. Lynn Sutcliffe, Sycom Enterprises, 7475 Wisconsin Avenue, 6th Floor, Bethesda, Maryland 20814; Lori Marsh, Virginia Cooperative Extension Services, VPI & State University, Blacksburg, Virginia 24061-0512; Piedmont Environmental Council, 28-C Main Street, P.O. Box 460, Warrenton, Virginia 22186; Sierra Club-Virginia Chapter, P.O. Box 14648, Richmond, Virginia 23221-0648; William B. Grant, Energy Conservation Commission, 803 Marlbank Drive, Yorktown, Virginia 23692-4353; Patricia J. Devlin, Department of Consumer Affairs, 3959 Pender Drive, Fairfax, Virginia 22030; Neal D. Emerald, Virginia Wildlife Federation, 4033 Poplar Street, Fairfax, Virginia 22030; Stephen M. Ayres, American Lung Association of Virginia, P.O. Box 7065, Richmond, Virginia 23221-0065; Dubose Egleston, Jr., Council of Trout Unlimited, P.O. Box 838, Waynesboro, Virginia 22980; Virginia Citizen Action, 1531 West Main Street, 2nd Floor, Richmond, Virginia 23220; Eileen B. Claussen, Atmospheric and Indoor Air Program, U. S. Environmental Protection Agency, Washington, D.C.

20460; Daniel Lashof, Natural Resources Defense Council, 1350 New York Avenue, N.W., Washington, D.C. 20005; and to the Commission's Divisions of Energy Regulation, Accounting and Finance and Economics and Finance.

GENERAL NOTICES/ERRATA

Symbol Key †

† Indicates entries since last publication of the Virginia Register

GENERAL NOTICES

NOTICE

Notices of Intended Regulatory Action are published as a separate section at the beginning of each issue of the Virginia Register.

Notice to the Public

RT Associates has published a Virginia Register Deskbook, a cumulative index of Volumes I through 8 (Issue 13). For more information contact RT Associates, P.O. Box 36416, Baltimore, Maryland 21286.

DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

† Division Administration Directive Number: 79-1

Methods Prescribed or Approved for Animal Euthanasia and Competency Certification Requirements

Effective: February 8, 1993

I. Purpose

This Directive sets forth methods that are currently prescribed and approved by the State Veterinarian for the euthanasia of animals by any person pursuant to the provisions of Title 3.1, Chapter 27.4, of the Code of Virginia (1950), as amended.

II. Authority

Title 3.1, Chapter 27.4, Article 4, § 3.1-796.96 of the Code of Virginia states, in part, "Any animal destroyed pursuant to the provisions of this chapter shall be euthanized by one of the methods prescribed or approved by the State Veterinarian."

Title 54.1, Chapter 34, § 54.1-3425 of the Code of Virginia states, in part, that the Board of Pharmacy "may issue, upon such terms and conditions as it finds proper, to any humane society making application, a limited permit only for the purpose of buying, possessing, and using any drug approved by the State Veterinarian for the purpose of euthanizing injured, sick, homeless, and unwanted domestic pets and animals."

III. Approved methods

All euthanasia must be performed humanely by a competency-certified individual using one of the following:

A. Routine Euthanasia

All situations; possible exceptions indicated under Emergency Euthanasia.

1. Sodium Pentobarbital, with or without lidocaine - humanely administered intravenously or intraperitoneally, with or without prior sedation by an approved pre-euthanasia method. Intracardiac administration may be used only when the animal is anesthetized or comatose. (See Appendix B for dosages and further details.)

2. Carbon Monoxide Gas - humanely administered, commercial-grade gas dispensed from a cylinder into an appropriately constructed and functioning chamber, with or without prior sedation of the animal with acepromazine (see under pre-euthanasia). NOT APPROVED FOR YOUNG ANIMALS, PUPPIES OR KITTENS UNDER 8 WEEKS OF AGE. (See Appendix C for chamber and operating requirements and further details.)

3. Drugs and/or methods considered and recommended as humane by the most recent Report of the American Veterinary Medical Association's Panel on Euthanasia, but only if administered humanely by or under the direct supervision (ie., in the immediate presence) of a licensed veterinarian.

B. Emergency Euthanasia

When euthanasia is required, no other method of routine euthanasia is possible, and all other conditions for use of the following methods are met.

1. Sodium Pentobarbital, with or without lidocaine (See Appendix B for routes, dosages and further details.)

Recommend the legal provision and use of sodium pentobarbital by animal wardens, animal control officers or other officers for the necessary euthanasia of critically ill or critically injured animals for humane purposes in field situations pursuant to § 3.1-796.96 or § 3.1-796.115 of the Code of Virginia. Consult the Virginia Board of Pharmacy for rules and regulations governing the legal procurement, storage and use of this drug in field situations.

2. Firearms

Approved for use only when all of the following conditions are met:

a. Euthanasia is performed pursuant to:

(1) § 3.1-796.98 when an animal is "showing active signs of rabies or suspected of having rabies" and for which "confinement is impossible or impracticable," or

(2) § 3.1-796.116 when dogs are "in the act of killing or injuring livestock or poultry."

b. Accepted or approved methods of humane capture have been reasonably attempted and exhausted, have failed, or are not possible (e.g., when time and physical constraints in emergency situations negate capture as a viable option, as when a dog is in the act of killing or injuring livestock or poultry, or is placing the public or officer in immediate, life-threatening danger as in the case of an animal showing active signs of rabies) and capture is impracticable;

c. Conditions permit the safe utilization and discharge of a rifle or pistol without jeopardy to the public or other non-targeted animals;

d. All local and state laws, rules and regulations or ordinances governing the use of firearms are followed;

e. Euthanasia is performed by a person that is trained and competency-certified in the:

(1) Use of the firearm to be used,

(2) Accurate placement of the projectile (i.e., the bullet) in the brain or heart* of the animal at the appropriate location for the species so as to cause instant unconsciousness or death.

*Note: Only for animals in field situations in which locating and hitting the brain of the animal by gunshot is not possible or is inappropriate (as in the case of a rabid animal for which the intact brain may be required).

f. Any animal that can reasonably be considered to be, or is capable of being, under the direct control or custody of the animal warden/control officer (including critically ill, critically injured or unweaned animals) are to be euthanized only by means of an approved method of routine euthanasia, i.e., sodium pentobarbital or carbon monoxide, not by the use of firearms.

C. Pre-Euthanasia

The following methods are approved for use ONLY as a means of preliminary sedation of an animal in preparation for and as an aid in the humane euthanasia of an animal, but NOT for use as the primary means of euthanasia.

1. Acepromazine Maleate

Administered intramuscularly, subcutaneously or orally. See Appendix D for dosages and further details.

Note: Do not use this drug in animals (especially cats) that have been given or been exposed to organophosphates such as insecticides, dips, etc. because this drug may potentiate such poisons.

2. Xylazine Hydrochloride (e.g., trade name: Rompun)

Administered intramuscularly (in dogs and cats) or subcutaneously (in dogs only). See Appendix D for dosages and further details.

3. Ketamine Hydrochloride-Promazine Hydrochloride-Aminopentamide Hydrogen Sulfate Combination (e.g., trade name: Ketaset-Plus)

For cats only - administered intramuscularly only. See Appendix D for dosages and further details.

4. Sodium Pentobarbital, with or without lidocaine

Administered intravenously or intraperitoneally. See Appendix D for dosages and further details.

IV. General considerations for euthanasia

A. According to the 1993 Report of the American Veterinary Medical Association's Panel on Euthanasia, "The need to minimize animal distress, including fear, anxiety, and apprehension, must be considered in determining the method of euthanasia. Distress vocalizations, fearful behavior, and release of certain odors or pheromones by a frightened animal may cause anxiety and apprehension in other animals. Therefore, whenever possible, other animals should not be present when euthanasia is performed, especially euthanasia of the same species."

B. According to § 9 B of VR 115-02-09, issued pursuant to § 3.1-796.96 of the Code of Virginia, after euthanasia of an animal, death must be positively confirmed before disposal of the carcass. Therefore, each animal is to be carefully examined for:

1. Lack of heartbeat*,

2. Lack of respiration*, and

3. Lack of corneal (i.e., eye) and/or toe-pinch reflexes

*The use of a stethoscope to check for lack of heartbeat and respiration is quick, inexpensive, easy to

General Notices/Errata

learn (suggest learning from a licensed veterinarian), more reliable than visual observation or palpation of the thorax, and should be used.

C. The approval of any drug, drug combination, euthanizing agent, method of euthanasia or pre-euthanasia medication does not sanction the procurement or use of such drugs, agents or methods by any person in violation of state or federal laws.

V. Competency certification requirements

Detailed information on the competency certification requirements can be found in the following:

- A. General Provisions - Appendix A
- B. Sodium Pentobarbital - Appendix B
- C. Carbon Monoxide - Appendix C
- D. Pre-Euthanasia Methods - Appendix D

VI. Approval of additional methods and procedures

Advances in animal euthanasia research will be continually monitored by the Office of the State Veterinarian, and those methods which are proved to be acceptable will be added to the approved list.

Local authorities or individuals seeking approval of specific alternative methods of animal euthanasia may submit a written request for consideration of the proposal to the:

State Veterinarian/Director
VDACS, Division of Animal Health
P. O. Box 1163
Richmond, Virginia 23209
Phone: 804-786-2481

The request is to include a detailed explanation of the proposed alternate method, substantive justification for the request, substantive reasons why the currently prescribed or approved methods cannot be used and how the proposed alternative will resolve the reasons/problems, and sufficient objective and supportable evidence that the proposed alternative method is at least as humane as the currently prescribed or approved methods of euthanasia identified in this directive.

Appendix A

General Provisions

A. Any animal euthanized is to be euthanized only by a person or by persons that have been certified* in writing by a Virginia-licensed veterinarian or other qualified individual as being properly trained and competent in the humane restraint and euthanasia of animals by the specific approved method(s) and euthanasia agent(s) used.

*Note: Licensed veterinarians are exempted from this provision, having their competency certified by their Virginia license.

Such written certification of competency is to:

1. Indicate that, at a specified point in time (i.e., date), the individual (specified by their full name):

a. Was instructed by an appropriately qualified individual (identified by full name and credentials) in the proper humane restraint and euthanasia of animals, using the approved method(s) and euthanasia agent(s) specified;

b. Demonstrated to the instructor/certifying veterinarian:

(1) An understanding of the requirements of this directive;

(2) Competency in the humane restraint of animals for the approved method(s) and euthanasia agent(s) to be used;

(3) Competency in determining the concentration and the appropriate dosage and rate of administration of the approved pre-euthanasia and/or euthanasia agent used;

(4) Competency in humanely administering the specified approved pre-euthanasia and/or euthanasia agent(s) via approved routes of administration;

(5) Competency in properly and accurately determining the death of an animal by the lack of a detectable:

- Heartbeat (by the use of a stethoscope and by thoracic palpation),

- Respiration (by use of a stethoscope and by thoracic palpation), and

- Corneal reflex and toe-pinch reflex.

2. Be signed and dated by the licensed veterinarian attesting to (i.e., "certifying") the individual's demonstrated competency at that point in time;

3. Be kept on file at the animal facility as a matter of public record;

4. Be copied to the Office of the State Veterinarian for file, reference and public information; and

5. Be renewed at least every 3 years.

Appendix B

Sodium Pentobarbital, with or without lidocaine, is the

euthanasia agent of choice and is recommended above all others at this time.

General information and requirements

A. Authorization to procure and use sodium pentobarbital (with or without lidocaine) requires registration with the:

1. Drug Enforcement Agency (DEA)
Washington Field Division, Room 2558
400 6th Street, S.W.
Washington, DC 20024
Phone: 202-254-8255 or 804-771-8163
2. Virginia Department of Health Professions
Board of Pharmacy
6606 West Broad Street
Richmond, Virginia 23230
Phone: 804-662-9939

B. Legal considerations regarding sodium pentobarbital.

1. According to the Board of Pharmacy, § 54.1-3415 of the Code of Virginia authorizes animal control officers/animal wardens and law-enforcement officers "...in the employ of the United States government or of any state, territorial, district, county, municipal, or insular government..." to purchase, receive or possess any approved euthanasia drug for use in the lawful euthanasia of animals "...by reason of his official duties."

2. According to § 54.1-3425 of the Code of Virginia, the Board of Pharmacy "may issue, upon such terms and conditions as it finds proper, to any humane society making application, a limited permit only for the purpose of buying, possessing, and using any drug approved by the State Veterinarian for the purpose of euthanizing injured, sick, homeless, and unwanted domestic pets and animals."

C. Sodium pentobarbital, in a concentration of not less than 5 grains of sodium pentobarbital per cubic centimeter (i.e., per cc) of water, is to be administered by hypodermic syringe and needle directly into the bloodstream or peritoneal cavity of a properly restrained animal.

D. Restraint and injection is to be performed by two trained individuals; one to restrain the animal and the other competency-certified to administer the drug(s).

E. General certification requirements

Sodium Pentobarbital, with or without lidocaine

Certified competency and training for use of this drug is to include a demonstrated:

1. Knowledge of the requirements of this directive for its use; and

2. Ability to correctly determine the:

- a. Concentration of the euthanasia solution used; and
- b. Euthanasia dose of the euthanasia solution used.
- c. Correct gauge of hypodermic needle to be used (e.g., in a puppy, kitten or other young animal, in animals under 20 pounds, in 20 to 35 pound animals, in 35 to 50 pound animals, and in animals weighing more than 50 pounds);

F. Intravenous administration is the preferred route of administration.

1. Intravenous administration is to be performed only:

a. By an operator who is properly trained and competency-certified in intravenous administration of the drug into the jugular vein, cephalic vein, saphenous vein, femoral vein (cats only; not for dogs) or any other readily accessible and appropriate venous site for the species of animal being euthanized;

b. When the animal is tractable and properly restrained without undue stress; and

c. When a vein is readily accessible.

2. Generally, a one-inch, 20- or 22-gauge hypodermic needle is used for injection in dogs weighing 20 or more pounds. Intravenous injection of smaller dogs, cats, kittens, and puppies requires increased expertise and the use of a smaller gauge (e.g., a 24-gauge), one-inch hypodermic needle. However, the smaller gauge needles, such as 24-gauge, makes injection of the sodium pentobarbital through the needle difficult and may cause the needle hub to disconnect from the syringe during injection. Therefore, use of a 24-gauge needle which screws onto the syringe and slow, steady injection may be needed for small animals. In all cases, the gauge or size of the needle used must be the appropriate size (i.e., not too large or small) for the size of the vein being injected.

3. Recommend the use of eccentric-hubbed syringes for increased ease of inserting the needle into an animal's vein.

4. Pre-euthanasia medication may be administered (See Section III. C.)

a. Before intravenous administration of the euthanasia drug, sedation or anesthetization of the animal with an approved pre-euthanasia medication may be performed and may be needed, especially in fractious, vicious or intractable animals, or in animals with veins that are difficult to identify for injection.

General Notices/Errata

b. Such pre-euthanasia sedation or anesthetization is to be performed only by individuals who are properly trained and competency-certified in the use and administration of the approved pre-euthanasia medications.

5. General certification requirements

Intravenous Administration

Certified competency training for use of this method of administration is to include a demonstrated ability to:

- a. Properly and humanely restrain an animal for injection into the jugular, cephalic, saphenous and (in the cat only) femoral vein; and
- b. Correctly locate, and humanely inject into, the:
 - (1) Jugular vein,
 - (2) Cephalic vein,
 - (3) Saphenous vein, and
 - (4) Femoral vein (for the cat only).

G. Intraperitoneal injection may be a preferred route of injection in cats, kittens, small dogs (under 20 lbs), puppies, birds and other small animals, or for animals that have small, collapsed or difficult to inject veins.

1. Intraperitoneal injection is to be performed only:

- a. By a person who is properly trained and competency-certified in the procedure, and
 - b. When the animal is properly restrained.
2. The usual injection site is approximately one-inch behind the umbilicus on the midline.
3. Generally, a one-inch, 22- to 24-gauge hypodermic needle (see § F. 2., caution regarding use of 24-gauge needles) may be used in animals weighing under 10 pounds; a one-inch, 22-gauge needle in animals weighing 10 to 25 pounds; and a one-inch, 20-gauge needle in animals weighing 25-45 pounds, and 18- to 20-gauge needle in animals over 45 pounds. In each case, the size and gauge of the needle must be appropriate for the size of the animal.
4. After intraperitoneal administration of the drug(s), the animal is to be placed in a safe cage or run (preferably in a quiet area) and monitored so that the animal does not inadvertently injure itself by stumbling or falling as unconsciousness develops. The time from injection to unconsciousness to death will differ from animal to animal.

5. The drug is gradually absorbed through the peritoneum. Therefore, after intraperitoneal injection, the animal gradually enters deeper planes of anesthesia as increasing amounts of the drug enters the bloodstream. Consequently, 30 minutes or more may be required before sufficient drug is absorbed to induce death. However, the mode of action to induce death is the same as for intravenous administration.

6. Because of the slow absorption from the peritoneal cavity, and the variability of metabolism in various animals, it is strongly recommended that, once the animal is "down," (i.e., sedated, anesthetized or unconscious), that the animal be given a "follow-up" lethal injection of sodium pentobarbital to ensure death.

7. General certification requirements

Intraperitoneal administration

Certified competency training for use of this method of administration is to include a demonstrated ability to:

- a. Properly and humanely restrain an animal for injection into the peritoneal cavity;
- b. Correctly locate, and humanely inject into, the peritoneal cavity approximately one-inch behind the umbilicus on the midline.

H. Intracardiac administration is not approved for use, unless the animal is fully anesthetized, comatose or unconscious.

1. The animal is to be properly and humanely restrained, and the heart must be penetrated with one thrust of the hypodermic needle.
2. Competency certification to use this method of administration is to include a demonstrated ability to:
 - a. Properly and humanely restrain an animal for intracardiac injection;
 - b. Correctly locate the heart for humane injection in cats, puppies, kittens and other young animals as well as in small (less than 20 pounds), medium (20 to 40 pounds) and large animals (greater than 40 pounds);
 - c. Correctly determine and select the appropriate gauge and length of hypodermic needle for use in young, small, medium and large animals;
 - d. Properly and humanely penetrate (i.e., inject) the heart of an animal with one thrust of a hypodermic needle.

Appendix C

Carbon Monoxide

Minimum requirements for use

A. Euthanasia of animals with carbon monoxide is to be performed only:

1. By a person who is properly trained and competency-certified in the use of this method of euthanasia.
2. Using a properly constructed and maintained chamber.
3. In accordance with all the provisions of this Directive.

B. The chamber must:

1. Be constructed of durable, easily cleanable material;
2. Have functioning, internal lighting and at least one clean and transparent viewport (i.e., window), both of which are to be used by the operator of the chamber to directly observe and monitor the animals during euthanasia to ensure that euthanasia is occurring properly and humanely;
3. Be properly sealed, with such seals properly maintained to enable at least a 6% concentration of the gas to be attained in the chamber within 20 seconds, and to maintain this chamber concentration of the gas until death has occurred.

C. Only commercial-grade carbon monoxide gas dispensed from a cylinder shall be used.

D. The commercial-grade gas shall be dispensed from a cylinder into an appropriately constructed, sealed and maintained carbon monoxide chamber at a pressure and rate that achieves a 6% concentration of the gas within the chamber within 20 seconds.

E. The carbon monoxide gas and chamber is only to be stored and used in a well-ventilated area where the toxic hazards of gas exposure to the operator, to pound/shelter personnel and to pound/shelter animals not intended to be immediately euthanized will be avoided.

F. Pre-euthanasia sedation with acepromazine maleate, given intramuscularly (see Appendix D.), may be performed in dogs and cats 20 minutes prior to subjecting the animal(s) to carbon monoxide euthanasia.

*According to Drs. A. Dallaire and A. Chalifoux in their report on the "Physiologic and Behavioral Evaluation of Carbon Monoxide Euthanasia of Adult Dogs - Premedication of Dogs with Acepromazine or Pentazocine Before Euthanasia with Carbon Monoxide" (Canadian Journal of Comparative Medicine; 1985; 49:171-178):

Acepromazine (at a dosage of 0.3 mg/lb. of body weight) ... reduced by 25% ... the number of (mongrel) dogs that showed vocalization and agitation. In acepromazine premedicated dogs, the duration of these signs was significantly diminished and sphincter relaxation did not occur in more than 50% of the cases. Furthermore, with the use of acepromazine, no significant peaks or drastic drops were noticed in the heart and respiratory rates and in the arterial blood pressure. These manifestations are usually related to stress. ... Acepromazine pre-treatment significantly reduced

(1) The number of dogs showing behavioral manifestations (33.3%) and

(2) The duration of the behavioral manifestations (39.8%).

... In light of these results, it is recommended to premedicate dogs with acepromazine before submitting them to euthanasia by carbon monoxide."

G. Only compatible animals of the same size and species shall be placed into the chamber together.

H. Animals shall not be crowded together into the chamber (i.e., each animal shall be allowed sufficient space to stand up, sit down and turn around freely using normal body movements and without having to touch another animal in the chamber to do so).

I. Animals to be euthanized shall not be placed into the chamber with other animals that have already been euthanized.

J. Each cat shall be placed into the chamber in a separate, lightweight, open-wire cage with a solid, metal bottom.

K. The animal(s) should become unconscious within 45 to 60 seconds, and death should occur within 2 to 4 minutes.

*Note: Some reflex movements and sounds (vocalizations) may occur from the unconscious animals; these vocalizations and movements, made while the animal is passing through what is often called Stage II of anesthesia, should be differentiated from, and should not be confused with, conscious struggling.

L. Animals should be left in the chamber at least 10 minutes after death has occurred before the chamber is opened.

M. The operator should open the chamber only in a well-ventilated area, and should leave the animals another 10 minutes after the chamber is opened.

N. Animals must be carefully examined to ensure that death has indeed occurred.

General Notices/Errata

O. General certification requirements

Carbon Monoxide

Certified competency training in the use of this method of euthanasia is to include a demonstrated:

1. Understanding of the provisions of Directive 79-1 pertaining to the use of this method of euthanasia;
2. Understanding of the hazards associated with the use of this method and appropriate precautions to be taken when this method of euthanasia is performed;
3. Ability to properly and correctly determine and monitor the rate of flow and concentration of carbon monoxide in the chamber;
4. Ability to correctly operate the chamber;
5. Ability to properly and humanely euthanize animals with carbon monoxide; and
6. Ability to correctly evaluate and determine when the animal has been rendered unconscious and has died;

(Revised 2/2/93)

APPENDIX D

APPROVED PRE-EUTHANASIA METHODS

A. *NOTE: These methods are not approved as a primary means of euthanasia but only as a means of preliminary sedation to aid in the humane euthanasia of an animal:

APPROVED DRUG*	SPECIES APPROVED FOR USE IN*	ROUTE OF ADMINISTRATION*	DOSAGE
Acepromazine maleate	Dogs	Intramuscular or Subcutaneous	0.25 to 0.5 mg/lb.
		Orally	0.25 to 1 mg/lb.
	Cats	Intramuscular or Subcutaneous	0.5 to 1 mg/lb.
		Orally	0.5 to 1 mg/lb.
Xylazine hydrochloride	Dogs	Intramuscular or Subcutaneous	1mg/lb.*
	*Less than 50 lbs.		
	More than 50 lbs.	Intramuscular	0.5 mg/lb.
Ketamine hydrochloride	Cats	Intramuscular	1 mg/lb.
	Non-human primates	Intramuscular	5 to 15 mg/lb.
Ketamine HCL, Promazine HCL, and Aminopentamide hydroqen sulfate combination (ie., Ketaset-Plus)	Cats	Intramuscular	3 to 15 mg/lb.
			15 to 20 mg/lb.
Sodium Pentobarbital** (with or without lidocaine)	Any animal	Intravenous	0.2 cc/10 lbs.**
	Young, small, fractious, ill or injured animals	Intraperitoneal	0.8cc/10lbs.**

*Species, routes and dosages approved by the FDA and listed in the manufacturers' recommendations.

**Assuming the use of a 5 grain/ml. concentration of sodium pentobarbital.

B. Pre-Euthanasia sedation is to be administered only:

1. By individuals that are properly trained and competency-certified to use and administer the approved pre-euthanasia drugs;
2. In the species in which the FDA has approved the drug(s) for use;
3. Via an approved route of administration for the species being given the approved drug; and
4. When the animal is being properly and humanely restrained by a person who is trained in the proper restraint of the animal for injection via the approved route of administration to be utilized.

C. General certification requirements

Pre-euthanasia methods

Certified competency training is to include a demonstrated:

1. Knowledge of the requirements of this Directive regarding the use of the approved pre-euthanasia drugs;
2. Ability to correctly determine the:
 - a. Concentration of the approved pre-euthanasia drug to be used;
 - b. Dose of the approved pre-euthanasia drug required; and
 - c. Ability to properly and humanely administer the drug via the approved route(s) of administration to be used.

Division Administration Directive Number 83-1

Approved Capture Drugs and Drug Administering Equipment

Effective: February 8, 1993

I. Purpose

This Directive sets forth capture drugs and drug administering equipment approved by the State Veterinarian for use in the capture of companion animals by animal wardens and other officers as defined in § 3.1-796.66 of the Comprehensive Animal Laws (i.e., Title 3.1, Chapter 27.4 of the Code of Virginia).

II. Authority

Title 3.1, Chapter 27.4, § 3.1-796.119 of the Code of Virginia states, in part, "All drugs and drug administering equipment used by animal wardens or other officers to

capture companion animals pursuant to this chapter shall have been approved by the State Veterinarian."

III. Approved Drugs

The following drugs are approved for use in the capture of companion animals only when: (i) the drug is administered by individuals appropriately trained and competency-certified to humanely administer the drug; (ii) the drug is used only in a species in which the U.S. Food and Drug Administration (FDA) has approved the drug for use; and (iii) the drug is administered via an approved route of administration and in accordance with the manufacturer's recommendations. (See Appendix A for further details.)

A. Acepromazine maleate

Administered orally (tablet form only), subcutaneously, intramuscularly, or intravenously. (See Appendix A for further details.)

*Do not use in animals (especially cats) potentially exposed to organophosphates such as insecticides, dips, or flea collars because this drug may potentiate such poisons.

Xylazine hydrochloride (trade name: Rompun)

Administered intramuscularly only. (See Appendix A for further details.)

Ketamine Hydrochloride

Administered intramuscularly only.

*Note: This drug is approved by the FDA for use only in cats and nonhuman primates. (See Appendix A for further details.)

D. Ketamine hydrochloride-promazine hydrochloride-aminopentamide-hydrogen sulfate combination (trade name: Ketaset-Plus)

Administered intramuscularly only.

*Note: this drug is approved by the U.S. FDA for use only in cats and nonhuman primates. (See Appendix A for further details.)

E. Drugs, methods, or both prescribed by a licensed veterinarian for use in the species involved, but only if performed by or under the direct and immediate supervision of the licensed veterinarian so prescribing the method.

Approved Drug Administering Equipment*

Equipment manufactured by the following named firms is approved for the humane capture of companion animals on condition that:

General Notices/Errata

A. The users of the equipment are appropriately trained in the proper and humane use of the approved capture equipment;

B. The users of the equipment follow the operating instructions prescribed by the manufacturer of the equipment;

C. The equipment is well maintained and kept in a high state of repair at all times; and

D. The animal is humanely captured.

Company Name and Address Drug Administering Equipment

Palmer Chemical & Equipment Co., Inc. CAP-CHUR Equipment
V8 P.O. Box 867, Palmer Village
Douglasville, Georgia 30133

Glasgow Veterinary Supply DIST-INJECT Equipment
Fort Peck Route
Glasgow, Montana 59230

Telonics PAXARMS Equipment
932 East Impalla Avenue
Mesa, Arizona 85204-6699

Zoolu Arms of Omaha SIMMONS Equipment
10315 Wright Street
Omaha, Nebraska 68124

Telinject, U.S.A., Inc. TELINJECT Equipment
16133 Ventura Boulevard
Suite 635
Encino, California 91436

*Note: The State Veterinarian does NOT recommend the equipment produced by one manufacturer over that produced by another.

V. Approval of Additional Drugs and Drug Administering Equipment

Advances in research relative to drugs and drug administering equipment for use in capturing companion animals will be monitored on a continuing basis by the Office of the State Veterinarian. Chemical restraint drugs (i.e., capture drugs) and drug administering equipment which are proved to be acceptable will be added to the approved list.

Firms or individuals seeking approval of specific drugs or drug administering equipment for use in capturing companion animals may submit a written request for the consideration of such proposals to the:

State Veterinarian/Director
Division of Animal Health
P. O. Box 1163

Richmond, Virginia 23209
Phone: 804-786-2481

Requests to deviate from or to use an alternative to the approved drugs or drug administering equipment must be sent in writing to the State Veterinarian at the above address. The request must include a detailed explanation of the proposed deviation or alternative, substantive justification for the request, substantive reasons why the currently approved drugs or drug administering equipment cannot be used and how the proposed deviation or alternative will resolve the reasons/problems, and sufficient objective and supportable evidence that the proposed deviation or alternative is at least as humane as the currently approved drugs or drug administering equipment identified in this directive.

(Revised 2/2/93)

APPENDIX A.

I.

APPROVED DRUG*	SPECIES APPROVED FOR USE IN*	ROUTE OF ADMINISTRATION*	DOSAGE	
Acepromazine maleate	Dogs	Intramuscular or Subcutaneous	0.25 to 0.5 mg/lb.	
		Orally	0.25 to 1 mg/lb.	
	Cats	Intramuscular or Subcutaneous	0.5 to 1 mg/lb.	
		Orally	0.5 to 1 mg/lb.	
Xylazine hydrochloride	Dogs	*Less than 50 lbs. Intramuscular or Subcutaneous	1 mg/lb.*	
		More than 50 lbs. Intramuscular	0.5 mg/lb.	
	Cats	Intramuscular	1 mg/lb.	
		Ketamine hydrochloride	Cats	Intramuscular
Ketamine HCL, Promazine HCL, and Aminopentamide hydrogen sulfate combination (i.e., Ketaset-Plus)	Cats	Non-human primates	Intramuscular	3 to 15 mg/lb.
		Cats	Intramuscular	15 to 20 mg/lb.

*Species, routes and dosages approved by the FDA and listed in the manufacturers' recommendations.

**Also see section IV. of Appendix A.

II. Competency Certification Required

A. Any companion animal captured is only to be captured by a person or by persons that have been certified in writing by a Virginia-licensed veterinarian or other qualified individual as being properly trained and competent in the humane capture of animals by use of the specified approved capture drug(s) and equipment being used.

II. Competency Certification Required

A. Any companion animal captured is only to be captured by a person or by persons that have been certified in writing by a Virginia-licensed veterinarian or other qualified individual, as being properly trained and competent in the humane capture of animals by use of the specified approved capture drug(s) and equipment being used.

B. See Appendices A-D of Division of Animal Health Directive 79-1 for competency certification requirements.

III. Capture drugs are to be administered only:

A. By individuals that are appropriately trained and competency-certified to humanely use and administer the approved capture drug(s);

B. In the species in which the FDA has approved the drug(s) for use;

C. When administered via an approved route of administration for the species being given the approved drug and in accordance with the manufacturer's recommendations.

IV. General Considerations

A. If xylazine is to be given alone, the dosage and dose of the xylazine must be determined by a supervising, licensed veterinarian. As a rule, dogs weighing under 25 pounds should NOT be captured by chemical means using remote injection (e.g., by use of a dart gun).

B. According to author Leon Nielson, in his book Chemical Immobilization in Urban Animal Control Work,

"The dosage suggested... for the ketamine/xylazine combination is 5.0 mg of ketamine/kg* of body weight and 1.0 mg of xylazine/kg of body weightfor intramuscular injection in dogs only."

Nielson further states that,

"This regimen has produced immobilization (recumbency) in dogs in 2.6 - 3.6 minutes, with a recovery time of 131 and 110 minutes, respectively. The most practical way of preparing the mixture is to add 2 ml (200 mg) of xylazine to a 10 ml (1,000 mg) vial of ketamine. Testing has shown that this pre-mixed solution will remain stable with undiminished potency for 6 months. The dosage to use of the 5:1 combination is 6.0 mg/kg...."

The above dosage of the drug combination is calculated to be 0.027 ml per pound of body weight, or 0.81 ml per 30 pounds of body weight, using a 10% concentration of xylazine.

*Remember: 1.0 kilogram (or "1 kg") = 2.2 pounds.

*Note: Currently, ketamine hydrochloride has NOT been approved by the FDA for use in dogs. Therefore, although the combination of xylazine and ketamine hydrochloride given at the dosages described above and using the appropriate drug administering equipment for the drug, animal and situation involved is considered effective for use in the chemical capture of dogs, the State Veterinarian can only acknowledge the effectiveness of this drug combination, but does not sanction the procurement or use of ketamine or any other drug in violation of state or federal law. Therefore, should this drug combination be used, it would be approved for use only if done under the lawful supervision of a licensed veterinarian.

C. According to the Virginia Board of Pharmacy, § 54.1-3415 of the Code of Virginia authorizes animal wardens/animal control officers and law-enforcement officers "... in the employ of the United States government or of any state, territorial, district, county, municipal, or insular government..." to purchase, receive or possess any approved capture drug for use in the lawful capture of animals pursuant to Title 3.1, Chapter 27.4 of the Code of Virginia "...by reason of his official duties."

AUDITOR OF PUBLIC ACCOUNTS

† Uniform Financial Reporting Manual Summary of Revisions and Manual Contents

General

This document contains a summary of significant changes made to the Uniform Financial Reporting Manual with the November, 1992 revision. A draft copy of the manual is currently available from the Auditor of Public Accounts (APA) at no charge by writing to the following address:

Uniform Financial Reporting Manual
Auditor of Public Accounts
P.O. Box 1295
Richmond, Virginia 23210

Local government officials, auditors, and other interested parties are encouraged to provide written comments to the above address. The APA also will hold public hearings to provide interested parties the opportunity to provide comments. Details on these hearings are found in the Calendar of Events section of this issue of The Virginia Register and are available from the APA. The written comment period closes on May 5, 1993.

Chapter 1 Introduction

This chapter discusses the organization of the manual and the procedures used by the Auditor of Public Accounts in revising it. It also contains an order form for additional copies of the manual and other publications of the APA.

General Notices/Errata

Chapter 2 Accounting and Reporting Principles

This chapter discusses accounting and reporting principles applicable to Virginia local governments. Revisions to this chapter include:

A. Updates to reflect changes in accounting and reporting principles since the previous manual revisions;

B. Discussion of GASB 14 (Reporting Entity) as it relates to the inclusion of school boards in a locality's financial statements. The APA believes these should be discretely presented in a separate column. See Section 2.13 for further details.

C. Addition of Risk Management/Self Insurance funds to the list of activities which should be reported as internal services in the transmittal forms.

Chapter 3 Uniform System of Accounts

This chapter provides details on a Uniform account structure which local governments should use to facilitate the completion of the transmittal forms. Significant revisions to this chapter include:

A. Deleting various accounts which are no longer applicable to local governments.

B. Incorporating changes to the chart of accounts required of local school boards by the Department of Education.

Chapter 4 Comparative Report Transmittal Forms

This chapter contains copies of all the transmittal forms and related instructions. In addition, it contains information regarding the auditors responsibilities and reporting requirements, and requirements for submitting the forms. Significant revisions to this chapter include:

A. Incorporates changes made to the forms since the last manual revision.

B. Contains more detailed instructions for preparing each of the forms.

C. Reflects a new requirement for submitting the forms. This requires that the forms may only be submitted on the automated or manual forms mailed to the locality by the APA in August of each year. The APA will no longer accept forms designed by the locality or their auditors. See § 4.2 for further details.

D. Modifies the auditors reporting requirements for transmittal forms. The auditor will now be required to issue a report on agreed upon procedures related to the transmittal forms review. See Section 4.3 for further details.

E. Makes minor changes to Forms 110 and 310. Also,

expands Form 610 to include a separate column for each acceptable enterprise activity. See §§ 4.5, 4.9 and 4.13 respectively for further details.

F. Incorporates the AutoTrans users manual into an appendix.

Chapter 5 Comparative Report

This chapter contains an example of the layout and related footnotes for each exhibit in the comparative report. There were no significant changes made to this chapter.

Chapter 6 Prototype Financial Statements

This chapter contains prototype financial statements and auditors reports designed to comply with the requirements of Generally Accepted Accounting Principles (GAAP) and Generally Accepted Government Auditing Standards (GAGAS). It also contains prototype statements of treasurer's accountability and legal debt margin required by the Code of Virginia. The only significant changes to this chapter were to bring it up to date with changes in GAAP and GAGAS since the previous revision of the manual.

Chapter 7 Public Employee Retirement Systems

This is a new chapter issued pursuant to § 51.1-1003 of the Code of Virginia. It incorporates the Virginia Accounting and Reporting Release #1 issued August 5, 1991. The chapter requires that local retirement systems publish an annual report which contains statements prepared in conformance with Governmental Accounting Standards Board (GASB) standards for financial reporting by public retirement systems.

Chapter 8 Virginia Accounting and Reporting Releases

This chapter is included for the purpose of accommodating subsequent Virginia accounting and reporting releases which will be issued as necessary to supplement this manual.

COUNCIL ON THE ENVIRONMENT

† Virginia Coastal Resources Management Program Public Notice of Approved Routine Program Implementations

On January 11, 1993, the Council on the Environment submitted two routine program changes to the Office of Ocean and Coastal Resources Management of NOAA for incorporation into the Virginia Coastal Resources Management Program (VCRMP). As required by the Coastal Zone Management Act, Tidewater localities and affected federal and state agencies were notified on the same date of the proposed incorporation of the revised Erosion and Sediment Control Law and Regulations and

the revised Barrier Island Policy of the Coastal Primary Sand Dunes Guidelines. A public notice describing the submission was simultaneously published in The Virginia Register and the Richmond Times-Dispatch. On February 17, 1993, Virginia received notice that NOAA has accepted these changes to Virginia's coastal program. Consequently, the Commonwealth will apply Federal Consistency provisions to the revised Erosion and Sediment Control Law and its regulations and the revised Barrier Island Policy of the Coastal Primary Sand Dunes Guidelines. Further information and the complete RPI package may be obtained by contacting Jeannie Lewis Smith of the Council on the Environment.

DEPARTMENT OF LABOR AND INDUSTRY

Notice to the Public

The Virginia State Plan for the enforcement of occupational safety and health laws (VOSH) commits the Commonwealth to adopt regulations identical to, or as effective as, those promulgated by the U.S. Department of Labor, Occupational Safety and Health Administration (OSHA).

Accordingly, public participation in the formulation of such regulations must be made during the adoption of such regulations at the federal level. Therefore, the Virginia Department of Labor and Industry is reissuing the following Federal OSHA notice:

U.S. Department of Labor
Occupational Safety and Health Administration
29 CFR Part 1926
(Docket S-775)

Safety Standards for Steel and Other Metal and Non-Metal Erection

Agency: Occupational Safety and Health Administration (OSHA)

Action: Notice of Intent to Establish Negotiated Rulemaking Committee; Request for Representation.

Summary: The Occupational Safety and Health Administration is announcing its intent to establish a Steel Erection Negotiated Rulemaking Advisory Committee under the Negotiated Rulemaking Act (NRA) and the Federal Advisory Committee Act (FACA). The committee will negotiate issues associated with the development of a proposed revision of the existing safety provisions in its construction standards for steel erection (29 CFR part 1926, subpart R). The committee will include representatives of identified parties who would be significantly affected by the final rule. OSHA solicits interested parties to nominate representatives for membership for representation on the committee.

Nominations for membership or representation on the

committee should be sent, in quadruplicate, to the Docket Office, Docket S-775, U.S. Department of Labor, Occupational Safety and Health Administration, Room N-2625, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Text: Full text of the proposed rulemaking can be found in Volume 57, No. 250, p. 61860 (December 29, 1992) of the Federal Register.

Date: OSHA must receive written comments and requests for membership or representation by March 29, 1993.

Address: Written comments should be submitted in quadruplicate to the Docket Office, Docket No. S-775, Room N-2625, U.S. Department of Labor, 200 Constitution Ave., N.W., Washington, D.C. 20210, telephone (202) 219-7894.

An additional copy should be submitted to the Director of Enforcement Policy, Virginia Department of Labor and Industry, 13 South 13th Street, Richmond, Virginia 23219.

For further information contact: James F. Foster, Office of Information and Consumer Affairs, OSHA, Room N-3647, 200 Constitution Avenue, N.W., Washington, D.C. 20210, telephone (202) 219-8151.

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

† Notice of Significant Change in Statewide Methods and Standards for Setting Payment Rates (Title 42 Code of Federal Regulations 447.205) Selective Contracting of Inpatient Hospital Services

Description: In the Selective Contracting Program, hospitals will be awarded contracts to provide inpatient services to Medicaid recipients based on their competitive proposal prices and the evaluation criteria specified in a federally approved waiver. The pilot program is based on awarding contracts to cost-effective hospitals in the Tidewater area while ensuring Medicaid recipients access to quality inpatient care.

Why the agency is changing its methods and standards: The 1992 Appropriation Act directed the Department of Medical Assistance Services (DMAS) to seek the necessary waivers from the United States Department of Health and Human Services to authorize the Commonwealth to provide hospital care to Medicaid recipients in the Tidewater area in selected hospitals through a competitive process.

Estimate of expected changes in annual aggregate expenditures: Development costs will include Management Information System changes, a patient origin study, and a microcomputer model for ensuring the necessary bed capacity. Total development costs are projected to be \$25,223. The additional two-year administrative costs associated with selective contracting are estimated to be \$200,383. Program savings are demonstrated by calculating

General Notices/Errata

the difference between projected costs without the waiver and the costs with the waiver in effect. In the absence of the waiver, inpatient costs are projected to be \$43.3 million in the first twelve-month period and \$49.7 million for the second twelve-month period. Selective contracting is expected to reduce these costs to \$41.5 million in year one of the waiver and to \$47.4 million in year two. Taking into account the development and administrative costs, savings will be \$3.87 million.

Availability of proposed changes and address for comments: Copies of the emergency regulation, once signed by the Governor, adopted by the agency, and filed with the Registrar, will be available for public review. Comments or questions should be directed to Kathryn Kotula, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, (804) 786-7933.

VIRGINIA CODE COMMISSION

NOTICE TO STATE AGENCIES

Mailing Address: Our mailing address is: Virginia Code Commission, 910 Capitol Street, General Assembly Building, 2nd Floor, Richmond, VA 23219. You may FAX in your notice; however, we ask that you do not follow-up with a mailed copy. Our FAX number is: 371-0169.

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: Virginia Code Commission, 910 Capitol Street, General Assembly Building, 2nd Floor, Richmond, VA 23219, 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 at the above address.

CALENDAR OF EVENTS

Symbols Key

- † Indicates entries since last publication of the Virginia Register
- ☒ Location accessible to handicapped
- ☎ Telecommunications Device for Deaf (TDD)/Voice Designation

NOTICE

Only those meetings which are filed with the Registrar of Regulations by the filing deadline noted at the beginning of this publication are listed. Since some meetings are called on short notice, please be aware that this listing of meetings may be incomplete. Also, all meetings are subject to cancellation and the Virginia Register deadline may preclude a notice of such cancellation.

For additional information on open meetings and public hearings held by the Standing Committees of the Legislature during the interim, please call Legislative Information at (804) 786-6530.

VIRGINIA CODE COMMISSION

EXECUTIVE



DEPARTMENT FOR THE AGING

Long-Term Care Ombudsman Program Advisory Council

March 25, 1993 - 9:30 a.m. – Open Meeting
The Virginia Association of Homes for Adults, Inc., United Way Building, 224 West Broad Street, Suite 101, Richmond, Virginia. ☒

Business will include further discussion on the goals and objectives for the Virginia Long-Term Care Ombudsman Program and Elder Rights.

Contact: Etta V. Hopkins, Assistant State Ombudsman, Virginia Department for the Aging, 700 E. Franklin St., 10th Floor, Richmond, VA 23219-2327, telephone (804) 225-2271, toll-free 1-800-552-3402, or (804) 225-2271/TDD ☎

VIRGINIA AGRICULTURAL COUNCIL

† **March 22, 1993 - 9 a.m. – Open Meeting**
† **March 23, 1993 - 8 a.m. – Open Meeting**
Days Inn Hotel, 1901 Emmett Street, Charlottesville,

Virginia. ☒ (Interpreter for the deaf provided upon request)

A meeting to review and act upon new grant proposal requests, second and third year project continuations and a brief business session at the beginning and end of the two-day meeting. The council will entertain public comment at the conclusion of all other business for a period not to exceed 30 minutes.

Contact: Thomas R. Yates, Assistant Secretary, 1100 Bank St., Suite 203, Richmond, VA 23219, telephone (804) 786-6060.

DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES (BOARD OF)

May 19, 1993 - 2 p.m. – Public Hearing
1100 Bank Street, 2nd Floor Board Room, Richmond, Virginia.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Agriculture and Consumer Services intends to consider amending regulations entitled **VR 115-05-01. Regulations Governing Grade "A" Milk.** The proposed regulation will continue certain authority contained in the existing regulation governing the production, processing, and sale of Grade "A" pasteurized milk and Grade "A" pasteurized milk products and certain milk products. The purpose of the present regulatory action is to review the regulation for effectiveness and continued need. The proposed regulation has been drafted to include provisions of the existing regulation and to enhance its effectiveness. In addition, certain new provisions have been established which affect milk plants, receiving station, transfer stations, producers and industry laboratories specifying: drug screening requirements of Grade "A" raw milk for pasteurization prior to processing; minimum penalties for violation of the drug residue requirements; new standards for temperature, somatic cell counts and cryoscope test; requirements to receive and retain a permit; sanitation requirements for Grade "A" raw milk for pasteurization; and sanitation requirements for Grade "A" pasteurized milk.

Statutory Authority: § 3.1-530.1 of the Code of Virginia.

Contact: J. A. Beers, Program Manager, P.O. Box 1163, Richmond, VA 23209, telephone (804) 786-1453.

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Calendar of Events

† June 30, 1993 - 1 p.m. - Public Hearing
Department of Agriculture and Consumer Services,
Washington Building, 1100 Bank Street, Board Room, Room
204, Richmond, Virginia.

June 25, 1993 - 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 Agriculture and Consumer Services intends to adopt regulations entitled: **VR 115-04-28. Regulations Governing the Oxygenation of Gasoline.** The purpose of the proposed regulation is to ensure that motor fuels dispensed in this Commonwealth comply with any oxygenation requirements specified by the federal Clean Air Act pertaining to motor fuels. The 1990 amendments to the federal Clean Air Act require states with carbon monoxide nonattainment areas with design values¹ of 9.5 parts per million (ppm) or more to implement an oxygenated gasoline program in all such designated nonattainment areas. Title II of the 1990 amendments to the federal Clean Air Act requires that states institute an oxygenated gasoline program by establishing "control areas" in any Metropolitan Statistical Area (MSA) which contains one or more carbon monoxide nonattainment areas. Pursuant to such provisions, the Department of Air Pollution Control has designated as the control area the Virginia counties within the Washington, D.C. Metropolitan Statistical Area (MSA) consisting of Arlington, Fairfax, Loudoun, Prince William, and Stafford; and the Virginia cities within the Washington, D.C. MSA consisting of Alexandria, Fairfax, Falls Church, Manassas, and Manassas Park.

The oxygen content requirement applies during the portion of the year in which the control area is prone to high ambient concentrations of carbon monoxide. The Environmental Protection Agency has established this control period (which the Board of Agriculture and Consumer Services anticipates will recur annually) to be, in the case of Virginia, a specified four months out of twelve. In Virginia this control period will begin on November 1 of one year and continue through the last day of February of the following year.

The proposed regulation (i) specifies carbon monoxide nonattainment areas; (ii) specifies the control area; (iii) specifies the control period; (iv) specifies a minimum oxygenate content in gasoline during the control period; (v) requires all persons regulated to keep records of classes of oxygenates and oxygenate content; (vi) requires gasoline pump labelling; (vii) specifies methods of sampling, testing, and oxygen content calculations; and (viii) specifies means of compliance and methods of enforcement.

¹ Design value means the calculation which is used to derive the number of carbon monoxide parts per million in the air

in order to determine whether an area shall be designated a carbon monoxide nonattainment area.

STATEMENT

Basis: Sections 59.1-153 and 59.1-156 of the Code of Virginia.

Purpose: The proposed regulation is for the purpose of complying in this Commonwealth with any gasoline oxygenation requirements specified by the federal Clean Air Act. The 1990 amendments to the federal Clean Air Act require states with carbon monoxide nonattainment areas with design values of 9.5 parts per million (ppm) or more, to implement an oxygenated gasoline program in all such designated areas. The 1990 amendments to the federal Clean Air Act require that states introduce an oxygenated gasoline program which controls the oxygen content of gasoline by establishing "control areas" in any Metropolitan Statistical Area (MSA) which contains one or more carbon monoxide nonattainment areas. The Washington, D.C. MSA is a carbon monoxide nonattainment area.

The control area in Virginia means the Virginia counties within the Washington, D.C. MSA consisting of Arlington, Fairfax, Loudoun, Prince William, and Stafford; and the Virginia cities within the Washington, D.C. MSA consisting of Alexandria, Fairfax, Falls Church, Manassas, and Manassas Park. The oxygen content requirement applies during the portion of the year in which the areas are prone to high ambient concentrations of carbon monoxide. The Environmental Protection Agency has established this control period (which the Board of Agriculture and Consumer Services anticipates will recur annually) to be, in the case of Virginia, a specified four months out of twelve. In Virginia this control period will begin on November 1 of one year and continue through the last day of February of the following year.

Substance: The proposed regulation, VR 115-04-28, "Regulation Governing Oxygenation of Gasoline" establishes minimum requirements for the oxygen content in gasoline.

The proposed regulation:

- a. Specifies carbon monoxide nonattainment areas;
- b. Specifies the control area;
- c. Specifies the control period;
- d. Specifies a minimum oxygenate content in gasoline during the control period;
- e. Requires all persons regulated to keep records of classes of oxygenates and oxygenate content;
- f. Requires gasoline pump labelling;

g. Specifies methods of sampling, testing, and oxygen content calculations; and

h. Specifies means of compliance and methods of enforcement.

Issues: One issue is environmental. The use of oxygenated gasoline in lieu of nonoxygenated gasoline reduces carbon monoxide emissions from motor vehicles and thereby helps carbon monoxide nonattainment areas in their efforts to achieve compliance with the national ambient air quality standard for carbon monoxide. The use of oxygenated gasoline is becoming a widely recognized control strategy for reducing carbon monoxide emissions from motor vehicles in a timely and cost-effective manner. If Virginia does not adopt this proposed regulation, carbon monoxide emissions from motor vehicles will not be reduced and the Commonwealth will not be in compliance with the national ambient air quality standard for carbon monoxide.

Furthermore, not adopting the proposed regulation would mean a potential loss of federal funds. Such funds may be lost where a state fails to submit a plan for a designated carbon monoxide nonattainment area, or where a state fails to submit an adequate plan, as determined by the Administrator of the United States Environmental Protection Agency. The potential loss of federal funds includes funds for highways.

Estimated impact:

a. Number and types of regulated entities or persons affected:

Approximately 150 private facilities ("wholesale purchaser-consumer facilities"), approximately 10 bulk terminal operators, and approximately 30 bulk plant operators, will be affected by this proposed regulation, as the proposed regulation requires gasoline oxygenation and record keeping. Approximately 623 retail outlets will be affected by this proposed regulation, as the proposed regulation requires gasoline oxygenation, record keeping, and in addition, gasoline pump labelling.

b. Projected cost to regulated entities (and to the public) for implementation and compliance:

In a cost-benefit analysis contained in United States Environmental Protection Agency's "Oxygenated Gasoline Implementation Guidelines" of July 1992, the Field Operations and Support Division, Office of Mobile Sources projects that in a Mid-Atlantic city (no information is available for the South East) the oxygenated gasoline program benefit for the November 1992 through February 1993 control period will be the reduction of 66,061 tons of pollutants at a cost of \$222 per ton of pollutants.

Industry estimates an increased cost of approximately two cents per gallon of gasoline in the control area, which it is expected will be passed on to the consumer. Consumer costs for motor vehicle refueling will also rise

because fuel economy decreases with the use of oxygenated gasoline.

The department believes these cost estimates may be conservatively high. Some gasoline refiners have already voluntarily marketed oxygenated gasoline which either met or approached the requirements of the proposed regulation. This gasoline was marketed at competitive prices.

It should be noted that these cost impacts are based on compliance with oxygenated gasoline requirements on a per gallon basis. The emergency regulation already in effect is based on a per gallon basis. Administration of an averaging-based compliance program would increase program costs due to additional staffing which would be needed by the department.

The costs of noncompliance should also be noted. There will be federal sanctions for noncompliance. The sanctions include loss of federal funds, including funds for highways.

c. Projected cost to agency for implementation and enforcement:

The United States Environmental Protection Agency requires that samples be taken at a minimum of 20% of the regulated facilities each year. The enforcement of this program through inspections, mandated sampling, and sanctions for noncompliance will require additional funding. The enforcement costs for personal and nonpersonal services will be approximately \$60,000 per year.

Department of General Services, Division of Consolidated Laboratory Services, will require oxygenate analysis equipment costing approximately \$150,000 to \$175,000. This equipment will be required by November 1, 1994, which will be a singular expenditure. The equipment will expand the ability of the Department of General Services, Division of Consolidated Laboratory Services, to respond to future motor fuel programs related to reformulated fuels. Such programs are anticipated by the Department of Agriculture and Consumer Services in the next two years.

There will be additional recurring analysis costs for personal and nonpersonal services of approximately \$75,000 per year. Alternatively, an independent laboratory could be used for the analysis of samples. Testing costs at an independent laboratory will be as high as \$150 per sample. The department anticipates a minimum of 500 samples during the first year, at a cost of \$75,000. The department expects the United States Environmental Protection Agency to raise the number of mandated samplings in each subsequent year.

Additional miscellaneous nonrecurring funding of \$15,000 will be required for the public outreach program, contained in United States Environmental Protection Agency's "Oxygenated Gasoline Implementation Guidelines" of July 1992, prepared by the Field Operations and

Calendar of Events

Support Division, Office of Mobile Sources. Such program is to include, but not be limited to, advertisements, hotlines, public meetings, educational materials, and press coverage. Training workshops for inspectors will also be required.

d. Source of funds:

General Fund.

Statutory Authority: §§ 59.1-153 and 59.1-156 of the Code of Virginia.

Contact: J. Alan Rogers, Program Manager, Office of Weights and Measures, Department of Agriculture and Consumer Services, 1100 Bank St., Room 402, Richmond, VA 23219, telephone (804) 786-2476.

Virginia Cattle Industry Board

† **April 14, 1993 - 2 p.m.** – Open Meeting

† **April 15, 1993 - 8:30 a.m.** – Open Meeting

Lynchburg Hilton, 2900 Candler's Mountain Road, Liberty Room Lynchburg, Virginia. ☒

A meeting to discuss the budget and other business related to the industry. The board will entertain public comment at the conclusion of all other business on April 15, 1993, for a period not to exceed 30 minutes.

Contact: Reggie Reynolds, Program Director, Department of Agriculture and Consumer Services, P.O. Box 176, Daleville, VA 24083, telephone (703) 992-1992.

Virginia Farmers Market Board

† **March 25, 1993 - 1 p.m.** – Open Meeting

Capitol Square, House Room 1, Richmond, Virginia. ☒

A general business meeting to discuss finances and present a status report on all markets. The board will also entertain grant proposals from the network managers. The board will entertain public comment at the conclusion of all other business for a period not to exceed 30 minutes.

Contact: Nancy L. Israel, Program Director, Washington Bldg., 1100 Bank St., Richmond, VA 23219, telephone (804) 371-6157.

Virginia Marine Products Board

March 30, 1993 - 5:30 p.m. – Open Meeting

Nick's Steak and Spaghetti House, Route 17, Gloucester Point, Virginia. ☒

The board will meet to receive reports from the executive director of the Virginia Marine Products Board on: finance, marketing, past and future program planning, publicity and public relations, and old and new business.

Contact: Shirley Estes, Executive Director, 554 Denbigh Blvd., Suite B, Newport News, VA 23602, telephone (804) 874-3474.

Virginia Peanut Board

† **March 23, 1993 - 10 a.m.** – Open Meeting

Tidewater Agricultural Experiment Station, Holland Station, Suffolk, Virginia. ☒

A meeting to review peanut research projects for possible funding in 1993. The board will entertain public comment at the conclusion of all other business for a period not to exceed 30 minutes.

Contact: Russell C. Schools, Program Director, P.O. Box 149, Capron, VA 23829, telephone (804) 658-4573.

Pesticide Control Board

† **April 15, 1993 - 8 a.m.** – Open Meeting

Department of Agriculture and Consumer Services, 1100 Bank Street, Board Room 204, Richmond, Virginia. ☒

A tour of Plant Food Products, Coastal Chemical, and Franklin Airport. Committee meetings will follow beginning at 5 p.m. Portions of the meeting may be held in closed session pursuant to § 2.1-344 of the Code of Virginia.

† **April 16, 1993 - 9 a.m.** – Open Meeting

Department of Agriculture and Consumer Services, 1100 Bank Street, Board Room 204, Richmond, Virginia. ☒

The board will conduct a general business meeting. Portions of the meeting may be held in closed session pursuant to § 2.1-344 of the Code of Virginia. The public will have an opportunity to comment on any matter not on the board's agenda at 9 a.m.

Contact: Dr. Marvin A. Lawson, Program Manager, Office of Pesticide Management, Department of Agriculture and Consumer Services, P.O. Box 1163, 1100 Bank St., Room 401, Richmond, VA 23209, telephone (804) 371-6558.

Virginia Seed Potato Board

† **April 21, 1993 - 8 p.m.** – Open Meeting

Eastern Shore Agriculture Experiment Station, Research Drive, Painter, Virginia. ☒

The board will meet to review the 1993 planting season. The board will entertain public comment at the conclusion of all other business for a period not to exceed 30 minutes.

Contact: J. William Mapp, Program Director, Department of Agriculture and Consumer Services, Box 26, Onley, VA 23418, telephone (804) 787-5867.

Virginia Winegrowers Advisory Board

† April 8, 1993 - 10 a.m. - Open Meeting
Oakencroft Winery, 2nd Floor, Meeting Room,
Charlottesville, Virginia.

The board will hear committee and project monitor reports and review old and new business. The board will entertain public comment at the conclusion of all other business for a period not to exceed 30 minutes.

Contact: Wendy Rizzo, Secretary, Virginia Winegrowers Advisory Board, P.O. Box 1010, Richmond, VA 23219, telephone (804) 786-0481.

DEPARTMENT OF AIR POLLUTION CONTROL

State Advisory Board on Air Pollution

† April 1, 1993 - 9 a.m. - Open Meeting
Monroe Building, Room E, Richmond, Virginia. ☐

A meeting to discuss research topics for 1993 and annual meeting plans.

Contact: Dr. Kathleen Sands, Policy Analyst, Department of Air Pollution Control, P.O. Box 10089, Richmond, VA 23240, telephone (804) 225-2722.

ALCOHOLIC BEVERAGE CONTROL BOARD

March 29, 1993 - 9:30 a.m. - Open Meeting
April 12, 1993 - 9:30 a.m. - Open Meeting
April 26, 1993 - 9:30 a.m. - Open Meeting
May 10, 1993 - 9:30 a.m. - Open Meeting
May 24, 1993 - 9:30 a.m. - Open Meeting
2901 Hermitage Road, Richmond, Virginia. ☐

A meeting to receive and discuss reports and activities from staff members. Other matters not yet determined.

Contact: Robert N. Swinson, Secretary to the Board, Alcoholic Beverage Control Board, 2901 Hermitage Road, P.O. Box 27491, Richmond, VA 23261, telephone (804) 367-0616.

ASAP POLICY BOARD - MOUNT ROGERS

April 14, 1993 - 1 p.m. - Open Meeting
Oby's Restaurant, North Main Street, Marion, Virginia. ☐

A meeting to conduct program business. The order of business at all regular meetings shall be as follows: (i) call to order; (ii) roll call; (iii) approval of minutes; (iv) unfinished business; (v) new business; and (vi) adjournment.

Contact: J. L. Reedy, Jr., Director, Mt. Rogers ASAP, 1102 A N. Main St., Marion, VA 24354, telephone (703) 783-7771.

BOARD OF AUDIOLOGY AND SPEECH-LANGUAGE PATHOLOGY

† May 13, 1993 - 11 a.m. - Open Meeting
6606 West Broad Street, Richmond, Virginia. ☐

A board meeting and formal conferences.

Contact: Meredyth P. Partridge, Executive Director, 6606 W. Broad St., Richmond, VA 23230, telephone (804) 662-9111.

AUDITOR OF PUBLIC ACCOUNTS

† April 19, 1993 - 10 a.m. - Public Hearing
National Guard Armory, Franklin Street, Christiansburg, Virginia.

† April 26, 1993 - 10 a.m. - Public Hearing
Sheraton Inn and Conference Center, Route 3 at I-95, Fredericksburg, Virginia.

† May 3, 1993 - 10 a.m. - Public Hearing
Sheraton Inn Coliseum, 1215 Mercury Boulevard, Hampton, Virginia.

Public hearings to receive public testimony on the draft revision of the Uniform Financial Reporting Manual. Individuals planning to attend or make a presentation at one of these hearings are requested to complete a registration form available from the Auditor of Public Accounts. There is no charge to attend the public hearings.

Written comments may be submitted until May 5, 1993. All comments received will be considered in finalizing the revision of the manual.

Contact: UFRM, Auditor of Public Accounts, P.O. Box 1295, Richmond, VA 23210, telephone (804) 225-3350.

BOARD FOR BARBERS

† April 5, 1993 - 9 a.m. - Open Meeting
Department of Commerce, 3600 West Broad Street, 5th Floor, Richmond, Virginia. ☐

A meeting to (i) review applications; (ii) review correspondence; (iii) review and disposition of enforcement cases; and (iv) conduct routine board business.

Contact: Roberta L. Banning, Assistant Director, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-8590.

Calendar of Events

CHESAPEAKE BAY LOCAL ASSISTANCE BOARD

March 25, 1993 - 10 a.m. – Open Meeting
State Capitol, Senate Room 4, Richmond, Virginia. ☒
(Interpreter for the deaf provided upon request)

The board will conduct general business, including review of local Chesapeake Bay Preservation Area programs. A tentative agenda is available from the Chesapeake Bay Local Assistance Department.

Contact: Receptionist, Chesapeake Bay Local Assistance Department, 805 E. Broad St., Richmond, VA 23219, telephone (804) 225-3440 or toll-free 1-800-243-7229/TDD
TELE

INTERDEPARTMENTAL REGULATION OF RESIDENTIAL FACILITIES FOR CHILDREN

Coordinating Committee

† **April 16, 1993 - 8:30 a.m. – Open Meeting**
Office of Coordinator, Interdepartmental Regulation, 8007 Discovery Drive, Blair Building, Conference Room C, Richmond, Virginia. ☒

A regularly scheduled meeting to consider such administrative and policy issues as may be presented to the committee. A period for public comment is provided at each meeting.

Contact: John J. Allen, Jr., Coordinator, Office of the Coordinator, Interdepartmental Regulation, 8007 Discovery Dr., Richmond, VA 23229-8699, telephone (804) 662-7124.

BOARD OF COMMERCE

March 22, 1993 - 10 a.m. – Open Meeting
Department of Commerce, 3600 West Broad Street, Richmond, Virginia.

A meeting to discuss agenda items including General Assembly bills, and studies requested of the Board of Commerce.

Contact: Bonnie S. Salzman, Director, Department of Commerce, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-8519.

* * * * *

May 7, 1993 – Written comments may be submitted through this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Commerce intends to repeal regulations entitled: **VR 190-02-1. Agency Rules of Practice for Hearing Officers.** The Board of Commerce is proposing to repeal its current

rules of practice for hearing officers used for governing all formal proceedings involved in enforcing the regulation of professions and occupations listed under § 54.1-300 of the Code of Virginia to eliminate any confusion, duplication or inconsistency with the statutes incorporated in the Administrative Process Act.

Written comments may be submitted through May 7, 1993, to Bonnie S. Salzman, Director, Department of Commerce, 3600 West Broad Street, Richmond, Virginia 23230.

Statutory Authority: § 54.1-310 of the Code of Virginia.

Contact: Peggy McCreery, Regulatory Programs Director, Department of Commerce, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-2194.

COMPENSATION BOARD

March 31, 1993 - 5 p.m. – Open Meeting
Ninth Street Office Building, 202 North Ninth Street, Room 913/913A, 9th Floor, Richmond, Virginia. ☒ (Interpreter for the deaf provided upon request)

A routine meeting to conduct business.

Contact: Bruce W. Haynes, Executive Secretary, Compensation Board, P.O. Box 3-F, Richmond, VA 23206-0686 or (804) 786-3886/TDD ☎

DEPARTMENT OF CONSERVATION AND RECREATION

Upper James Scenic River Advisory Board

† **March 24, 1993 - Noon – Open Meeting**
Sunnybrook Inn, Plantation Road, Hollins, Virginia.

A review of river issues and programs.

Contact: Richard G. Gibbons, Environmental Program Manager, Department of Conservation and Recreation, Division of Planning and Recreation Resources, 203 Governor St., Suite 326, Richmond, VA 23219, telephone (804) 786-4132 or (804) 786-2121/TDD ☎

BOARD FOR CONTRACTORS

Applications Review Committee

† **March 30, 1993 - 9 a.m. – Open Meeting**
Department of Commerce, 3600 West Broad Street, Conference Room 1, Richmond, Virginia. ☒

A regular meeting to review applications with convictions and/or complaints for class A contractors licenses and class B contractors registration.

Contact: Florence R. Brassier, Assistant Director, Department of Commerce, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-7557.

BOARD FOR COSMETOLOGY

March 29, 1993 - 9 a.m. - Open Meeting Department of Commerce, 3600 West Broad Street, Richmond, Virginia.

A general business meeting.

Contact: Demetra Y. Kontos, Assistant Director, Board for Cosmetology, Department of Commerce, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-0500.

CRIMINAL JUSTICE SERVICES BOARD

Committee on Criminal Justice Information Systems

† March 25, 1993 - 10 a.m. - Open Meeting Ninth Street Office Building, Ninth and Grace Streets, 6th Floor, Governor's Cabinet Conference Room, Richmond, Virginia. ☒

A meeting to discuss projects and business of the committee.

Contact: Paula Scott Dehetre, Executive Assistant, Department of Criminal Justice Services, 805 E. Broad St., Richmond, VA 23219, telephone (804) 786-4000.

DEPARTMENT FOR THE DEAF AND HARD OF HEARING

March 24, 1993 - 5 p.m. - Public Hearing The Rehabilitation Center for the Blind, 401 Azalea Avenue, Richmond, Virginia. ☒ (Interpreter for the deaf provided upon request)

A public hearing to receive comments on the department's proposed fee increase for candidates participating in the Virginia Quality Assurance Screening Written and Performance Assessments.

Contact: Brenda Thornton, VQAS Coordinator, 1100 Bank Street, 12th Floor, Richmond, VA 23219, telephone (804) 225-2570 or toll-free 1-800-552-7917.

BOARD OF DENTISTRY

† April 9, 1993 - 8:30 a.m. - Open Meeting 6606 West Broad Street, 4th Floor, Richmond, Virginia. ☒

Informal conferences.

† April 16, 1993 - 8:30 a.m. - Open Meeting

† April 17, 1993 - 8:30 a.m. - Open Meeting † April 18, 1993 - 8:30 a.m. - Open Meeting 6606 West Broad Street, 4th Floor, Richmond, Virginia. ☒

Friday: Formal hearings

Saturday: Formal hearing and board business, including committee reports.

This is a public meeting and the public is invited to observe. No public testimony will be received by the board at this meeting.

Contact: Marcia J. Miller, Executive Director, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9906.

* * * * *

April 15, 1993 - 7 p.m. - Public Hearing 6606 West Broad Street, 5th Floor, Conference Room 1, Richmond, Virginia.

May 10, 1993 - Written comments may be submitted through this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Dentistry intends to amend regulations entitled: VR 255-01-1. Virginia Board of Dentistry Regulations. The purpose of the proposed amendments is to establish the requirements for certification to apply Schedule VI topical medications.

Statutory Authority: §§ 54.1-2400, 54.1-2700 et seq., 54.1-3303, and 54.1-3408 of the Code of Virginia.

Contact: Marcia J. Miller, Executive Director, Virginia Board of Dentistry, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9906.

DEPARTMENT OF EDUCATION (BOARD OF)

March 25, 1993 - 8 a.m. - Open Meeting James Monroe Building, 101 North 14th Street, Richmond, Virginia. ☒ (Interpreter for the deaf provided upon request)

The Board of Education and the Board of Vocational Education will hold a regularly scheduled meeting. Business will be conducted according to items listed on the agenda. The agenda is available upon request.

Contact: Dr. Ernest W. Martin, Assistant Superintendent, P.O. Box 2120, Richmond, VA 23216-2120, telephone (804) 225-2073.

* * * * *

† April 21, 1993 - 7 p.m. - Public Hearing

Calendar of Events

Petersburg High School, Petersburg, Virginia.

† April 22, 1993 - 7 p.m. – Public Hearing
Maury High School, Norfolk, Virginia.

† April 27, 1993 - 7 p.m. – Public Hearing
Warrenton Junior High School, Warrenton, Virginia.

† April 28, 1993 - 7 p.m. – Public Hearing
Abingdon High School, Abingdon, Virginia.

May 21, 1993 – Written comments may be submitted through this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Board of Education intends to amend regulations entitled: **VR 270-01-0007. Regulations Governing Special Education Programs for Children with Disabilities in Virginia.** The revised regulations outline the requirements for the provision of special education programs. Areas of coverage include identification, eligibility, service delivery, funding, personnel qualifications, procedural safeguards, local school division responsibilities, and Department of Education responsibilities.

STATEMENT

Basis: Section 22.1-214 of the Code of Virginia vests the Board of Education with the authority to prepare and supervise the provision by local school divisions of special education for children with disabilities. Section 22.1-214 further requires the Board of Education to ensure that all children with disabilities have available a free appropriate public education. Section 22.1-215 contemplates board regulations for special education.

Purpose: The purpose of these regulations and their amendments is to ensure the provision of a free appropriate public education for children with disabilities in the Commonwealth.

Issues: These proposed regulations contain amendments to the current regulations governing special education in Virginia. These regulations have been amended for several primary purposes: (i) to comply with amendments to the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. §§ 1400-1485) and that Act's implementing regulations; (ii) to comply with § 22.1-214 G of the Code of Virginia; (iii) to eliminate overly burdensome mandates on local school divisions; and (iv) to rewrite any passage needing clarification.

Substance: The following provisions have been added to incorporate new requirements from the IDEA and its regulations:

A. The following terms are now defined in the definitions section:

1. Assistive Technology Device;

2. Assistive Technology Service;
3. Rehabilitation Counseling Services;
4. Transition Services;
5. Traumatic Brain Injury.

B. Section 3.3 B has been amended to include provisions for the federal requirement that the Individualized Education Program (IEP) of each child with a disability at age 16 (and at age 14 where appropriate) contain a statement of needed transition services.

C. Section 3.3 B has also been amended to include the federal requirement that local school divisions provide assistive technology services and/or devices to those children with disabilities who need them.

Section 3.2 has been amended to comply with § 22.1-214 G of the Code of Virginia. The revisions remove formerly required assessments components that exceeded federal evaluation requirements and add a provision providing parents an opportunity to participate in the selection of assessment components.

The following revisions have been made to eliminate overly burdensome mandates on local school divisions:

A. Section 3.2 has been amended to no longer require that all children referred for special education be reviewed by a Child Study Committee. The revision now allows that committee to be used where appropriate.

B. Section 3.3 has been amended to no longer require that local school divisions reevaluate a child with disability before changing the child's placement.

C. Section 3.4 has been amended to no longer require that local school divisions obtain parental consent prior to a change in the identification of a child's particular disability, prior to a change in program, and prior to any reevaluation.

D. Section 3.6 has been amended to remove many of the mandatory procedures regarding the local school divisions' annual plans and special education advisory committees.

Pursuant to the final recommendations of the final report from the department project team studying this disorder, the list of conditions under "Other Health Impairment" in the definition section has been amended to include Attention Deficit Hyperactivity Disorder/Attention Deficit Disorder (ADHD/ADD).

Estimated impact:

A. Entities affected: These regulations will affect all local school divisions of the Commonwealth. In developing these proposed regulations, input was sought from school division administrators and staff (as well as from parents). Much of the substance of that input has been included, especially with reference to items A-D listed above.

B. Costs to affected entities: The amendments to these regulations resulting from the Individuals with Disabilities Education Act and its regulations will have no fiscal impact. Those items are already in effect under federal law; local school divisions must already comply with those requirements. These particular amendments, therefore, are merely bringing the state regulations up to date.

The amendment, in response to § 22.1-214 G of the Code of Virginia, eliminating mandatory, specified assessments components is expected to have a fiscal impact. The exact dollar amount of that impact cannot be determined as the selection of assessment components for each child will now be on an individualized, case-by-case basis; however, any impact felt should be one of a reduction in local school divisions expenditures.

Of the changes made to reduce overly burdensome requirements on local school divisions, the following fiscal impact is expected:

1. The removal of the requirement that all children referred for special education must be reviewed by the Child Study Committee is expected to have a fiscal impact. The exact dollar amount of that impact cannot be determined as the decision as to when to use the Child Study Committee will be made on an individualized, case-by-case basis; however, any impact felt should be one of a reduction in local school division expenditures.

2. The reduction of instances in which a child must be evaluated is expected to have a fiscal impact. The exact dollar amount of that impact cannot be determined as the extent (and, therefore, the cost) of each child's evaluations will vary; however, any impact felt should be one of a reduction in local school division expenditures.

The inclusion of ADHD/ADD in the definition of "other health impairment" is estimated to increase the annual total of students receiving special education across the Commonwealth by 6,500. Four hundred forty additional teachers are estimated to be needed at an annual estimated cost of \$5,000,000 to the local school divisions. An additional \$3,000,000 per year is estimated to be needed for localities to perform the evaluations of these additional students.

C. Cost to agency: There will be a minimal cost incurred by the department to produce and mail the revised regulations to local school divisions. No additional enforcement costs are anticipated because the revised requirements will be monitored as part of the department's normal federal program monitoring activities.

The inclusion of ADHD/ADD in the definition of "other health impairment" is estimated to increase the total number of students receiving special education annually by 6,500. The additional costs to the state agency is estimated to be \$10,000,000 annually.

D. Source of agency funds: The minimal costs projected to be incurred for reproducing and mailing the revised regulations can be absorbed through the department's federal grant under Part B of the Individuals with Disabilities Education Act.

Of the \$10,000,000 estimated to be needed annually as a result of including ADHD/ADD in the definition of "other health impairment," \$2,000,000 will come from the department's federal grant under Part B of the Individuals with Disabilities Education Act. The remaining \$8,000,000 will come from the department's general fund allocation.

Statutory Authority: §§ 22.1-214 and 22.1-215 of the Code of Virginia.

Contact: Anne P. Michie, Specialist, Federal Program Monitoring, Department of Education, P.O. Box 2120, Richmond, VA 23216-2120, telephone (804) 225-2013 or toll-free 1-800-292-3820.

LOCAL EMERGENCY PLANNING COMMITTEE - CHESTERFIELD COUNTY

April 1, 1993 - 5:30 p.m. - Open Meeting

May 6, 1993 - 5:30 p.m. - Open Meeting

Chesterfield County Administration Building, 10001 Ironbridge Road, Room 502, Chesterfield, Virginia. ☐

A meeting to meet requirements of Superfund Amendment and Reauthorization Act of 1986.

Contact: Lynda G. Furr, Assistant Emergency Services Coordinator, Chesterfield Fire Department, P.O. Box 40, Chesterfield, VA 23832, telephone (804) 748-1236.

LOCAL EMERGENCY PLANNING COMMITTEE - WINCHESTER

† April 7, 1993 - 3 p.m. - Open Meeting

Shawnee Fire Company, 2333 Roosevelt Boulevard, Winchester, Virginia.

A regular meeting.

Contact: L. A. Miller, Fire Chief, Winchester Fire and Rescue Department, 126 N. Cameron St., Winchester, VA 22601, telephone (703) 662-2298.

FOOD SERVICE ADVISORY COMMITTEE

† April 2, 1993 - 10 a.m. - Open Meeting

Department of Housing and Community Development, 501 North 2nd Street, Jackson Street, 2nd Floor Conference Room, Richmond, Virginia. ☐

A regular meeting. The committee meets at least once a year to discuss and recommend food service policy,

Calendar of Events

regulation, and programmatic changes to the Commissioner of Health for implementation.

Contact: John E. Benko, Division Director, Division of Food and Environmental Services, 1500 E. Main St., Suite 115, Richmond, VA 23219, telephone (804) 786-3559.

BOARD OF FUNERAL DIRECTORS AND EMBALMERS

† **April 6, 1993 - 9 a.m.** – Open Meeting
6606 West Broad Street, Richmond, Virginia. ☒

A board meeting.

† **April 7, 1993 - 9 a.m.** – Open Meeting
6606 West Broad Street, 5th Floor, Room 2, Richmond, Virginia. ☒

Informal hearings.

† **May 4, 1993 - 9 a.m.** – Open Meetings
6606 West Broad Street, Rooms 1, 3 and 4, Richmond, Virginia. ☒

Exams and a board meeting.

Contact: Meredyth P. Partridge, Executive Director, Department of Health Professions, 6606 W. Broad St., Richmond, VA, telephone (804) 662-9111.

Informal Conference Committee

† **May 5, 1993 - 9 a.m.** – Open Meeting
6606 West Broad Street, 5th Floor, Room 2, Richmond, Virginia. ☒

Informal conferences.

Contact: Meredyth P. Partridge, Executive Director, Department of Health Professions, 6606 W. Broad St., Richmond, VA, telephone (804) 662-9111.

BOARD OF GAME AND INLAND FISHERIES

April 1, 1993 - 9 a.m. – Open Meeting
Holiday Inn, 6531 West Broad Street, Richmond, Virginia.

The board will convene its meeting at 9 a.m. They will immediately recess for their committee meetings, beginning with the Wildlife and Boat Committee, followed by the Funding Committee, Liaison Committee, Planning Committee, Finance Committee, and end with the Law and Education Committee. In addition to the Wildlife and Boat Committee hearing staff recommendations for changes to the 1993-94 and 1994-95 hunting seasons, each committee will hear and discuss topics appropriate to their authority, and take any necessary action.

April 2, 1993 - 9 a.m. – Open Meeting
Holiday Inn, I-64 West Broad, 6531 West Broad Street, Richmond, Virginia.

The board will reconvene its meeting with an executive session at 8 a.m. They will recess or adjourn the executive session at 9 a.m. for the public meeting. During the public meeting, the board will hear and consider proposed changes to the 1993-94 and 1994-95 hunting seasons. Proposed changes will be adopted for advertisement for public comment, and will be reconsidered by the board at the June 17 and 18, 1993 meetings. Final regulations will be adopted at that time. In addition to considering changes to the hunting seasons, other general and administrative matters, as necessary, will be considered, with the appropriate action taken by the board.

Contact: Belle Harding, Secretary to Bud Bristow, 4010 W. Broad St., Richmond, VA 23230, telephone (804) 367-1000.

BOARD FOR GEOLOGY

† **April 23, 1993 - 10 a.m.** – Open Meeting
Department of Commerce, 3600 West Broad Street, Conference Room 3, Richmond, Virginia. ☒

A general board meeting.

Contact: Nelle P. Hotchkiss, Assistant Director, Department of Commerce, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8595 or (804) 367-9753/TDD ☎

GOVERNOR'S COMMISSION ON VIOLENT CRIME

† **March 23, 1993 - 9:30 a.m.** – Open Meeting
General Assembly Building, 910 Capitol Square, Senate Room B, Richmond, Virginia. ☒

This meeting will initiate the second phase of the commission's work - programmatic initiatives.

Contact: Kris Ragan, Special Assistant, Department of Criminal Justice Services, Research Center, 701 E. Franklin St., 9th Floor, Richmond, VA 23219, telephone (804) 225-3899.

GOVERNOR'S JOB TRAINING COORDINATING COUNCIL

† **March 22, 1993 - 10:30 a.m.** – Open Meeting
The Embassy Suites Hotel, 2925 Emerywood Parkway, Richmond, Virginia. ☒ (Interpreter for the deaf provided upon request)

A general meeting.

Contact: Abria M. Singleton, Executive Secretary, 4615 W.

Broad St., 3rd Floor, Richmond, VA 23230, telephone (804) 367-9816, toll-free 1-800-552-7020 or (804) 367-6283/TDD

HAZARDOUS MATERIALS TRAINING COMMITTEE

† March 23, 1993 - 10 a.m. - Open Meeting Virginia Department of Emergency Services, 308 Turner Road, Training Center, Richmond, Virginia.

A meeting to discuss curriculum course development, and review existing hazardous material courses.

Contact: Roger D. Raines, 108 B Courthouse Lane, P.O. Box 447, Bowling Green, VA 22427, telephone (804) 633-9831.



DEPARTMENT OF HEALTH (STATE BOARD OF)

April 23, 1993 - Written comments may be submitted through this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Board of Health intends to amend regulations entitled: VR 355-28-100. Regulations for Disease Reporting and Control. The regulations are being amended to (i) comply with current disease control policies, (ii) change the form for reporting morbidity, and (iii) comply with statutory requirements.

Statutory Authority: §§ 32.1-12 and 32.1-35 of the Code of Virginia.

Contact: C. Diane Woolard, M.P.H., Senior Epidemiologist, Virginia Department of Health, P.O. Box 2448, Room 113, Richmond, VA 23218, telephone (804) 786-6261.

April 23, 1993 - Written comments may be submitted through this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Board of Health intends to amend regulations entitled: VR 355-30-000. Virginia Medical Care Facilities Certificate of Public Need Rules and Regulations. The purpose of the proposed amendments is to implement the Certificate of Public Need program consistent with the amended law which became effective July 1, 1992.

Statutory Authority: §§ 32.1-12 and 32.1-102.2 of the Code

of Virginia.

Written comments may be submitted through April 23, 1993, to Paul E. Parker, Director, Division of Resources Development, Virginia Department of Health, 1500 East Main Street, Suite 105, Richmond, Virginia 23219.

Contact: Wendy Brown, Project Review Manager, Division of Resources Development, 1500 E. Main St., Suite 105, Richmond, VA 23219, telephone (804) 786-7463.

April 23, 1993 - Written comments may be submitted through this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Board of Health intends to repeal regulations entitled: 1987 State Medical Facilities Plan and adopt regulations entitled: VR 355-30-100 through VR 355-30-113. Virginia State Medical Facilities Plan. The purpose of the proposed action is to revise the State Medical Facilities Plan to provide guidance for assessing the public need for projects for review according to the 1992 amendments to the Certificate of Public Need law.

Statutory Authority: §§ 32.1-12 and 32.1-102.2 of the Code of Virginia.

Contact: Paul E. Parker, Director, Division of Resources Development, 1500 E. Main St., Suite 105, Richmond, VA 23219, telephone (804) 786-7463.

† April 26, 1993 - 2 p.m. - Teleconference Richmond Plaza Building, 101 South 7th Street, 4th Floor East Auditorium, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A tele-meeting for the purpose of approving the final version of the waterworks (surface water treatment and total coliform) regulations.

Contact: Susan R. Rowland, MPA, Assistant to the Commissioner, Department of Health, 1500 E. Main St., Suite 214, Richmond, VA 23219, telephone (804) 786-3564.

Commissioner's Waterworks Advisory Committee

May 20, 1993 - 10 a.m. - Open Meeting 400 South Main Street, 2nd Street, Culpeper, Virginia.

A meeting to conduct general business of the committee.

Contact: Thomas B. Gray, P.E., Special Project Engineer, 1500 E. Main St., Room 109, Richmond, VA 23219, telephone (804) 786-1768.

Calendar of Events

BOARD OF HEALTH PROFESSIONS

† **April 20, 1993 - 11 a.m.** – Open Meeting
Department of Health Professions, 6606 West Broad Street,
5th Floor, Conference Room 1, Richmond, Virginia. ☒

A regular quarterly meeting of the board.

Contact: Richard D. Morrison, Executive Director, 6606 W.
Broad St., 4th Floor, Richmond, VA 23230, telephone (804)
662-9904 or (804) 662-7197/TDD ☎

Administration and Budget Committee

† **April 7, 1993 - 1 p.m.** – Open Meeting
Department of Health Professions, 6606 West Broad Street,
5th Floor, Conference Room 1, Richmond, Virginia. ☒

A meeting to review budget preparation for the
department.

Contact: Richard D. Morrison, Executive Director, 6606 W.
Broad St., 4th Floor, Richmond, VA 23230, telephone (804)
662-9904 or (804) 662-7197/TDD ☎

Compliance and Discipline Committee

† **April 19, 1993 - 10 a.m.** – Open Meeting
Department of Health Professions, 6606 West Broad Street,
5th Floor, Conference Room 2, Richmond, Virginia. ☒

The committee will plan its work for the balance of
the calendar year and prepare its report to the full
Board of Health Professions to meet on April 20.

Contact: Richard D. Morrison, Executive Director, 6606 W.
Broad St., 4th Floor, Richmond, VA 23230, telephone (804)
662-9904 or (804) 662-7197/TDD ☎

Executive/Legislative Committee

† **April 20, 1993 - 8:30 a.m.** – Open Meeting
Department of Health Professions, 6606 West Broad Street,
5th Floor, Conference Room 2, Richmond, Virginia. ☒

A meeting to review 1993 General Assembly legislation
and board agenda.

Contact: Richard D. Morrison, Executive Director, 6606 W.
Broad St., 4th Floor, Richmond, VA 23230, telephone (804)
662-9904 or (804) 662-7197/TDD ☎

Committee on Professional Education and Public Affairs

† **April 20, 1993 - 8:30 a.m.** – Open Meeting
Department of Health Professions, 6606 West Broad Street,
5th Floor, Conference Room 1, Richmond, Virginia. ☒

The committee will continue its discussions of
complaint intake, department public information
activity and complainant satisfaction.

Contact: Richard D. Morrison, Executive Director, 6606 W.
Broad St., 4th Floor, Richmond, VA 23230, telephone (804)
662-9904 or (804) 662-7197/TDD ☎

Regulatory Research Committee

† **April 19, 1993 - 2 p.m.** – Open Meeting
Department of Health Professions, 6606 West Broad Street,
5th Floor, Conference Room 2, Richmond, Virginia. ☒

The committee will develop its workplan for studies
requested by the 1993 General Assembly and prepare
its report to the full Board of Health Professions to
meet on April 20.

Contact: Richard D. Morrison, Executive Director, 6606 W.
Broad St., 4th Floor, Richmond, VA 23230, telephone (804)
662-9904 or (804) 662-7197/TDD ☎

VIRGINIA HEALTH SERVICES COST REVIEW COUNCIL

March 23, 1993 - 9:30 a.m. – Open Meeting
Blue Cross/Blue Shield of Virginia, 2015 Staples Mill Road,
Richmond, Virginia. ☒

A monthly meeting.

Contact: John A. Rupp, Executive Director, 805 E. Broad
St., 6th Floor, Richmond, VA 23219, telephone (804)
786-6371.

† **May 25, 1993 - 9:30 a.m.** – Open Meeting
Blue Cross/Blue Shield, 2015 Staples Mill Road, Richmond,
Virginia.

A monthly meeting followed by a public hearing on
the rules and regulations (VR 370-01-001 and VR
370-01-002). The public hearing will begin at noon.

Contact: Kim Bolden, Public Relations Coordinator, 805 E.
Broad St., 6th Floor, Richmond, VA 23219, telephone (804)
786-6371.

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† **May 25, 1993 - Noon** – Public Hearing
Blue Cross/Blue Shield, 2015 Staples Mill Road, Richmond,
Virginia.

May 25, 1993 – 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 Virginia Health
Services Cost Review Council intends to amend
regulations entitled: **VR 370-01-001. Rules and
Regulations of the Virginia Health Services Cost
Review Council.** The purpose of the proposed
amendments is to amend the agency's regulations to
conform to the new methodology adopted by the

Virginia Health Services Cost Review Council to measure efficiency and productivity of health care institutions.

STATEMENT

Background: The Commission on Health Care for All Virginians proposed legislation in the 1992 session of the Virginia General Assembly effectuating a number of significant changes regarding the operations of the Virginia Health Services Cost Review Council. A significant part of Senate Bill 518 contained the requirement that the council develop a new methodology for the measurement of efficiency and productivity of hospitals and nursing homes and implement it by January 1, 1993.

In late spring of 1992 the Virginia Health Services Cost Review Council contracted with the Williamson Institute of Medical College of Virginia/Virginia Commonwealth University to assist it in developing this new methodology. In addition, the council also contracted with McManis Associates, Inc., a consulting firm from Washington, D.C., to provide its expertise in reviewing recommendations set forth by the Williamson Institute from a consumer perspective. Also, the council established several work groups to develop different methodologies for nursing homes and for hospitals. Finally, the work groups, constituents, and council staff, on a large number of occasions, met and talked with outside constituency groups, including hospital and nursing home trade groups, to seek their input and comment during the development of this methodology.

The proposed new methodology seeks to stimulate competition in the market for hospitals, nursing homes, and ambulatory surgery centers by improving the availability of information to various groups of consumers regarding "efficiency and productivity." A ratio analysis methodology will be used to identify efficient and productive providers.

The changes to these generic regulations will make them conform to the new methodology being adopted by the council. These changes are identical to the changes adopted by the council at its November 23, 1992, meeting on an emergency basis. The Governor approved these emergency regulations on December 24, 1992.

Clarity and simplicity: According to our consultants, ratio analysis is the least complex and most easily understood methodology of identifying efficient and productive providers of health care. This technique will use ratios that measure elements of charges, cost, resource utilization, financial viability, and community support activities so that institutions' performances can be compared. As described above, this process has been discussed with representatives of the relevant trade associations throughout the entire process to develop the new methodology and they have been supportive. Other regulatory processes were initially considered, but the work groups of the council concluded that the language in

SB 518 supported the use of this type of approach. The council believes that the proposed regulations are the least burdensome available alternative.

When employing ratio analysis, the Virginia Health Services Cost Review Council will assure the accurate development, reporting, and analysis of individual and aggregate indicators of efficiency and productivity, as well as identification of top performers. The Virginia Health Services Cost Review Council will also distribute accurate and timely information on provider efficiency and productivity. Different types of consumers (i.e., individuals, employers, insurers, and government) would be expected to use different combinations of available data to make informed purchasing decisions.

Fiscal impact: No state general funds will be required to implement these regulations. Changes will be necessary in the operations of the council and its current contractor, the Virginia Rate Review Program, in order to completely implement this new methodology. The process utilized to implement this new methodology will either be brought in-house in 1993 or an RFP process will be utilized in early 1993 to choose another independent contractor.

The council is currently supported by filing fees assessed against all licensed hospitals and nursing homes. In the spring of each year, the council establishes assessments against these facilities based upon an adjusted per inpatient day and year expected expenditures. At this time, we cannot say whether we will advise the council to revise its fees for hospitals and nursing homes for the fiscal year beginning July 1, 1993.

Because the council's new methodology will shorten the filing requirements for each facility, we anticipate that the projected costs for these facilities to complete the new reporting form will be reduced from what was expended under the old methodology.

Statutory Authority: §§ 9-161.1 and 9-164 of the Code of Virginia.

Contact: John A. Rupp, Executive Director, Virginia Health Services Cost Review Council, 805 E. Broad St., 6th Floor, Richmond, VA 23219, telephone (804) 786-6371.

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† **May 25, 1993 - Noon** – Public Hearing
Blue Cross/Blue Shield, 2015 Staples Mill Road, Richmond, Virginia.

May 25, 1993 – 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 Virginia Health Services Cost Review Council intends to adopt regulations entitled: **VR 370-01-002. Regulations to Measure the Efficiency and Productivity of Health**

Calendar of Events

Care. The purpose of the proposed regulation is to establish a new methodology to measure the efficiency and productivity of health care institutions.

STATEMENT

Background: The Commission on Health Care for All Virginians proposed legislation in the 1992 session of the Virginia General Assembly effectuating a number of significant changes regarding the operations of the Virginia Health Services Cost Review Council. A significant part of Senate Bill 518 contained the requirement that the council develop a new methodology for the measurement of efficiency and productivity of hospitals and nursing homes and implement it by January 1, 1993.

In late spring of 1992 the Virginia Health Services Cost Review Council contracted with the Williamson Institute of Medical College of Virginia/Virginia Commonwealth University to assist it in developing this new methodology. In addition, the council also contracted with McManis Associates, Inc., a consulting firm from Washington, D.C., to provide its expertise in reviewing recommendations set forth by the Williamson Institute from a consumer perspective. Also, the council established several work groups to develop different methodologies for nursing homes and for hospitals. Finally, the work groups, constituents, and council staff, on a large number of occasions, met and talked with outside constituency groups, including hospital and nursing home trade groups, to seek their input and comment during the development of this methodology.

The proposed new methodology seeks to stimulate competition in the market for hospitals, nursing homes, and ambulatory surgery centers by improving the availability of information to various groups of consumers regarding "efficiency and productivity." A ratio analysis methodology will be used to identify efficient and productive providers.

This set of regulations was adopted by the council on an emergency basis at its November 23, 1992, meeting and approved by the Governor on December 4. There is no change in these regulations from that approved on an emergency basis.

Clarity and simplicity: According to our consultants, ratio analysis is the least complex and most easily understood methodology of identifying efficient and productive providers of health care. This technique will use ratios that measure elements of charges, cost, resource utilization, financial viability, and community support activities so that institutions' performances can be compared. As described above, this process has been discussed with representatives of the relevant trade associations throughout the entire process to develop the new methodology and they have been supportive. Other regulatory processes were initially considered, but the work groups of the council concluded that the language in SB 518 supported the use of this type of approach. The

council believes that the proposed regulations are the least burdensome available alternative.

When employing ratio analysis, the Virginia Health Services Cost Review Council will assure the accurate development, reporting, and analysis of individual and aggregate indicators of efficiency and productivity, as well as identification of top performers. The Virginia Health Services Cost Review Council will also distribute accurate and timely information on provider efficiency and productivity. Different types of consumers (i.e., individuals, employers, insurers, and government) would be expected to use different combinations of available data to make informed purchasing decisions.

Fiscal impact: No state general funds will be required to implement these regulations. Changes will be necessary in the operations of the council and its current contractor, the Virginia Rate Review Program, in order to completely implement this new methodology. The process utilized to implement this new methodology will either be brought in-house in 1993 or an RFP process will be utilized in early 1993 to choose another independent contractor.

The council is currently supported by filing fees assessed against all licensed hospitals and nursing homes. In the spring of each year, the council establishes assessments against these facilities based upon an adjusted per inpatient day and year expected expenditures. At this time, we cannot say whether we will advise the council to revise its fees for hospitals and nursing homes for the fiscal year beginning July 1, 1993.

Because the council's new methodology will shorten the filing requirements for each facility, we anticipate that the projected costs for these facilities to complete the new reporting form will be reduced from what was expended under the old methodology.

Statutory Authority: §§ 9-161.1 and 9-164 of the Code of Virginia.

Contact: John A. Rupp, Executive Director, Virginia Health Services Cost Review Council, 805 E. Broad St., 6th Floor, Richmond, VA 23219, telephone (804) 786-6371.

STATE COUNCIL OF HIGHER EDUCATION FOR VIRGINIA

April 13, 1993 - 9:30 a.m. -- Open Meeting
Danville Community College, Danville, Virginia.

A general business meeting. For additional information contact the council.

Contact: Anne M. Pratt, Associate Director, Monroe Bldg., 101 N. 14th St., 9th Floor, Richmond, VA 23219, telephone (804) 225-2639.

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March 26, 1993 – Written comments may be submitted through this date.

Notice is hereby given that the State Council of Higher Education for Virginia intends to adopt regulations entitled: **VR 380-93-97. Virginia Guaranteed Assistance Program Regulations.** The proposed regulations are being promulgated to ensure that the operation of the Virginia Guaranteed Assistance Program is uniform for all participating public schools and institutions of higher education.

Statutory Authority: §§ 22.1-212.3, 22.1-212.4, and 23-38.53:4 of the Code of Virginia.

Contact: Stephen R. Merritt, Council of Higher Education, James Monroe Bldg., 101 N. 14th St., 10th Floor, Richmond, VA 23219, telephone (804) 225-2623.

HOPEWELL INDUSTRIAL SAFETY COUNCIL

April 6, 1993 - 9 a.m. – Open Meeting

† **May 4, 1993 - 9 a.m.** – Open Meeting

† **June 1, 1993 - 9 a.m.** – Open Meeting

Hopewell Community Center, Second and City Point Road, Hopewell, Virginia. ☒ (Interpreter for deaf provided upon request)

A Local Emergency Preparedness Committee meeting on emergency preparedness as required by SARA Title III.

Contact: Robert Brown, Emergency Service Coordinator, 300 N. Main St., Hopewell, VA 23860, telephone (804) 541-2298.

DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT (BOARD OF)

April 19, 1993 - 10 a.m. – Open Meeting

Salem Civic Center, 1001 Boulevard, Parlor A, Salem, Virginia. ☒ (Interpreter for the deaf provided upon request)

April 20, 1993 - 10 a.m. – Open Meeting

City Council Chambers, 22 Lincoln Street, Hampton, Virginia. ☒ (Interpreter for the deaf provided upon request)

April 21, 1993 - 10 a.m. – Open Meeting

One County Complex Court, County Board Chambers, Prince William, Virginia. ☒ (Interpreter for the deaf provided upon request)

April 22, 1993 - 10 a.m. – Open Meeting

501 North 2nd Street, First Floor Board Room, Richmond, Virginia. ☒ (Interpreter for the deaf provided upon request)

Public Participation Regional Regulatory Review workshop, to explain the review and adoption process and to solicit proposals.

Contact: Norman R. Crumpton, Program Manager, 501 N. 2nd St., Richmond, VA 23219-1321, telephone (804) 371-7170 or (804) 371-7089/TDD ☎

Amusement Device Technical Advisory Committee

† **April 15, 1993 - 9 a.m.** – Open Meeting

Jackson Center, 501 North 2nd Street, 2nd Floor Conference Center, Richmond, Virginia. ☒

A meeting to review and discuss regulations pertaining to the construction, maintenance, operation and inspection of amusement devices adopted by the Board of Housing and Community Development.

Contact: Jack A. Proctor, CPCA, Deputy Director, Department of Housing and Community Development, Jackson Center, 501 N. 2nd St., Richmond, VA 23219-1321, telephone (804) 371-7150 or (804) 371-7089/TDD ☎

ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS

† **April 6, 1993 - 1 p.m.** – Open Meeting

State Capitol Building, House Room 2, Richmond, Virginia.

A regular meeting to consider such matters as may be presented. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact the commission's offices at (804) 786-6508 or (804) 786-1860/TDD by March 30, 1993.

Contact: Robert H. Kirby, Secretary, Eighth Street Office Bldg., Room 702, Richmond, VA 23219, telephone (804) 786-6508 or (804) 786-1860/TDD ☎

DEPARTMENT OF LABOR AND INDUSTRY

Apprenticeship Council

March 25, 1993 - 10 a.m. – Open Meeting

General Assembly Building, 910 Capitol Street, House Room C, Richmond, Virginia 23219. ☒

A regular meeting of the Apprenticeship Council. Agenda items are: (i) deregistration of the Dorey Electric Company Apprentice Program, and (ii) proposed changes to the ratio regulation for contractors performing Davis-Bacon work.

Contact: Robert S. Baumgardner, Director, Apprenticeship Division, Department of Labor and Industry, 13 S. 13th St., Richmond, VA 23219, telephone (804) 786-2381.

Calendar of Events

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April 12, 1993 – Written comments may be submitted through this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Apprenticeship Council intends to amend regulations entitled: **VR 425-01-26. Regulations Governing the Administration of Apprenticeship Programs in the Commonwealth of Virginia.** This amendment provides new minimum numeric ratios for program sponsors performing Davis-Bacon work.

Statutory Authority: § 40.1-118 of the Code of Virginia.

Contact: Robert S. Baumgardner, Director of Apprenticeship, Department of Labor and Industry, 13 S. 13th St., Richmond, VA 23219, telephone (804) 786-2381.

STATE COUNCIL ON LOCAL DEBT

April 21, 1993 - 11 a.m. – Open Meeting
James Monroe Building, 101 North 14th Street, 3rd Floor, Treasury Board Conference Room, Richmond, Virginia. ☐

A regular meeting subject to cancellation unless there are action items requiring the council's consideration. Persons interested in attending should call one week prior to meeting date to ascertain whether or not the meeting is to be held as scheduled.

Contact: Gary Ometer, Debt Manager, Department of the Treasury, P.O. Box 6-H, Richmond, VA 23215, telephone (804) 225-4928.

LONGWOOD COLLEGE

Academic Affairs Committee and Student Affairs Committee

April 5, 1993 - 4:30 p.m. – Open Meeting
Longwood College, East Ruffner Building, Board Room, Farmville, Virginia. ☐

A meeting to conduct routine business of the two committees prior to the full board meeting.

Contact: William F. Dorrill, President, 201 High St., Farmville, VA 23909-1899, telephone (804) 395-2001.

Board of Visitors

April 15, 1993 - 5 p.m. – Open Meeting
April 16, 1993 - 9:30 a.m. – Open Meeting
Longwood College, Ruffner Building, Farmville, Virginia. ☐

A meeting to conduct routine business of the board.

Contact: William F. Dorrill, President, 201 High St., Farmville, VA 23909-1899, telephone (804) 395-2001.

STATE LOTTERY BOARD

March 22, 1993 - 11 a.m. – Open Meeting
Lottery Fairfax Regional Office, 8550 Arlington Boulevard, Fairfax, Virginia. ☐

A regular monthly meeting of the board. The meeting will begin with a public hearing. The regular meeting business will be conducted according to items listed on an agenda which has not yet been determined. Two periods of public comment are scheduled.

Contact: Barbara L. Robertson, Lottery Staff Officer, State Lottery Department, 2201 W. Broad St., Richmond, VA 23220, telephone (804) 367-9433.

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March 22, 1993 - 11 a.m. – Public Hearing
Fairfax Regional Office, 8550 Arlington Boulevard, Fairfax, Virginia.

March 22, 1993 – Written comments may be submitted through this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Lottery Board intends to adopt regulations entitled **VR 447-02-2. On-Line Game Regulations.** The purpose of the proposed amendment is to reduce the potential of the purchase of large blocks of on-line lottery tickets by stipulating that all playslips used must be manually marked.

Statutory Authority: § 58.1-4007 of the Code of Virginia.

Contact: Barbara L. Robertson, Lottery Staff Officer, State Lottery Department, 2201 W. Broad St., Richmond, VA 23220, telephone (804) 367-9433.

VIRGINIA MANUFACTURED HOUSING BOARD

March 24, 1993 - 10 a.m. – Open Meeting
Department of Housing and Community Development, 501 North 2nd Street, 2nd Floor, Richmond, Virginia. ☐
(Interpreter for the deaf provided upon request)

A regular monthly meeting of the board.

Contact: Curtis L. McIver, Associate Director, Department of Housing and Community Development, Code Enforcement Office, The Jackson Center, 501 N. 2nd St., Richmond, VA 23219-1321, telephone (804) 371-7160.

MARINE RESOURCES COMMISSION

† March 23, 1993 - 9:30 a.m. - Open Meeting
2600 Washington Avenue, 4th Floor, Room 403, Newport News, Virginia. ☒ (Interpreter for the deaf provided upon request)

The commission will hear and decide marine environmental matters at 9:30 a.m.: (i) permit applications for projects in wetlands, bottom lands, coastal primary sand dunes and beaches; (ii) appeals of local wetland board decisions; and (iii) policy and regulatory issues. The commission will hear and decide fishery management items at approximately noon. Items to be heard are as follows: regulatory proposals, fishery management plans, fishery conservation issues, licensing, and shellfish leasing. Meetings are open to the public. Testimony is taken under oath from parties addressing agenda items on permits and licensing. Public comments are taken on resource matters, regulatory issues and items scheduled for public hearing. The commission is empowered to promulgate regulations in the areas of marine environmental management and marine fishery management.

Contact: Sandra S. Schmidt, Secretary to the Commission, P.O. Box 756, Newport News, Virginia 23607-0756, telephone (804) 247-8088, toll-free 1-800-541-4646 or (804) 247-2292/TDD ☎

MARY WASHINGTON COLLEGE

Board of Visitors

April 17, 1993 - 9 a.m. - Open Meeting
Woodard Campus Center, Red Room, Fredericksburg, Virginia. ☒

A regularly scheduled meeting.

Contact: Vicki Campbell, Clerk, Board of Visitors, Mary Washington College, 1301 College Avenue, George Washington Hall 103, Fredericksburg, VA 22401-5358, telephone (703) 899-4621.

MATERNAL AND CHILD HEALTH COUNCIL

† April 21, 1993 - 1 p.m. - Open Meeting
United Way of Virginia, 224 East Broad Street, Room 101, Richmond, Virginia. ☒ (Interpreter the deaf provided upon request)

A meeting to focus on improving the health of the Commonwealth's mothers and children by promoting and improving programs and service delivery systems related to maternal and child health.

Contact: Nancy C. Ford, MCH Nurse Consultant,

Department of Health, Division of Maternal and Child Health, 1500 E. Main St., Suite 137, Richmond, VA 23218-2448, telephone (804) 786-7367.

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES (BOARD OF)

April 23, 1993 - Written comments may be submitted through 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 amend regulations entitled: **State Plan for Medical Assistance Relating to EPSDT and Inpatient Psychiatric Services; VR 460-01-22, Services; VR 460-03-3.1100, Amount, Duration and Scope of Services; VR 460-02-3.1300, Standards Established and Methods Used to Assure High Quality of Care; and VR 460-02-4.1920, Methods and Standards for Establishing Payment Rates-Other Types of Care.** The purpose of this proposal is to promulgate permanent regulations to supersede the current emergency regulations which provide for the same policies. The sections of the State Plan for Medical Assistance (the Plan) affected by this proposed regulation are: preprinted page 22; the Amount, Duration, and Scope of Services narrative (Supplement 1 to Attachment 3.1 A and B); Standards Established and Methods Used to Assure High Quality of Care (Attachment 3.1 C); and Methods and Standards for Establishing Payment Rates - Other Types of Care (Attachment 4.19 B).

The Omnibus Budget Reconciliation Act of 1989 (OBRA 89) requires that state Medicaid programs provide to recipients any and all necessary services permitted to be covered under federal law, when the need for those services are identified as a result of screenings through the Early and Periodic Screening, Diagnosis, and Treatment Program. Such services must be provided even if they are not otherwise covered under the Plan, and are thus not available to recipients independent of EPSDT referral.

The EPSDT program provides for screening and diagnostic services to determine physical and mental defects in recipients up to age 21, and health care, treatment, and other services to correct or ameliorate any defects or chronic conditions discovered. EPSDT is a mandatory program which must be provided for all Medicaid-eligible recipients who are 18 years old or younger and, at the state's option, up to age 21. The Commonwealth provides EPSDT for recipients to age 21.

One service now required to be covered for recipients because of EPSDT is inpatient psychiatric services in psychiatric hospitals. These regulations reflect the definition of covered services and the fee-for-service reimbursement methodology.

Calendar of Events

During the development of the department's policy concerning EPSDT, the Health Care Financing Administration (HCFA) provided guidance to the states. DMAS incorporated this guidance into its emergency regulations which HCFA subsequently approved. DMAS has tightened its definition of covered psychiatric services to be those provided in psychiatric hospitals when the services are the result of EPSDT.

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

Written comments may be submitted until 5 p.m. on April 23, 1993, to Betty Cochran, Director, Division of Quality Care Assurance, 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.

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April 23, 1993 – Written comments may be submitted through 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 amend regulations entitled: **VR 460-02-4.1810, VR 460-02-4.1830, and VR 460-02-4.1920. Outpatient Rehab Services and Removing the Medicare Cap on Fees.** The purpose of this proposal is (i) to promulgate permanent regulations which will provide for equitable application of recipient cost sharing policies for outpatient rehabilitative services and the elimination of the Medicare cap on all services' fees; and (ii) to replace emergency regulations currently in effect.

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

Written comments may be submitted until 5 p.m. on April 23, 1993, to Jerome W. Patchen, Director, Division of Policy and Research, 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.

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† **May 21, 1993** – Written comments may be submitted through 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 amend regulations entitled: **State Plan for Medical Assistance Relating to Interim Settlement/Prospective Rate Time Frames, Audited Financial Statements, and Appeal Notice Requirements. VR 460-03-4.1940:1. Nursing Home Payment System (PIRS).** The purpose of this proposal is to promulgate permanent regulations to supersede emergency regulations which change from 90 to 180 days the time frame within which cost reports filed pursuant to the Nursing Home Payment System are interim settled and a prospective rate set. In addition, this proposed regulation will require nursing facilities to file audited financial statements and related information as part of their annual cost report, and will change the appeal time frames from calendar days to business days, and from receipt of a notice or decision to date of a notice or decision.

Interim settlement/prospective rate time frames: Before the adoption of emergency regulations effective August 3, 1992, DMAS regulations and policy required that providers' cost reports be interim settled and a prospective rate set within 90 days after an acceptable cost report is received. Providers, prompted in part by changes in the Internal Revenue Code, were increasingly changing their fiscal year periods to a calendar year cost reporting period. Despite increasing the Cost Settlement staff in recent years, DMAS was unable to meet regulatory and policy timelines in the face of the increasingly lopsided filing periods. After review, DMAS concluded that adding more staff to meet a seasonal workload would not be a cost effective use of resources. This extension of time was expected to permit DMAS to even out the workload by moving some of it from the peak workload periods during the second and fourth calendar quarters to the lower workload periods in the third and first calendar quarters. The amendment was also expected to increase provider confidence in the rate-setting process and enhance staff morale.

Audited financial statements: The cost reports filed annually by nursing facilities are currently required to be accompanied by financial statements. In addition, a home office report must be filed, if applicable.

Providers are now required to file audited financial statements with the Virginia Health Services Cost Review Council. Accordingly, it would impose no burden on providers to require that they supply the same information to DMAS, and would enhance DMAS' performance of its mission.

Appeal notice requirements: Since 1986, DMAS has used certified mail to nursing facilities to advise them of deadlines or actions DMAS will take if a response is not received by a specific date, for example, due dates for noting appeals, or rate reductions for failure to file cost reports on time. As a result of an employee suggestion and a review of the program's experience, certified mail will no longer be used for

nursing facilities (except for final decisions signed by the DMAS director). To compensate for the earlier start of the timeclock, time will be measured by business days instead of calendar days.

STATEMENT

Basis and authority: Section 32.1-324 of the Code of Virginia authorizes the director of the Department of Medical Assistance Services (DMAS) to administer and amend the Plan for Medical Assistance in lieu of board action pursuant to the board's requirements. The Administrative Process Act (APA), in § 9-6.14:7.1 of the Code, also provides for this agency's promulgation of proposed regulations subject to the Department of Planning and Budget's and Governor's reviews. With respect to the interim settlement/prospective rate time frames issue, this public notice and comment period as contained in Article 2 of the APA follows an emergency adoption action.

Purpose: The purpose of this proposal is to promulgate permanent regulations to supersede emergency regulations which change from 90 to 180 days the time frame within which cost reports filed pursuant to the Nursing Home Payment System are interim settled and a prospective rate set. In addition, this proposed regulation will require nursing facilities to file audited financial statements and related information as part of their annual cost report, and will change the appeal time frames from calendar days to business days, and from receipt of a notice or decision to date of a notice or decision.

Summary and analysis: The sections of the State Plan for Medical Assistance affected by these regulations are the supplement to Attachment 4.19 D, the Nursing Home Payment System Patient Intensity Rating System.

Interim settlement/prospective rate time frames: Before the adoption of emergency regulations effective August 3, 1992, DMAS regulations and policy required that providers' cost reports be interim settled and a prospective rate set within 90 days after an acceptable cost report is received. The following explains why the emergency regulations were adopted:

Providers, prompted in part by changes in the Internal Revenue Code, were increasingly changing their fiscal year periods to a calendar year cost reporting period. In the summer of 1992, 40% of all providers, and, due to recent changes by major chains, 51% of all nursing facilities were reporting using a calendar year period. As a result, approximately 42% of the total cost reports had to be interim settled and have prospective rates set during the second calendar quarter of each year, with an additional 29% during the fourth calendar quarter. Conversely, only 11% were required during the third calendar quarter, and 18% during the first calendar quarter.

Despite increasing the Cost Settlement staff in recent years, DMAS was unable to meet regulatory and

policy timelines in the face of the increasingly lopsided filing periods. After review, DMAS concluded that adding more staff to meet a seasonal workload would not be a cost effective use of resources. However, the Auditor of Public Accounts had issued an audit point on timelines and providers and their attorneys had expressed concerns about the failure to meet regulatory mandates.

Medicare regulations at 42 CFR 405.1803 and 405.1835(c) define a reasonable period of time for issuing notices of amount of program reimbursement as within 12 months of receiving an acceptable cost report. DMAS did not believe it needed to go that far, instead its review indicated that extending the time frames an additional 90 days would be a reasonable solution. This extension of time was expected to permit DMAS to even out the workload by moving some of it from the peak workload periods during the second and fourth calendar quarters to the lower workload periods in the third and first calendar quarters. The amendment was also expected to increase provider confidence in the rate-setting process and enhance staff morale.

Audited financial statements: The cost reports filed annually by nursing facilities are currently required to be accompanied by financial statements. In addition, a home office report must be filed, if applicable.

DMAS has long believed that financial statements which are audited provide a stronger assurance that a provider's accounting procedures and records are properly capturing and reporting financial transactions. In addition, DMAS could rely on data developed by the independent auditors, thereby reducing DMAS' audit procedures. However, in the past, concern has been expressed that audited financial statements would generally not be available until after the report is submitted, and that it would not be cost effective for small facilities or those with low Medicaid utilization to obtain audits of their financial statements.

Providers are now required to file audited financial statements with the Virginia Health Services Cost Review Council. Accordingly, it would impose no burden on providers to require that they supply the same information to DMAS, and would enhance DMAS' performance of its mission.

In addition, information such as schedules of restricted cash funds and of investments are not currently provided on the cost report, but are necessary for DMAS to perform a complete review of the filings. Providers normally prepare this information as part of their fiscal year end process, so it should not be burdensome.

Appeal notice requirements: Since 1986, DMAS used certified mail to nursing facilities to advise them of deadlines or actions DMAS will take if a response is not received by a specific date, for example, due dates for noting appeals, or rate reductions for failure to file cost

Calendar of Events

reports on time. As a result of an employee suggestion and a review of the program's experience, certified mail will no longer be used for nursing facilities (except for final decisions signed by the DMAS director).

Without the receipt of mail being certified, it is difficult to determine when such correspondence was received. Therefore, all time frames (which are currently found in Part III, Appeals, of the Nursing Home Payment System) will run from the date of correspondence or action. To compensate for the earlier start of the timeclock, time will be measured by business days instead of calendar days.

Impact: The issues are discussed in the same order as established above.

Interim settlement/prospective rate time frame: No fiscal or budgetary impact is expected. Although providers are concerned about the potential additional 90-day delay before receiving their new prospective rate, any cash flow impact is expected to be insignificant. First, 70% of nursing facilities will still receive cost settlements within 90 days, and very few (less than one percent) will be settled in the 150-180 day time period. Second, DMAS will continue to (i) make retroactive cash payments for the period from the first day of a provider's fiscal year to the date the new rate is set; (ii) pay approved claims on a monthly basis (unlike some states which delay paying approved claims for up to one year); and (iii) pay providers in accordance with the provider agreement and thus not be the cause of bad debts. In addition, a provider which has been overpaid can, in lieu of repaying in a lump sum, request an extended repayment schedule of 12 to 36 months (along with interest at the statutory rate). Accordingly, providers are not expected to be significantly adversely affected.

Audited financial statements: No fiscal or budgetary impact is expected. Audited financial statements are already required by the Virginia Health Services Cost Review Council. The related information is normally prepared as part of a provider's fiscal year end process, so there would be no additional expense or burden.

Appeal notice requirements: By eliminating certified mail, DMAS will annually avoid approximately \$1,700 in labor cost and reduce its total expenditures by approximately \$2,300 for certified mail costs. Changing from calendar to business days and from date of receipt to date of correspondence is not expected to have any effect.

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

Written comments may be submitted through May 21, 1993, to William R. Blakely, Jr., 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.

Drug Utilization Review Board

† **April 1, 1993 - 3 p.m.** – Open Meeting
600 East Broad Street, Suite 1300, Richmond, Virginia.

A regular meeting. Routine business will be conducted.

Contact: Carol B. Pugh, Pharm.D., DUR Program Consultant, Quality Care Assurance Division, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 786-3820.

BOARD OF MEDICINE

Advisory Board of Occupational Therapists

March 24, 1993 - 10 a.m. – Open Meeting
Department of Health Professions, 6606 West Broad Street, 5th Floor, Board Room 2, Richmond, Virginia. ☒

A meeting to discuss the certified Occupational Therapy Assistant, review the regulation VR 465-08-01, continuing education, and such other business which comes before the advisory board. The chairman may entertain public comments on any of the agenda items noticed.

Contact: Eugenia K. Dorson, Deputy Executive Director, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9923.

Advisory Committee on Certification of Optometrists

April 9, 1993 - 10 a.m. – Open Meeting
6606 West Broad Street, Board Room 1, 5th Floor, Richmond, Virginia. ☒

A meeting to review all written and public comments received by the Board on Regulation VR 465-09-01, § 4.3, Therapeutic Pharmaceutical Agents, and make recommendations to full board.

Contact: Eugenia K. Dorson, Deputy Executive Director, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9923.

Advisory Board on Respiratory Therapy

March 26, 1993 - 1 p.m. – Open Meeting
Department of Health Professions, 6606 West Broad Street, 5th Floor, Richmond, Virginia. ☒

A meeting to elect officers, review the regulation VR 465-04-01 for certification of R.T.s, and such other business which may come before the advisory board. The chairman may entertain public comments on any of the agenda items noticed.

Calendar of Events

Contact: Eugenia K. Dorson, Deputy Executive Director, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9923.

Credentials Committee

April 17, 1993 - 8 a.m. - Open Meeting
6606 West Broad Street, 5th Floor, Board Room 3, Richmond, Virginia. ☒

The committee will meet in open and closed session to (i) conduct general business; (ii) interview and review medical credentials of applicants applying for licensure in Virginia; and (iii) discuss any other items which may come before the committee. The committee will receive public comments of those persons appearing on behalf of candidates.

Contact: Eugenia K. Dorson, Deputy Executive Director, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9923.

Executive Committee

April 16, 1993 - 9 a.m. - Open Meeting
6606 West Broad Street, 5th Floor, Board Room 1, Richmond, Virginia. ☒

The committee will meet in open and closed sessions to (i) review cases of files requiring administrative action; (ii) review proposed budget; (iii) review legislation enacted by the 1993 General Assembly; and (iv) consider any other items which may come before the committee. The committee may receive public comments on specific items at the pleasure of the chairman.

Contact: Eugenia K. Dorson, Deputy Executive Director, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9923.

DEPARTMENT OF MENTAL HEALTH, MENTAL RETARDATION AND SUBSTANCE ABUSE SERVICES (STATE BOARD)

March 24, 1993 - 10 a.m. - Open Meeting
Southeastern Virginia Training Center, 2100 Steppingstone Square, Community Services Meeting Room, Chesapeake, Virginia.

A regular monthly board meeting. Agenda to be published on March 17. Agenda can be obtained by calling Jane Helfrich.

Tuesday - Information session - 8 p.m.
Wednesday - Committee meetings - 9 a.m.
Regular session - 10 a.m.

See agenda for locations.

Contact: Jane V. Helfrich, Board Administrator, State MHMRSAS Board, P.O. Box 1797, Richmond, VA 23214, telephone (804) 786-3921.

March 25, 1993 - 10 a.m. - Public Hearing
James Madison Building, 109 Governor Street, Main Floor Conference Room, Richmond, Virginia. ☒ (Interpreter for the deaf provided upon request)

A meeting to obtain public comment on the Substance Abuse, Prevention and Treatment Block Grant, and application for federal fiscal year 1993.

Contact: Bill Armistead, James Madison Bldg., 109 Governor St., Richmond, VA 23219, telephone (804) 371-7769.

State Human Rights Committee

March 24, 1993 - 9 a.m. - Open Meeting
Southeastern Virginia Training Center, 2100 Steppingstone Square, Community Services Meeting Room, Chesapeake, Virginia. ☒

A regular meeting to discuss business relating to human rights issues. Agenda items are listed for the meeting.

Contact: Elsie D. Little, State Human Rights Director, Department of Mental Health, Mental Retardation and Substance Abuse Services, Office of Human Rights, P.O. Box 1797, Richmond, VA 23214, telephone (804) 786-3988.

Virginia Interagency Coordinating Council

† **April 21, 1993 - 9:30 a.m. - Open Meeting**
Virginia Housing Development Authority, 601 South Belvidere Street, Conference Rooms 1 and 2, Richmond, Virginia. ☒ (Interpreter for the deaf provided upon request)

A meeting to advise and assist the Department of Mental Health, Mental Retardation and Substance Abuse Services - the Part H early intervention program in their efforts to proceed with the implementation of Part H of the Individuals with Disabilities Education Act (IDEA), that provides early intervention services for infants and toddlers with disabilities and their families, ages birth through 2.

Contact: Dr. Michael Fehl, Ed.D., Director, Child/Youth Services, Department of Mental Health, Mental Retardation and Substance Abuse Services, P.O. Box 1797, Richmond, VA 23214, telephone (804) 786-3710.

MIDDLE VIRGINIA BOARD OF DIRECTORS AND THE MIDDLE VIRGINIA COMMUNITY CORRECTIONS RESOURCES BOARD

† **April 1, 1993 - 7 p.m. - Open Meeting**

Calendar of Events

502 South Main Street, #4, Culpeper, Virginia.

From 7 p.m. until 7:30 p.m. the board will hold a business meeting to discuss DOC contract, budget and other related business. Then the CCRB will meet to review cases before for eligibility to participate with the program. It will review the previous month's operation (budget and program-related business).

Contact: Lisa Ann Peacock, Program Director, 502 S. Main St., #4, Culpeper, VA 22701, telephone (703) 825-4562.

NORFOLK STATE UNIVERSITY

Board of Visitors

† **March 22, 1993 - 2 p.m.** – Open Meeting

† **March 23, 1993 - 10 a.m.** – Open Meeting

Harrison B. Wilson Hall Administration Building, Board Room, Norfolk, Virginia.

Committee meetings:

1. Academic Affairs will meet at 2 p.m. on March 22.
2. Student Affairs will meet at 3 p.m. on March 22.
3. Audit and Finance will meet at 8:30 a.m. on March 23.

Contact: Gerald D. Tyler, Norfolk State University, 2401 Corprew Avenue, Wilson Hall-S340, Norfolk, VA 23504, telephone (804) 683-8373.

BOARD OF NURSING

March 22, 1993 - 8:30 a.m. – Open Meeting

March 25, 1993 - 8:30 a.m. – Open Meeting

Department of Health Professions, 6606 West Broad Street, Conference Room 1, 5th Floor, Richmond, Virginia. ☒ (Interpreter for the deaf provided upon request)

A panel of the board will conduct formal hearings. Public comment will not be received.

March 23, 1993 - 9 a.m. – Open Meeting

March 24, 1993 - 9 a.m. – Open Meeting

Department of Health Professions, 6606 West Broad Street, Conference Room 1, 5th Floor, Richmond, Virginia. ☒ (Interpreter for the deaf provided upon request)

A regular meeting of the board to consider matters relating to nursing education programs, discipline of licensees, licensure by examination and endorsement and other matters under the jurisdiction of the board. A draft of proposed amendments to regulations will be considered. Public comment will be received during an open forum session beginning at 11 a.m. on Tuesday, March 23, 1993.

Contact: Corinne F. Dorsey, R.N., Executive Director, 6606 W. Broad St., 4th Floor, Richmond, VA 23230, telephone (804) 662-9909 or (804) 662-7197/TDD ☒

BOARD OF NURSING HOME ADMINISTRATORS

† **April 8, 1993 - 9 a.m.** – Open Meeting

6606 West Broad Street, Richmond, Virginia. ☒

National examinations	Room 2	9 a.m.
State examinations	Room 1	10 a.m.

† **April 28, 1993 - 10 a.m.** – Open Meeting

6606 West Broad Street, Richmond, Virginia. ☒

A board meeting and formal conferences.

Contact: Meredyth P. Partridge, Executive Director, 6606 W. Broad St., Richmond, VA 23230, telephone (804) 662-9111.

VIRGINIA OUTDOORS FOUNDATION

† **April 5, 1993 - 10 a.m.** – Open Meeting

Little River Inn, Aldie, Virginia. ☒

A general business meeting.

Contact: Tyson B. Van Auken, Executive Director, Virginia Outdoors Foundation, 203 Governor St., Suite 302, Richmond, VA 23219, telephone (804) 786-5539.

POLYGRAPH EXAMINERS ADVISORY BOARD

March 23, 1993 - 10 a.m. – Open Meeting

Department of Commerce, 3600 West Broad Street, Richmond, Virginia. ☒

A meeting to administer the Polygraph Examiners Licensing Examination to eligible polygraph examiner interns and to consider other matters which may require board action.

Contact: Gerald W. Morgan, Board Administrator, Department of Commerce, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-8534.

PREVENTION AND CHILDREN'S RESOURCES ADVISORY COUNCIL

April 22, 1993 - 10 a.m. – Open Meeting

James River Corporate Office, 100 Tredegar Street, Richmond, Virginia.

A regularly scheduled quarterly business meeting.

Contact: Harriet Russell, Director, Department of Mental

Calendar of Events

Health, Mental Retardation and Substance Abuse Services, Office of Prevention and Children's Resources, P.O. Box 1797, Richmond, VA 23214, telephone (804) 786-1530.

BOARD OF PROFESSIONAL COUNSELORS

† April 16, 1993 - 9 a.m. - Open Meeting
Department of Health Professions, 6606 West Broad Street, Richmond, Virginia. ☐

A meeting to conduct general board business to include committee reports and responding to board correspondence. No public comment. Regulatory review will also be conducted.

Contact: Evelyn B. Brown, Executive Director, or Joyce D. Williams, Administrative Assistant, 6606 W. Broad St., 4th Floor, Richmond, VA 23230, telephone (804) 662-9912.

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March 26, 1993 - 10 a.m. - Public Hearing
6606 West Broad Street, Conference Room 1, Richmond, Virginia.

May 7, 1993 - Written comments may be submitted through this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Professional Counselors intends to amend regulations entitled: **VR 660-01-02. Regulations Governing the Practice of Professional Counseling.** The proposed regulations establish standards of practice for professional counseling, including education, supervised experience and examination for licensure, and amends fees. The proposed regulations result from a biennial review.

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

Contact: Evelyn B. Brown, Executive Director, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9912.

BOARD OF PSYCHOLOGY

March 23, 1993 - 8:30 a.m. - Open Meeting
Department of Health Professions, 6606 West Broad Street, 5th Floor, Room #4, Richmond, Virginia. ☐

An informal fact finding conference to review application for licensure of Cheryl R. Hussey, Ed.D.

March 23, 1993 - 10:30 a.m. - Open Meeting
Department of Health Professions, 6606 West Broad Street, 5th Floor, Room #2, Richmond, Virginia. ☐

A meeting to conduct general board business, and review regulations to consider fee adjustments.

Contact: Evelyn B. Brown, Executive Director, or Jane Ballard, Administrative Assistant, Department of Health Professions, 6606 W. Broad St., Richmond, VA 23230-1717, telephone (804) 662-9913.

† April 19, 1993 - 10 a.m. - Open Meeting
Department of Health Professions, 6606 West Broad Street, 5th Floor, Room #2, Richmond, Virginia. ☐

A formal hearing. Public comment will not be heard.

Contact: Evelyn Brown, Executive Director, or Bernice Parker, Administrative Assistant, Department of Health Professions, 6606 W. Broad St., Richmond, VA 23230-1717, telephone (804) 662-7328.

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July 20, 1993 - 9 a.m. - Public Hearing
6606 West Broad Street, 5th Floor, Conference Room 1, Richmond, Virginia.

August 7, 1993 - 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 Psychology intends to amend regulations entitled: **VR 565-01-2. Regulations Governing the Practice of Psychology.** The proposed amendments increase license renewal fees for psychologists and school psychologists and increase application fees for clinical psychologists.

Statutory Authority: §§ 54.1-113 and 54.1-2400 of the Code of Virginia.

Contact: Evelyn B. Brown, Executive Director, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9913.

DEPARTMENT OF REHABILITATIVE SERVICES (BOARD OF)

† March 25, 1993 - 10 a.m. - Open Meeting
4901 Fitzhugh Avenue, Richmond, Virginia. ☐ (Interpreter for the deaf provided upon request)

The board will review legislative issues from the 1993 General Assembly.

Contact: Susan L. Urofsky, Commissioner, Board of Rehabilitative Services, 4901 Fitzhugh Ave., Richmond, VA 23230, telephone (804) 367-0318 or toll-free 1-800-552-5019/TDD ☐

† March 30, 1993 - 2:30 p.m. - Public Hearing
Department of Rehabilitative Services Regional Office, 3433 Brambleton Avenue, S.W., Roanoke, Virginia. ☐

† April 6, 1993 - 2:30 p.m. - Public Hearing

Calendar of Events

4901 Fitzhugh Avenue, Richmond, Virginia. ☒ (Interpreter for the deaf provided upon request)

A public hearing to provide an opportunity for the department to receive comments and ideas on vocational rehabilitation and independent living state plans from the public, including consumers and representatives of organizations.

Contact: Betty Sparrow, Policy Analyst, 4901 Fitzhugh Ave., Richmond, VA 23230, telephone (804) 367-0169 or toll-free 1-800-552-5019/TDD ☎

SEWAGE HANDLING AND DISPOSAL ADVISORY COMMITTEE

† March 25, 1993 - 10 a.m. - Open Meeting

† May 20, 1993 - 10 a.m. - Open Meeting

1500 East Main Street, Suite 115, Main Street Station, Richmond, Virginia. ☒

A regular meeting.

Contact: Constance G. Talbert, Secretary, 1500 E. Main St., P.O. Box 2448, Suite 117, Richmond, VA 23218, telephone (804) 786-1750.

DEPARTMENT OF SOCIAL SERVICES (STATE BOARD OF)

May 7, 1993 - Written comments may be submitted through this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Board of Social Services intends to adopt regulations entitled: **VR 615-01-47. Disability Advocacy Program.** The purpose of the proposed regulation is to allow local departments of social services to make referrals and pay for legal services for recipients of general relief or state and local foster care when the provision of these services results in approval of previously denied claims for Supplemental Security Income disability benefits.

Statutory Authority: §§ 63.1-25 and 63.1-89.1 of the Code of Virginia.

Written comments may be submitted through May 7, 1993, to Diana Salvatore, Program Manager, Medical Assistance Unit, Virginia Department of Social Services, 8007 Discovery Drive, Richmond, Virginia 23229.

Contact: Peggy Friedenber, Legislative Analyst, Bureau of Governmental Affairs, Division of Planning and Program Review, Virginia Department of Social Services, 8007 Discovery Dr., Richmond, VA 23229, telephone (804) 662-9217.

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† May 21, 1993 - Written comments may be submitted through this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Board of Social Services intends to adopt regulations entitled: **VR 615-80-01. Human Subject Research Regulations.** The regulations are for assuring the protection of participants in human subject research conducted or authorized by the Virginia Department of Social Services, local social service agencies, agencies licensed by the department, and others receiving funds for state or local agencies.

STATEMENT

Basis: Sections 63.1-25.01 and 32.1-162.16 of the Code of Virginia outline new requirements for the conduct, review and reporting of research with human participants and assigned oversight responsibility for human research to several state agencies, including the Department of Social Services. The legislation requires the State Board of Social Services to develop regulations for human research to be conducted or authorized by the Department of Social Services, local social service agencies, or any facilities or other entities funded or licensed by the department.

Purpose: The purpose is to establish regulations for human research to be conducted or authorized by the Department of Social Services, local social service agencies, or any facilities or other entities funded or licensed by the department.

Substance: The proposed regulations define requirements for obtaining informed consent and require the establishment of a human research committee by the Department of Social Services to review and approve any human subject research that the department, local social service agencies, or any facilities or other entity funded or licensed by the department is conducting or proposing to conduct or authorize. The proposed regulations require annual reporting of the human research committee to the Commissioner. Human research that is subject to federal regulations is exempt from the regulations.

The major aspects of the proposed regulations include the following:

1. Definition of categories of research exempt from regulations;
2. Establishment of a department human research committee to review research proposed or authorized by the Department of Social Services, local social service agencies, or any facilities or other entities funded or licensed by the department;
3. Requirement that the department research committee has at least seven members with varying

backgrounds;

4. Reporting of research committee annually to the Commissioner;

5. Reporting of the Commissioner annually to the Governor and General Assembly;

6. Consideration of research proposals by the committee within 45 days after submission;

7. Provision for expedited review of certain research projects;

8. Requirements for obtaining informed consent;

9. Requirement for preparation and maintenance of committee records of activities;

10. Exclusion of research subject to federal regulations.

Issues: The following issues have been addressed in the regulations:

1. The proposed regulations cover employees as well as clients as a potential human subject participant.

2. The regulations cover not only the department, local social service agencies and any entity licensed by the department, but also any entity funded or contracted with by the department.

3. Any research project requiring an allowance variance or other approval related to department regulations must obtain approval for such from the department prior to requesting the committee's review and approval of the proposed research.

4. The proposed regulations authorize the department's research review committee to determine whether research projects are exempt from the regulations.

Impact: Under previous state law, all human research conducted within the state that was not subject to federal regulations was governed by regulations promulgated by the Department of Mental Health, Mental Retardation and Substance Abuse Services (DMHMRSAS). Since the proposed regulations were modeled to a large extent after those of the DMHMRSAS, the requirements are substantially the same as before. The major change is the administrative structure in the Department of Social Services that will review and approve human subject research.

Statutory Authority: §§ 63.1-25 and 63.1-25.01 of the Code of Virginia.

Written comments may be submitted through May 21, 1993, to Sue Murdock, Department of Social Services, 8007 Discovery Drive, Richmond, Virginia 23229-8699.

Contact: Peggy Friedenber, Policy Analyst, Department of Social Services, 8007 Discovery Dr., Richmond, VA 23229-8699, telephone (804) 662-9217.

BOARD FOR PROFESSIONAL SOIL SCIENTISTS

† **April 19, 1993 - 10 a.m.** – Open Meeting
Department of Commerce, 3600 West Broad Street,
Conference Room 3, Richmond, Virginia. ☒

A general board meeting.

Contact: Nelle P. Hotchkiss, Assistant Director, Department of Commerce, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8595 or (804) 367-9753/TDD ☎

VIRGINIA STUDENT ASSISTANCE AUTHORITIES

† **April 29, 1993 - 10 a.m.** – Open Meeting
411 East Franklin Street, 2nd Floor Board Room,
Richmond, Virginia. ☒

A general business meeting.

Contact: Catherine E. Fields, Administrative Assistant, One Franklin Square, 411 E. Franklin St., Suite 300, Richmond, Virginia 23219, telephone (804) 775-4648 or toll-free 1-800-792-LOAN.

DEPARTMENT OF TAXATION

April 23, 1993 – Written comments may be submitted through this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of Taxation intends to amend regulations entitled: **VR 630-3-414. Corporation Income Tax: Sales Factor.** This regulation sets forth the proper method for including receipts from installment sales in the sales factor. The basis portion is included in the sales factor in the year of sale. The net gain portion and interest income are included in the sales factor in the year recognized for federal income tax purposes. The regulation also clarifies when such receipts should be included in the numerator of the sales factor.

Statutory Authority: 58.1-203 of the Code of Virginia.

Contact: Michael S. Melson, Tax Policy Analyst, Department of Taxation, P.O. Box 1880, Richmond, VA 23282-1880, telephone (804) 367-0033.

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April 23, 1993 – Written comments may be submitted through this date.

Calendar of Events

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of Taxation intends to amend regulations entitled: **VR 630-3-419. Corporation Income Tax: Construction Corporation; Apportionment.** This regulation clarifies that the "completed contract method" mentioned in § 58.1-419 of the Code of Virginia does not include any of the "percentage of completion" methods available under federal law. In addition, the regulation clarifies which apportionment formula should be used when a construction corporation reports income under two or more accounting methods. Other nonsubstantive changes are made to conform to the style of The Virginia Register.

Statutory Authority: § 58.1-203 of the Code of Virginia.

Contact: Michael S. Melson, Tax Policy Analyst, Department of Taxation, P.O. Box 1880, Richmond, VA 23282-1880, telephone (804) 367-0033.

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April 23, 1993 – Written comments may be submitted through this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of Taxation intends to amend regulations entitled: **VR 630-10-73. Retail Sales and Use Tax: Newspapers, Magazines, Periodicals and Other Publications.** The purpose of the proposed amendment is to clarify what constitutes taxable/exempt publications for purposes of the retail sales and use tax.

Statutory Authority: § 58.1-203 of the Code of Virginia.

Contact: Terry M. Barrett, Policy Analyst, Department of Taxation, P.O. Box 1880, Richmond, VA 23282-1880, telephone (804) 367-0010.

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April 23, 1993 – Written comments may be submitted through this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of Taxation intends to amend regulations entitled: **VR 630-10-74. Retail Sales and Use Tax: Nonprofit Organizations.** The purpose of the proposed amendment is to clarify the sales and use tax treatment of sales and purchase transactions made by nonprofit organizations.

Statutory Authority: § 58.1-203 of the Code of Virginia.

Contact: Lonnie T. Lewis, Jr., Tax Policy Analyst, Department of Taxation, P.O. Box 1880, Richmond, VA 23282-1880, telephone (804) 367-0962.

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April 23, 1993 – Written comments may be submitted through this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of Taxation intends to amend regulations entitled: **VR 630-10-80. Retail Sales and Use Tax: Penalties and Interest.** The purpose of the proposed amendment is to reflect recent law changes in the area of civil and criminal penalties in light of Virginia's 1990 Tax Amnesty Program and clarify the application of penalty to audit assessments.

Statutory Authority: § 58.1-203 of the Code of Virginia.

Contact: Valerie H. Marks, Tax Policy Analyst, Department of Taxation, P.O. Box 1880, Richmond, VA 23282-1880, telephone (804) 367-0964.

VIRGINIA COUNCIL ON TEEN PREGNANCY PREVENTION

May 6, 1993 - 10 a.m. – Open Meeting
Koger Center, 1604 Santa Rosa Drive, Wythe Building, Conference Rooms A and B, Richmond, Virginia.

A regularly scheduled quarterly business meeting.

Contact: Jeanne McCann, Coordinator, Virginia Council on Teen Pregnancy Prevention, Department of Mental Health, Mental Retardation and Substance Abuse Services, Office of Prevention and Children's Resources, P.O. Box 1797, Richmond, VA 23219, telephone (804) 786-1530.

DEPARTMENT OF TRANSPORTATION

March 22, 1993 - 10 a.m. – Public Hearing
Suffolk District Office, 1700 North Main Street (Route 460), Suffolk, Virginia. ♿ (Interpreter for the deaf provided upon request)

Suffolk district preallocation hearing to receive comments on highway allocations for the upcoming year, and on updating the six-year improvement program for the interstate, primary, and urban systems, as well as mass transit.

March 23, 1993 - 10 a.m. – Public Hearing
Augusta County Government Center, Route 11, Verona, Virginia. ♿ (Interpreter for the deaf provided upon request)

Staunton district preallocation hearing to receive comments on highway allocations for the upcoming year, and on updating the six-year improvement program for the interstate, primary, and urban systems, as well as mass transit.

Calendar of Events

March 24, 1993 - 10 a.m. – Public Hearing
Richmond District Office, Pine Forest Drive off Route 1, one mile north of Colonial Heights. ☒ (Interpreter for the deaf provided upon request)

Richmond district preallocation hearing to receive comments on highway allocations for the upcoming year, and on updating the six-year improvement program for the interstate, primary, and urban systems, as well as mass transit.

March 26, 1993 - 10 a.m. – Public Hearing
Culpeper District Office, Route 15, Culpeper, Virginia. ☒

Culpeper district preallocation hearing to receive comments on highway allocations for the upcoming year, and on updating the six-year improvement program for the interstate, primary, and urban systems, as well as mass transit.

March 31, 1993 - 10 a.m. – Public Hearing
Fairfax City Hall, Fairfax, Virginia. ☒ (Interpreter for the deaf provided upon request)

Northern Virginia district preallocation hearing to receive comments on highway allocations for the upcoming year, and on updating the six-year improvement program for the interstate, primary, and urban systems, as well as mass transit.

April 2, 1993 - 10 a.m. – Public Hearing
Virginia Highlands Community College, Route 372, Abingdon, Virginia. ☒ (Interpreter for the deaf provided upon request)

Bristol district preallocation hearing to receive comments on highway allocations for the upcoming year, and on updating the six-year improvement program for the interstate, primary, and urban systems, as well as mass transit.

April 5, 1993 - 10 a.m. – Public Hearing
Lynchburg District Office, Route 501, Lynchburg, Virginia. ☒ (Interpreter for the deaf provided upon request)

Lynchburg district preallocation hearing to receive comments on highway allocations for the upcoming year, and on updating the six-year improvement program for the interstate, primary, and urban systems, as well as mass transit.

June 10, 1993 - 9 a.m. – Public Hearing
Salem District Office, Harrison Avenue, Salem, Virginia. ☒ (Interpreter for the deaf provided upon request)

Final allocation hearing for the western districts to receive comments on highway allocations for the upcoming year, and on updating the six-year improvement program for the interstate, primary, and urban systems, and mass transit for the Bristol, Salem, Lynchburg, and Staunton districts.

June 10, 1993 - 2 p.m. – Public Hearing
Virginia Department of Transportation, 1221 East Broad Street, Auditorium, Richmond, Virginia. ☒ (Interpreter for the deaf provided upon request)

Final allocation hearing for the eastern districts to receive comments on highway allocations for the upcoming year, and on updating the six-year improvement program for the interstate, primary, and urban systems, and mass transit for the Richmond, Fredericksburg, Suffolk, Culpeper, and Northern Virginia districts.

Contact: Albert W. Coates, Jr., Assistant Commissioner, Virginia Department of Transportation, 1401 E. Broad St., Richmond, VA 23219, telephone (804) 786-9950.

TREASURY BOARD

April 21, 1993 - 9 a.m. – Open Meeting
James Monroe Building, 101 North 14th Street, Treasury Board Room, 3rd Floor, Richmond, Virginia. ☒

A regular meeting of the board.

Contact: Linda F. Bunce, Administrative Assistant to the Treasurer, Department of the Treasury, 101 N. 14th St., 3rd Floor, Richmond, VA 23219, telephone (804) 225-2142.

VIRGINIA COUNCIL ON VOCATIONAL EDUCATION

March 24, 1993 - 1 p.m. – Open Meeting
The Jefferson Hotel, Franklin and Adams Streets, Richmond, Virginia.

A business session.

March 25, 1993 - 9:30 a.m. – Open Meeting
James Monroe Building, 101 North 14th Street, Richmond, Virginia.

A joint meeting with the Virginia Board of Education.

Contact: Jerry M. Hicks, Executive Director, 7420-A Whitepine Rd., Richmond, VA 23237, telephone (804) 275-6218.

VIRGINIA VOLUNTARY FORMULARY BOARD

April 22, 1993 - 10:30 a.m. – Open Meeting
Washington Building, 1100 Bank Street, 2nd Floor Board Room, Richmond, Virginia.

A meeting to consider comments and review new product data for products pertaining to the Virginia Voluntary Formulary.

Contact: James K. Thomson, Director, Bureau of

Calendar of Events

Pharmacy Services, 109 Governor St., Room B1-9, Richmond, VA 23219, telephone (804) 786-4326.

DEPARTMENT FOR THE VISUALLY HANDICAPPED

Advisory Committee on Services

† April 24, 1993 - 10 a.m. – Open Meeting
Virginia Rehabilitation Center for the Blind, 401 Azalea Avenue, Richmond, Virginia. ☒

The committee meets quarterly to advise the Virginia Board for the Visually Handicapped on matters related to services for blind and visually impaired citizens of the Commonwealth. A portion of this meeting will be conducted jointly with the Board for the Visually Handicapped.

Contact: Barbara G. Tyson, Executive Secretary, 397 Azalea Ave., Richmond, VA 23227, telephone (804) 371-3140, toll-free 1-800-622-2155 or (804) 371-3140/TDD ☎

DEPARTMENT OF WASTE MANAGEMENT (VIRGINIA WASTE MANAGEMENT BOARD)

March 24, 1993 - 7 p.m. – Public Hearing
Central High School, Route 14 at King and Queen Courthouse, King and Queen County, Virginia.

Pursuant to the requirements of Part VII of the Virginia Solid Waste Management Regulations (Permitting of Solid Waste Management Facilities), the draft Solid Waste Disposal Facility Permit for the development of a sanitary landfill in King and Queen County, Virginia, proposed by Browning-Ferris Industries, is available for public review and comment. The permit allows the proposed facility to accept only authorized, nonhazardous wastes as listed in the draft permit. The proposal incorporates design elements for a single composite liner system and a high density polyethylene leachate collection pipe system, which are not provided for in the regulations. Browning-Ferris Industries petitioned for these features pursuant to the requirements of Part IX of the regulations (Rulemaking Petitions and Procedures), and the Department of Waste Management has granted tentative approval.

Contact: Dean E. Starook, Environmental Engineer Senior, Monroe Bldg., 101 N. 14th St., 11th Floor, Richmond, VA 23219, telephone (804) 371-0517.

March 26, 1993 - 2 p.m. – Public Hearing
County Administration Building, 4301 East Parham Road, Henrico County Supervisors Board Room, Richmond, Virginia.

Pursuant to the requirements of the Virginia Solid Waste Management Regulations (Permitting of Solid

Waste Management Facilities), the draft Solid Waste Disposal Facility Permit for the development of a sanitary landfill and resource management facility proposed by Browning-Ferris Industries of South Atlantic, Inc., is available for public review and comment. The permit allows the proposed facility to accept only authorized, nonhazardous solid waste, and will be open to all municipal, government, commercial, and industrial customers in accordance with the conditions of Henrico County Use Permit 41-90.

Contact: Donald H. Brunson, III, Environmental Engineer Senior, Monroe Bldg., 101 N. 14th St., 11th Floor, Richmond, VA 23219, telephone (804) 371-0515.

April 8, 1993 - 2 p.m. – Public Hearing
Alleghany High School, 210 Mountaineer Drive, Covington, Virginia.

Pursuant to the requirements of the Virginia Solid Waste Management Regulations (SWMR), Permitting of Solid Waste Management Facilities, the Department of Waste Management will hold a public hearing on the draft permit amendment for Hercules Industrial Landfill No. 93 located in the City of Covington. The permit amendment was drafted by the Department of Waste Management for the Hercules Incorporated, in accordance with Part VII of the VSWMR. The purpose of the public hearing will be to solicit comments regarding the technical merits of the amended issues. The public comment period will extend until April 19, 1993. Copies of the proposed draft permit may be obtained from Sanjay V. Thirunagari of the Department of Waste Management. Copies concerning the draft permit must be in writing and directed to Howard Freeland at the Department of Waste Management.

Contact: Sanjay V. Thirunagari, Environmental Engineer Senior, Virginia Department of Waste Management, James Monroe Bldg., 101 N. 14th St., 11th Floor, Richmond, VA 23219, telephone (804) 371-2518.

BOARD FOR WASTE MANAGEMENT FACILITY OPERATORS

† April 16, 1993 - 8:30 a.m. – Open Meeting
Department of Commerce, 3600 West Broad Street, Richmond, Virginia. ☒

A general board meeting.

Contact: Nelle P. Hotchkiss, Assistant Director, Department of Commerce, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8595 or (804) 367-9753/TDD ☎



DEPARTMENT OF YOUTH AND FAMILY SERVICES (BOARD OF)

April 8, 1993 - 8:30 a.m. - Open Meeting

700 Centre Building, 7th and Franklin Streets, 4th Floor,
Richmond, Virginia. ☒

Committee meetings begin at 8:30 to be followed by a general meeting at 10 a.m. to (i) review programs recommended for certification or probation; (ii) consider adoption of draft policies; and (iii) take up other matters that may come before the board.

Contact: Donald R. Carignan, Policy Coordinator, P.O. Box 1110, Richmond, VA 23208-1110, telephone (804) 371-0692.

March 25, 1993 - 9 a.m. - Open Meeting

Koger Center, 8007 Discovery Drive, Blair Building,
Conference Room C, Richmond, Virginia. ☒ (Interpreter for the deaf provided upon request)

A general business meeting to effect the Comprehensive Services Act for At-Risk Youth and Families. Please confirm meeting details before planning to attend.

Contact: Dian McConnel, Coordinator, Council on Community Services for Youth and Families, Department of Youth and Family Services, 700 Centre, 700 E. Franklin St., Richmond, VA 23219, telephone (804) 786-5394 or (804) 371-0772/TDD ☎

LEGISLATIVE

JOINT LEGISLATIVE AUDIT AND REVIEW COMMISSION

† **April 6, 1993 - 9:30 a.m. - Open Meeting**

General Assembly Building, 910 Capitol Square, House Appropriations Committee Room, 9th Floor, Richmond, Virginia.

A staff workplan for the remainder of 1993.

Contact: Phil Leone, General Assembly Bldg., 910 Capitol Square, Suite 1100, Richmond, VA 23219, telephone (804) 786-1258.

CHRONOLOGICAL LIST

OPEN MEETINGS

March 22

- † Agricultural Council, Virginia
Commerce, Board of
- † Governor's Job Training Coordinating Council
Lottery Department, State
- † Norfolk State University
- Board of Visitors
- Nursing, Board of

March 23

- † Agricultural Council, Virginia
- † Agriculture and Consumer Services, Department of
- Virginia Peanut Board
- † Hazardous Materials Training Committee
Health Services Cost Review Council, Virginia
- † Marine Resources Commission
- † Norfolk State University
- Board of Visitors
- Nursing, Board of
- Polygraph Examiners Advisory Board
- Psychology, Board of
- † Violent Crime, Governor's Commission on

March 24

- † Conservation and Recreation, Department of
- Upper James Scenic River Advisory Board
- Manufactured Housing Board, Virginia
- Medicine, Board of
- Advisory Board of Occupational Therapists
- Mental Health, Mental Retardation and Substance
Abuse Services Board, State
- Mental Health, Mental Retardation and Substance
Abuse Services, Department of
- State Human Rights Committee
- Nursing, Board of
- Vocational Education, Virginia Council on

March 25

- Aging, Department for the
- Long-Term Care Ombudsman Program Advisory
Council
- † Agriculture and Consumer Services, Department of
- Virginia Farmer's Market Board
- Chesapeake Bay Local Assistance Board
- † Criminal Justice Services Board
- Committee on Criminal Justice Information Systems
- Education, Board of
- † Labor and Industry, Department of
- Apprenticeship Council
- Nursing, Board of
- † Sewage Handling and Disposal Advisory Committee
- Vocational Education, Virginia Council on
- Youth and Family Services, Department of
- State Management Team of the Comprehensive
Services Act for At-Risk Youth and Families

Calendar of Events

March 26

Medicine, Board of
- Advisory Board on Respiratory Therapy

March 29

Alcoholic Beverage Control Board
Cosmetology, Board for

March 30

† Contractors, Board for
- Applications Review Committee
Marine Products Board, Virginia

March 31

Compensation Board

April 1

† Air Pollution, State Advisory Board on
Game and Inland Fisheries, Board of
Local Emergency Planning Committee - Chesterfield
County
† Medical Assistance Services, Department of
- Drug Utilization Review Board
† Middle Virginia Board of Directors and Middle
Virginia Community Corrections Resources Board

April 2

† Food Service Advisory Committee
Game and Inland Fisheries, Board of

April 5

† Barbers, Board for
Longwood College
Academic Affairs Committee and Student Affairs
Committee of the Board of Visitors
† Virginia Outdoors Foundation

April 6

† Funeral Directors and Embalmers, Board of
Hopewell Industrial Safety Council
† Intergovernmental Relations, Advisory Commission
on
† Joint Legislative Audit and Review Commission

April 7

† Funeral Directors and Embalmers, Board of
† Health Professions, Board of
- Administration and Budget Committee
† Local Emergency Planning Committee - Winchester

April 8

† Agriculture and Consumer Services, Department of
- Virginia Winegrowers Advisory Board
† Nursing Home Administrators, Board of
Youth and Family Services, Board of

April 9

† Dentistry, Board of
Medicine, Board of
- Advisory Committee on Certification for
Optometrists

April 12

Alcoholic Beverage Control Board

April 13

Higher Education for Virginia, State Council of

April 14

† Agriculture and Consumer Services, Department of
- Virginia Cattle Industry Board
Mount Rogers Alcohol Safety Action Program

April 15

† Agriculture and Consumer Services, Department of
- Virginia Cattle Industry Board
- Pesticide Control Board
† Housing and Community Development, Board of
Amusement Device Technical Advisory Committee
Longwood College
- Board of Visitors

April 16

† Agriculture and Consumer Services, Department of
- Pesticide Control Board
† Dentistry, Board of
† Interdepartmental Regulation of Residential Facilities
for Children
- Coordinating Committee
Longwood College
- Board of Visitors
Medicine, Board of
- Executive Committee
† Professional Counselors, Board of
† Waste Management Facility Operators, Board for

April 17

† Dentistry, Board of
Mary Washington College
- Board of Visitors
Medicine, Board of
- Credentials Committee

April 18

† Dentistry, Board of

April 19

† Health Professions, Board of
- Compliance and Discipline Committee
- Regulatory Research Committee
Housing and Community Development, Department of
† Psychology, Board of
† Soil Scientists, Board for

April 20

† Health Professions, Board of
- Executive/Legislative Committee
- Committee on Professional Education and Public
Affairs
Housing and Community Development, Department of

April 21

† Agriculture and Consumer Services, Department of

- Virginia Seed Potato Board
Housing and Community Development, Department of
Local Debt, State Council on
† Maternal and Child Health Council
† Mental Health, Mental Retardation and Substance
Abuse Services, Department of
- Virginia Interagency Coordinating Council
Treasury Board

- April 22**
Housing and Community Development, Department of
Prevention and Children's Resources Advisory Council
Voluntary Formulary Board, Virginia
- April 23**
† Geology, Board for
- April 24**
† Visually Handicapped, Department for the
- Advisory Committee on Services
- April 26**
Alcoholic Beverage Control Board
† Health, State Board of (Teleconference)
- April 28**
† Nursing Home Administrators, Board of
- April 29**
† Virginia Student Assistance Authorities
- May 4**
† Funeral Directors and Embalmers, Board of
† Hopewell Industrial Safety Council
- May 5**
† Funeral Directors and Embalmers, Board of
- Informal Conference Committee
- May 6**
Local Emergency Planning Committee - Chesterfield
County
Teen Pregnancy Prevention, Virginia Council on
- May 10**
Alcoholic Beverage Control Board
- May 13**
† Audiology and Speech-Language Pathology, Board of
- May 20**
Health, Department of
- Commissioner's Waterworks Advisory Committee
† Sewage Handling and Disposal Advisory Committee
- May 24**
Alcoholic Beverage Control Board
- May 25**
† Virginia Health Services Cost Review Council

June 1
† Hopewell Industrial Safety Council

PUBLIC HEARINGS

- March 22**
Lottery Department, State
Transportation, Department of
- March 23**
Transportation, Department of
- March 24**
Deaf and Hard of Hearing, Department for the
Transportation, Department of
Waste Management, Department of
- March 25**
Mental Health, Mental Retardation and Substance
Abuse Services, Department of
- March 26**
Professional Counselors, Board of
Transportation, Department of
Waste Management, Department of
- March 30**
† Rehabilitative Services, Department of
- March 31**
Transportation, Department of
- April 2**
Transportation, Department of
- April 5**
Transportation, Department of
- April 6**
† Rehabilitative Services, Department of
- April 8**
Waste Management, Department of
- April 15**
Dentistry, Board of
- May 19**
Agriculture and Consumer Services, Department of
† Public Accounts, Auditor of
- April 21**
† Education, State Board of
- April 22**
† Education, State Board of
- April 26**
† Public Accounts, Auditor of

Calendar of Events

April 27

† Education, State Board of

April 28

† Education, State Board of

May 3

† Public Accounts, Auditor of

May 25

† Virginia Health Services Cost Review Council

June 10

Transportation, Department of

June 30

† Agriculture and Consumer Services, Board of

July 20

Psychology, Board of