
THE VIRGINIA REGISTER INFORMATION PAGE

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 new and amended sections of regulations, both as proposed and as finally adopted, 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 and executive orders issued by the Governor, the Virginia Tax Bulletin issued periodically by the Department of Taxation, and notices of 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 intended regulatory action; a basis, purpose, substance and issues statement; an economic impact analysis prepared by the Department of Planning and Budget; the agency's response to the economic impact analysis; a summary; a notice giving the public an opportunity to comment on the proposal; and the text of the proposed regulation.

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

The 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 Registrar and the promulgating agency. The objection will be published in the *Virginia Register*. Within 21 days after receipt by the agency of a legislative objection, the agency shall file a response with the Registrar, the objecting legislative committee, and the Governor.

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

The Governor may review the final regulation during this time and, if he objects, forward his objection to the Registrar and the agency. In addition to or in lieu of filing a formal objection, the Governor may suspend the effective date of a portion or all of a regulation until the end of the next regular General Assembly session by issuing a directive signed by a majority of the members of the appropriate standing committees and the Governor. The Governor's objection or suspension of the regulation, or both, will be published in the *Virginia Register*. If the Governor finds that changes made to the proposed regulation have substantial impact, he may require the agency to provide an additional 30-day public comment period on the changes. Notice of the additional public comment period required by the Governor will be published in the *Virginia Register*.

The agency shall suspend the regulatory process for 30 days when it receives requests from 25 or more individuals to solicit additional public comment, unless the agency determines that the changes have minor or inconsequential impact.

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

the agency to provide for additional public comment, in which event the regulation, unless withdrawn, becomes effective on the date specified, which shall be after the expiration of the period for which the Governor has provided for additional public comment; (iii) the Governor and the General Assembly exercise their authority to suspend the effective date of a regulation until the end of the next regular legislative session; or (iv) the agency suspends the regulatory process, in which event the regulation, unless withdrawn, becomes effective on the date specified, which shall be after the expiration of the 30-day public comment period.

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

EMERGENCY REGULATIONS

If an agency demonstrates that (i) there is an immediate threat to the public's health or safety; or (ii) Virginia statutory law, the appropriation act, federal law, or federal regulation requires a regulation to take effect no later than (a) 280 days from the enactment in the case of Virginia or federal law or the appropriation act, or (b) 280 days from the effective date of a federal regulation, it then requests the Governor's approval to adopt 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 to addressing specifically defined situations and may not exceed 12 months in duration. Emergency regulations are published as soon as possible in the *Register*.

During the time the emergency status is in effect, the agency may proceed with the adoption of permanent regulations through the usual procedures. To begin promulgating the replacement regulation, the agency must (i) file the Notice of Intended Regulatory Action with the Registrar within 60 days of the effective date of the emergency regulation; and (ii) file the proposed regulation with the Registrar within 180 days of the effective date of the emergency regulation. If the agency chooses not to adopt the regulations, the emergency status ends when the prescribed time limit expires.

STATEMENT

The foregoing constitutes a generalized statement of the procedures to be followed. For specific statutory language, it is suggested that Article 2 (§ 9-6.14:7.1 et seq.) of Chapter 1.1:1 of the Code of Virginia be examined carefully.

CITATION TO THE VIRGINIA REGISTER

The *Virginia Register* is cited by volume, issue, page number, and date. **12:8 VA.R. 1096-1106 January 8, 1996**, refers to Volume 12, Issue 8, pages 1096 through 1106 of the *Virginia Register* issued on January 8, 1996.

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Staff of the Virginia Register: **Jane D. Chaffin**, Registrar of Regulations.

PUBLICATION SCHEDULE AND DEADLINES

This schedule is available on the *Register's* Internet home page (<http://legis.state.va.us/codecomm/register/regindex.htm>).

January 2000 through December 2000

<u>Volume:Issue</u>	<u>Material Submitted By Noon*</u>	<u>Will Be Published On</u>
16:10	January 12, 2000	January 31, 2000
16:11	January 26, 2000	February 14, 2000
16:12	February 9, 2000	February 28, 2000
16:13	February 23, 2000	March 13, 2000
16:14	March 8, 2000	March 27, 2000
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16:26	August 23, 2000	September 11, 2000
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17:1	September 6, 2000	September 25, 2000
17:2	September 20, 2000	October 9, 2000
17:3	October 4, 2000	October 23, 2000
17:4	October 18, 2000	November 6, 2000
17:5	November 1, 2000	November 20, 2000
17:6	November 14, 2000 (Tuesday)	December 4, 2000
17:7	November 29, 2000	December 18, 2000
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*Filing deadlines are Wednesdays unless otherwise specified.

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SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
Title 2. Agriculture			
2 VAC 15-20-70	Amended	16:9 VA.R. 1150	1/1/00
2 VAC 15-20-80	Amended	15:26 VA.R. 3445	8/17/99
2 VAC 15-20-80	Repealed	16:9 VA.R. 1150	1/1/00
2 VAC 15-20-81	Added	16:9 VA.R. 1150	1/1/00
Title 4. Conservation and Natural Resources			
4 VAC 20-270-50	Amended	16:7 VA.R. 804	1/1/00
4 VAC 20-333-10 through 4 VAC 20-333-40	Added	15:24 VA.R. 3035-3037	7/6/99
4 VAC 20-595-10 emer	Added	15:25 VA.R. 3366	8/15/99-8/31/99
4 VAC 20-595-20 emer	Added	15:25 VA.R. 3366	8/15/99-8/31/99
4 VAC 20-620-30	Amended	16:5 VA.R. 580	11/1/99
4 VAC 20-620-40	Amended	16:5 VA.R. 580	11/1/99
4 VAC 20-700-20	Amended	16:7 VA.R. 804	1/1/00
4 VAC 20-720-20	Amended	16:3 VA.R. 292	10/1/99
4 VAC 20-720-35	Added	16:3 VA.R. 292	10/1/99
4 VAC 20-720-40	Amended	16:3 VA.R. 292	10/1/99
4 VAC 20-720-50	Amended	16:3 VA.R. 293	10/1/99
4 VAC 20-720-60	Amended	16:3 VA.R. 293	10/1/99
4 VAC 20-720-70	Amended	16:3 VA.R. 294	10/1/99
4 VAC 20-720-80	Amended	16:3 VA.R. 294	10/1/99
4 VAC 20-720-105	Repealed	16:3 VA.R. 294	10/1/99
4 VAC 20-890-10	Amended	16:7 VA.R. 804	1/1/00
4 VAC 20-890-25	Added	16:7 VA.R. 805	1/1/00
4 VAC 20-890-35	Amended	16:7 VA.R. 805	1/1/00
Title 6. Criminal Justice and Corrections			
6 VAC 20-170-10 et seq.	Repealed	16:8 VA.R. 945	2/2/00
6 VAC 20-171-10 through 6 VAC 20-171-560	Added	16:8 VA.R. 945-974	2/2/00
Title 7. Economic Development			
7 VAC 10-20-10	Amended	15:25 VA.R. 3348	9/29/99
7 VAC 10-20-30	Amended	15:25 VA.R. 3350	9/29/99
7 VAC 10-20-50	Amended	15:25 VA.R. 3350	9/29/99
Title 9. Environment			
9 VAC 5-80-1400 through 9 VAC 5-80-1590	Added	16:7 VA.R. 806-819	2/1/00
9 VAC 25-151 (Forms)	Amended	15:24 VA.R. 3251	--
Title 11. Gaming			
11 VAC 10-130-10	Amended	15:26 VA.R. 3449	8/25/99
11 VAC 10-130-20	Amended	15:26 VA.R. 3449	8/25/99
11 VAC 10-130-40	Amended	15:26 VA.R. 3451	8/25/99
11 VAC 10-130-51	Amended	15:26 VA.R. 3451	8/25/99
11 VAC 10-130-60	Amended	15:26 VA.R. 3452	8/25/99
11 VAC 10-130-76	Amended	15:26 VA.R. 3452	8/25/99
11 VAC 10-130-77	Amended	15:26 VA.R. 3452	8/25/99
Title 12. Health			
12 VAC 5-371-40 emer	Amended	16:7 VA.R. 896	12/31/99-12/30/00
12 VAC 5-408-10 through 12 VAC 5-408-370	Added	16:7 VA.R. 819-837	1/20/00

Cumulative Table of VAC Sections Adopted, Amended, or Repealed

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
12 VAC 5-408-70	Erratum	16:9 VA.R. 1174	--
12 VAC 5-408-230	Erratum	16:9 VA.R. 1174	--
12 VAC 5-408-360	Erratum	16:9 VA.R. 1174	--
12 VAC 5-408-370	Erratum	16:9 VA.R. 1174	--
12 VAC 5-410-70 emer	Amended	16:7 VA.R. 897	12/31/99-12/30/00
12 VAC 5-610-10*	Repealed	15:24 VA.R. 3188	*
12 VAC 5-610-20*	Amended	15:24 VA.R. 3188	*
12 VAC 5-610-30*	Amended	15:24 VA.R. 3188	*
12 VAC 5-610-40*	Amended	15:24 VA.R. 3188	*
12 VAC 5-610-50*	Amended	15:24 VA.R. 3188	*
12 VAC 5-610-70*	Amended	15:24 VA.R. 3189	*
12 VAC 5-610-75*	Added	15:24 VA.R. 3190	*
12 VAC 5-610-80*	Amended	15:24 VA.R. 3190	*
12 VAC 5-610-90*	Repealed	15:24 VA.R. 3190	*
12 VAC 5-610-100*	Amended	15:24 VA.R. 3190	*
12 VAC 5-610-110*	Repealed	15:24 VA.R. 3190	*
12 VAC 5-610-120*	Amended	15:24 VA.R. 3190	*
12 VAC 5-610-130*	Amended	15:24 VA.R. 3192	*
12 VAC 5-610-140*	Repealed	15:24 VA.R. 3192	*
12 VAC 5-610-150*	Repealed	15:24 VA.R. 3192	*
12 VAC 5-610-170*	Amended	15:24 VA.R. 3192	*
12 VAC 5-610-180*	Repealed	15:24 VA.R. 3193	*
12 VAC 5-610-190*	Amended	15:24 VA.R. 3193	*
12 VAC 5-610-200*	Amended	15:24 VA.R. 3194	*
12 VAC 5-610-230*	Amended	15:24 VA.R. 3195	*
12 VAC 5-610-250*	Amended	15:24 VA.R. 3195	*
12 VAC 5-610-255*	Added	15:24 VA.R. 3198	*
12 VAC 5-610-260*	Amended	15:24 VA.R. 3198	*
12 VAC 5-610-270*	Amended	15:24 VA.R. 3198	*
12 VAC 5-610-280*	Amended	15:24 VA.R. 3198	*
12 VAC 5-610-290*	Amended	15:24 VA.R. 3199	*
12 VAC 5-610-300*	Amended	15:24 VA.R. 3199	*
12 VAC 5-610-330*	Amended	15:24 VA.R. 3199	*
12 VAC 5-610-340*	Amended	15:24 VA.R. 3199	*
12 VAC 5-610-360*	Amended	15:24 VA.R. 3200	*
12 VAC 5-610-370*	Repealed	15:24 VA.R. 3200	*
12 VAC 5-610-380*	Amended	15:24 VA.R. 3201	*
12 VAC 5-610-430*	Amended	15:24 VA.R. 3202	*
12 VAC 5-610-440*	Amended	15:24 VA.R. 3202	*
12 VAC 5-610-441 through 12 VAC 5-610-449*	Added	15:24 VA.R. 3202-3210	*
12 VAC 5-610-449.1*	Added	15:24 VA.R. 3211	*
12 VAC 5-610-450*	Amended	15:24 VA.R. 3212	*
12 VAC 5-610-470*	Amended	15:24 VA.R. 3212	*
12 VAC 5-610-480*	Amended	15:24 VA.R. 3214	*
12 VAC 5-610-490*	Amended	15:24 VA.R. 3214	*
12 VAC 5-610-500*	Amended	15:24 VA.R. 3215	*
12 VAC 5-610-510 through 12 VAC 5-610-550*	Repealed	15:24 VA.R. 3215-3216	*
12 VAC 5-610-560*	Amended	15:24 VA.R. 3216	*
12 VAC 5-610-570*	Repealed	15:24 VA.R. 3216	*
12 VAC 5-610-580*	Amended	15:24 VA.R. 3217	*
12 VAC 5-610-591 through 12 VAC 5-610-594*	Added	15:24 VA.R. 3217-3218	*
12 VAC 5-610-596 through 12 VAC 5-610-599*	Added	15:24 VA.R. 3218-3222	*
12 VAC 5-610-599.1 through 12 VAC 5-610-599.4*	Added	15:24 VA.R. 3222-3223	*

* The regulatory process was suspended on this section in 16:2 VA.R. 202, and the final effective date is pending until further action by the board.

Cumulative Table of VAC Sections Adopted, Amended, or Repealed

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
12 VAC 5-610-620*	Amended	15:24 VA.R. 3223	*
12 VAC 5-610-650*	Amended	15:24 VA.R. 3223	*
12 VAC 5-610-670*	Amended	15:24 VA.R. 3223	*
12 VAC 5-610-690*	Amended	15:24 VA.R. 3223	*
12 VAC 5-610-700*	Amended	15:24 VA.R. 3224	*
12 VAC 5-610-800*	Amended	15:24 VA.R. 3226	*
12 VAC 5-610-810*	Amended	15:24 VA.R. 3226	*
12 VAC 5-610-815*	Added	15:24 VA.R. 3226	*
12 VAC 5-610-817*	Added	15:24 VA.R. 3227	*
12 VAC 5-610-820*	Amended	15:24 VA.R. 3227	*
12 VAC 5-610-830*	Repealed	15:24 VA.R. 3227	*
12 VAC 5-610-840*	Repealed	15:24 VA.R. 3227	*
12 VAC 5-610-880*	Amended	15:24 VA.R. 3227	*
12 VAC 5-610-890*	Amended	15:24 VA.R. 3229	*
12 VAC 5-610-930*	Amended	15:24 VA.R. 3229	*
12 VAC 5-610-940*	Amended	15:24 VA.R. 3232	*
12 VAC 5-610-950*	Amended	15:24 VA.R. 3233	*
12 VAC 5-610-960*	Amended	15:24 VA.R. 3235	*
12 VAC 5-610-965*	Added	15:24 VA.R. 3236	*
12 VAC 5-610-980*	Amended	15:24 VA.R. 3237	*
12 VAC 5-610-1080*	Amended	15:24 VA.R. 3238	*
12 VAC 5-610-1140*	Amended	15:24 VA.R. 3240	*
12 VAC 5-610-1150*	Repealed	15:24 VA.R. 3240	*
12 VAC 30-10-441	Added	15:26 VA.R. 3454	10/13/99
12 VAC 30-10-490	Amended	15:26 VA.R. 3454	10/13/99
12 VAC 30-10-680	Amended	15:26 VA.R. 3454	10/13/99
12 VAC 30-50-100	Amended	15:24 VA.R. 3243	9/15/99
12 VAC 30-50-105	Amended	15:24 VA.R. 3245	9/15/99
12 VAC 30-50-140	Amended	15:24 VA.R. 3247	9/15/99
12 VAC 30-50-160	Amended	16:2 VA.R. 202	11/10/99
12 VAC 30-50-210	Amended	16:2 VA.R. 205	11/10/99
12 VAC 30-50-220	Amended	15:25 VA.R. 3362	10/1/99
12 VAC 30-50-270	Amended	16:6 VA.R. 706	1/5/00
12 VAC 30-60-130	Amended	16:6 VA.R. 707	1/5/00
12 VAC 30-80-30	Amended	16:2 VA.R. 207	11/10/99
12 VAC 30-80-30	Amended	16:6 VA.R. 710	1/5/00
12 VAC 30-80-40	Amended	16:2 VA.R. 208	11/10/99
12 VAC 30-130-270 through 12 VAC 30-130-530	Repealed	16:6 VA.R. 711-715	1/5/00
12 VAC 30-140-10 through 12 VAC 30-140-570	Added	15:26 VA.R. 3456-3465	10/13/99
12 VAC 30-140-370	Amended	16:4 VA.R. 404	12/8/99
12 VAC 30-140-380	Amended	16:4 VA.R. 404	12/8/99
Title 13. Housing			
13 VAC 5-175-10 through 13 VAC 5-175-40	Added	16:4 VA.R. 405-406	10/20/99
Title 14. Insurance			
14 VAC 5-270-30	Amended	16:5 VA.R. 582	1/1/00
14 VAC 5-270-40	Amended	16:5 VA.R. 582	1/1/00
14 VAC 5-270-60	Amended	16:5 VA.R. 582	1/1/00
14 VAC 5-270-70	Amended	16:5 VA.R. 583	1/1/00
14 VAC 5-270-80	Amended	16:5 VA.R. 583	1/1/00
14 VAC 5-270-160	Repealed	16:5 VA.R. 584	1/1/00
14 VAC 5-319-10 through 14 VAC 5-319-80	Added	16:5 VA.R. 585-599	1/1/00
14 VAC 5-350-10 et seq. (Forms)	Amended	16:8 VA.R. 976	--
14 VAC 5-395-20	Amended	16:4 VA.R. 407	10/20/99

* The regulatory process was suspended on this section in 16:2 VA.R. 202, and the final effective date is pending until further action by the board.

Cumulative Table of VAC Sections Adopted, Amended, or Repealed

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
14 VAC 5-395-25	Added	16:4 VA.R. 407	10/20/99
14 VAC 5-395-60	Amended	16:4 VA.R. 407	10/20/99
Title 16. Labor and Employment			
16 VAC 25-120-1917.1	Amended	16:7 VA.R. 843	1/20/00
16 VAC 25-130-1918.1	Amended	16:7 VA.R. 843	1/20/00
Title 18. Professional and Occupational Licensing			
18 VAC 5-20-10 emer	Amended	16:3 VA.R. 319	10/4/99-10/3/00
18 VAC 5-20-11 emer	Added	16:3 VA.R. 321	10/4/99-10/3/00
18 VAC 5-20-20 emer	Amended	16:3 VA.R. 322	10/4/99-10/3/00
18 VAC 5-20-30 emer	Repealed	16:3 VA.R. 324	10/4/99-10/3/00
18 VAC 5-20-40 emer	Repealed	16:3 VA.R. 324	10/4/99-10/3/00
18 VAC 5-20-41 emer	Added	16:3 VA.R. 324	10/4/99-10/3/00
18 VAC 5-20-50 emer	Repealed	16:3 VA.R. 325	10/4/99-10/3/00
18 VAC 5-20-60 emer	Repealed	16:3 VA.R. 325	10/4/99-10/3/00
18 VAC 5-20-70 emer	Repealed	16:3 VA.R. 326	10/4/99-10/3/00
18 VAC 5-20-80 emer	Repealed	16:3 VA.R. 326	10/4/99-10/3/00
18 VAC 5-20-81 emer	Added	16:3 VA.R. 326	10/4/99-10/3/00
18 VAC 5-20-90 emer	Repealed	16:3 VA.R. 326	10/4/99-10/3/00
18 VAC 5-20-91 emer	Added	16:3 VA.R. 327	10/4/99-10/3/00
18 VAC 5-20-100 emer	Amended	16:3 VA.R. 328	10/4/99-10/3/00
18 VAC 5-20-110 emer	Amended	16:3 VA.R. 329	10/4/99-10/3/00
18 VAC 5-20-111 emer	Added	16:3 VA.R. 330	10/4/99-10/3/00
18 VAC 5-20-112 emer	Added	16:3 VA.R. 330	10/4/99-10/3/00
18 VAC 5-20-120 through 18 VAC 5-20-440 emer	Repealed	16:3 VA.R. 330-333	10/4/99-10/3/00
18 VAC 5-20-441 emer	Added	16:3 VA.R. 333	10/4/99-10/3/00
18 VAC 5-20-442 emer	Added	16:3 VA.R. 334	10/4/99-10/3/00
18 VAC 5-20-443 emer	Added	16:3 VA.R. 334	10/4/99-10/3/00
18 VAC 5-20-444 emer	Added	16:3 VA.R. 336	10/4/99-10/3/00
18 VAC 5-20-445 emer	Added	16:3 VA.R. 336	10/4/99-10/3/00
18 VAC 5-20-450 emer	Repealed	16:3 VA.R. 336	10/4/99-10/3/00
18 VAC 5-20-451 emer	Added	16:3 VA.R. 336	10/4/99-10/3/00
18 VAC 5-20-460 through 500 emer	Repealed	16:3 VA.R. 337-339	10/4/99-10/3/00
18 VAC 10-20-10	Amended	16:3 VA.R. 298	12/1/99
18 VAC 10-20-20	Amended	16:3 VA.R. 299	12/1/99
18 VAC 10-20-35	Added	16:3 VA.R. 299	12/1/99
18 VAC 10-20-90	Amended	15:24 VA.R. 3248	10/1/99
18 VAC 10-20-110	Amended	16:3 VA.R. 299	12/1/99
18 VAC 10-20-120	Amended	16:3 VA.R. 300	12/1/99
18 VAC 10-20-140	Amended	16:3 VA.R. 300	12/1/99
18 VAC 10-20-150	Amended	16:3 VA.R. 301	12/1/99
18 VAC 10-20-160	Amended	16:3 VA.R. 303	12/1/99
18 VAC 10-20-170	Amended	15:24 VA.R. 3248	10/1/99
18 VAC 10-20-170	Amended	16:3 VA.R. 303	12/1/99
18 VAC 10-20-190	Amended	16:3 VA.R. 303	12/1/99
18 VAC 10-20-200	Amended	16:3 VA.R. 304	12/1/99
18 VAC 10-20-210	Amended	16:3 VA.R. 304	12/1/99
18 VAC 10-20-215	Added	16:3 VA.R. 305	12/1/99
18 VAC 10-20-230	Amended	16:3 VA.R. 305	12/1/99
18 VAC 10-20-250	Amended	16:3 VA.R. 305	12/1/99
18 VAC 10-20-260	Amended	16:3 VA.R. 306	12/1/99
18 VAC 10-20-270	Amended	16:3 VA.R. 306	12/1/99
18 VAC 10-20-280	Amended	15:24 VA.R. 3249	10/1/99
18 VAC 10-20-280	Amended	16:3 VA.R. 306	12/1/99
18 VAC 10-20-300	Amended	16:3 VA.R. 306	12/1/99
18 VAC 10-20-310	Amended	16:3 VA.R. 307	12/1/99
18 VAC 10-20-320	Amended	16:3 VA.R. 307	12/1/99

Cumulative Table of VAC Sections Adopted, Amended, or Repealed

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
18 VAC 10-20-330	Amended	16:3 VA.R. 307	12/1/99
18 VAC 10-20-350	Amended	16:3 VA.R. 307	12/1/99
18 VAC 10-20-360	Amended	16:3 VA.R. 308	12/1/99
18 VAC 10-20-400	Amended	15:24 VA.R. 3249	10/1/99
18 VAC 10-20-440	Amended	16:3 VA.R. 308	12/1/99
18 VAC 10-20-450	Amended	16:3 VA.R. 308	12/1/99
18 VAC 10-20-470	Amended	15:24 VA.R. 3249	10/1/99
18 VAC 10-20-490	Amended	16:3 VA.R. 309	12/1/99
18 VAC 10-20-500	Repealed	16:3 VA.R. 309	12/1/99
18 VAC 10-20-520	Amended	15:24 VA.R. 3249	10/1/99
18 VAC 10-20-530	Amended	16:3 VA.R. 309	12/1/99
18 VAC 10-20-560	Amended	16:3 VA.R. 310	12/1/99
18 VAC 10-20-570	Amended	16:3 VA.R. 310	12/1/99
18 VAC 10-20-580	Amended	15:24 VA.R. 3249	10/1/99
18 VAC 10-20-590	Amended	16:3 VA.R. 310	12/1/99
18 VAC 10-20-630	Amended	15:24 VA.R. 3249	10/1/99
18 VAC 10-20-640	Amended	16:3 VA.R. 311	12/1/99
18 VAC 10-20-680	Amended	16:3 VA.R. 311	12/1/99
18 VAC 10-20-730	Amended	16:3 VA.R. 311	12/1/99
18 VAC 10-20-740	Amended	16:3 VA.R. 311	12/1/99
18 VAC 10-20-760	Amended	16:3 VA.R. 312	12/1/99
18 VAC 10-20-780	Amended	16:3 VA.R. 313	12/1/99
18 VAC 10-20-790	Amended	16:3 VA.R. 313	12/1/99
18 VAC 10-20-795	Added	16:3 VA.R. 314	12/1/99
18 VAC 25-21-70	Amended	15:26 VA.R. 3468	11/1/99
18 VAC 55-22-310	Amended	15:26 VA.R. 3476	11/1/99
18 VAC 55-22 (Forms)	Amended	16:5 VA.R. 600	--
18 VAC 60-20-20	Amended	16:7 VA.R. 846	1/19/00
18 VAC 60-20-30	Amended	16:7 VA.R. 846	1/19/00
18 VAC 65-20-70	Amended	16:7 VA.R. 851	1/19/00
18 VAC 65-20-120	Amended	16:7 VA.R. 851	1/19/00
18 VAC 65-20-130	Amended	16:7 VA.R. 851	1/19/00
18 VAC 65-20-435	Added	16:7 VA.R. 851	1/19/00
18 VAC 85-20-22	Amended	16:4 VA.R. 407	12/8/99
18 VAC 85-20-230	Amended	16:4 VA.R. 408	12/8/99
18 VAC 85-20-235	Added	16:4 VA.R. 408	12/8/99
18 VAC 85-20-236	Added	16:4 VA.R. 408	12/8/99
18 VAC 85-20-240	Amended	16:4 VA.R. 409	12/8/99
18 VAC 85-20-240	Erratum	16:8 VA.R. 997	--
18 VAC 85-20-280	Added	16:7 VA.R. 854	1/19/00
18 VAC 85-20-290	Added	16:7 VA.R. 854	1/19/00
18 VAC 85-20-300	Added	16:7 VA.R. 855	1/19/00
18 VAC 85-40-10	Amended	16:7 VA.R. 860	1/19/00
18 VAC 85-40-25	Added	16:7 VA.R. 860	1/19/00
18 VAC 85-40-40	Amended	16:7 VA.R. 860	1/19/00
18 VAC 85-40-45	Added	16:7 VA.R. 860	1/19/00
18 VAC 85-40-50	Amended	16:7 VA.R. 860	1/19/00
18 VAC 85-40-60	Amended	16:7 VA.R. 861	1/19/00
18 VAC 85-40-65	Added	16:7 VA.R. 861	1/19/00
18 VAC 85-40-80	Amended	16:7 VA.R. 861	1/19/00
18 VAC 85-80-10	Amended	16:7 VA.R. 868	1/19/00
18 VAC 85-80-20	Amended	16:7 VA.R. 868	1/19/00
18 VAC 85-80-25	Added	16:7 VA.R. 868	1/19/00
18 VAC 85-80-35	Added	16:7 VA.R. 868	1/19/00
18 VAC 85-80-40	Amended	16:7 VA.R. 868	1/19/00
18 VAC 85-80-50	Amended	16:7 VA.R. 869	1/19/00

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SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
18 VAC 85-80-60	Amended	16:7 VA.R. 869	1/19/00
18 VAC 85-80-70	Amended	16:7 VA.R. 869	1/19/00
18 VAC 85-80-80	Amended	16:7 VA.R. 869	1/19/00
18 VAC 85-101-10	Amended	16:4 VA.R. 410	12/8/99
18 VAC 85-101-40	Amended	16:4 VA.R. 410	12/8/99
18 VAC 85-101-50	Amended	16:4 VA.R. 410	12/8/99
18 VAC 85-101-60	Amended	16:4 VA.R. 411	12/8/99
18 VAC 85-101-70	Amended	16:4 VA.R. 411	12/8/99
18 VAC 85-101-130	Amended	16:4 VA.R. 411	12/8/99
18 VAC 85-101-160	Amended	16:4 VA.R. 412	12/8/99
18 VAC 90-20-300	Amended	16:3 VA.R. 315	11/24/99
18 VAC 90-20-420	Added	16:3 VA.R. 315	11/24/99
18 VAC 90-20-430	Added	16:3 VA.R. 315	11/24/99
18 VAC 90-20-440	Added	16:3 VA.R. 316	11/24/99
18 VAC 90-20-450	Added	16:3 VA.R. 316	11/24/99
18 VAC 90-20-460	Added	16:3 VA.R. 317	11/24/99
18 VAC 100-20-10	Amended	15:26 VA.R. 3479	11/1/99
18 VAC 100-20-40	Amended	15:26 VA.R. 3479	11/1/99
18 VAC 100-20-50	Amended	15:26 VA.R. 3479	11/1/99
18 VAC 100-20-60	Amended	15:26 VA.R. 3479	11/1/99
18 VAC 100-20-70	Amended	15:26 VA.R. 3479	11/1/99
18 VAC 110-20-10	Amended	15:26 VA.R. 3482	10/13/99
18 VAC 110-20-135	Added	15:26 VA.R. 3484	10/13/99
18 VAC 110-20-140	Amended	15:26 VA.R. 3484	10/13/99
18 VAC 110-20-690	Added	15:26 VA.R. 3485	10/13/99
18 VAC 110-20-700	Added	15:26 VA.R. 3485	10/13/99
18 VAC 110-20-710	Added	15:26 VA.R. 3485	10/13/99
18 VAC 110-20-720	Added	15:26 VA.R. 3486	10/13/99
18 VAC 115-30-10	Amended	16:7 VA.R. 876	1/19/00
18 VAC 115-30-20	Repealed	16:7 VA.R. 877	1/19/00
18 VAC 115-30-30	Amended	16:7 VA.R. 877	1/19/00
18 VAC 115-30-40	Amended	16:7 VA.R. 877	1/19/00
18 VAC 115-30-45	Added	16:7 VA.R. 877	1/19/00
18 VAC 115-30-60	Amended	16:7 VA.R. 878	1/19/00
18 VAC 115-30-70	Amended	16:7 VA.R. 879	1/19/00
18 VAC 115-30-80	Repealed	16:7 VA.R. 879	1/19/00
18 VAC 115-30-90	Amended	16:7 VA.R. 879	1/19/00
18 VAC 115-30-100	Repealed	16:7 VA.R. 879	1/19/00
18 VAC 115-30-110	Amended	16:7 VA.R. 879	1/19/00
18 VAC 115-30-120	Amended	16:7 VA.R. 879	1/19/00
18 VAC 115-30-130	Repealed	16:7 VA.R. 879	1/19/00
18 VAC 115-30-140	Amended	16:7 VA.R. 879	1/19/00
18 VAC 115-30-150	Amended	16:7 VA.R. 880	1/19/00
18 VAC 115-30-160	Amended	16:7 VA.R. 880	1/19/00
18 VAC 115-50-10	Amended	16:7 VA.R. 886	1/19/00
18 VAC 115-50-30	Amended	16:7 VA.R. 886	1/19/00
18 VAC 115-50-40	Amended	16:7 VA.R. 887	1/19/00
18 VAC 115-50-50	Amended	16:7 VA.R. 887	1/19/00
18 VAC 115-50-55	Added	16:7 VA.R. 887	1/19/00
18 VAC 115-50-60	Amended	16:7 VA.R. 888	1/19/00
18 VAC 115-50-70	Amended	16:7 VA.R. 889	1/19/00
18 VAC 115-50-80	Repealed	16:7 VA.R. 889	1/19/00
18 VAC 115-50-90	Amended	16:7 VA.R. 889	1/19/00
18 VAC 115-60-10 through 18 VAC 115-60-150	Added	16:7 VA.R. 890-895	1/19/00
18 VAC 120-30-100	Amended	15:26 VA.R. 3487	11/1/99
18 VAC 125-20-10	Amended	16:2 VA.R. 210	11/10/99

Cumulative Table of VAC Sections Adopted, Amended, or Repealed

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
18 VAC 125-20-30	Amended	16:2 VA.R. 210	11/10/99
18 VAC 125-20-40	Amended	16:2 VA.R. 210	11/10/99
18 VAC 125-20-41	Added	16:2 VA.R. 211	11/10/99
18 VAC 125-20-42	Added	16:2 VA.R. 211	11/10/99
18 VAC 125-20-50	Repealed	16:2 VA.R. 212	11/10/99
18 VAC 125-20-51	Repealed	16:2 VA.R. 212	11/10/99
18 VAC 125-20-52	Repealed	16:2 VA.R. 212	11/10/99
18 VAC 125-20-53	Repealed	16:2 VA.R. 213	11/10/99
18 VAC 125-20-54	Added	16:2 VA.R. 214	11/10/99
18 VAC 125-20-55	Added	16:2 VA.R. 214	11/10/99
18 VAC 125-20-56	Added	16:2 VA.R. 215	11/10/99
18 VAC 125-20-60	Repealed	16:2 VA.R. 216	11/10/99
18 VAC 125-20-65	Added	16:2 VA.R. 216	11/10/99
18 VAC 125-20-70	Repealed	16:2 VA.R. 216	11/10/99
18 VAC 125-20-80	Amended	16:2 VA.R. 217	11/10/99
18 VAC 125-20-90	Repealed	16:2 VA.R. 217	11/10/99
18 VAC 125-20-100	Repealed	16:2 VA.R. 217	11/10/99
18 VAC 125-20-120	Amended	16:2 VA.R. 218	11/10/99
18 VAC 125-20-130	Amended	16:2 VA.R. 218	11/10/99
18 VAC 125-20-140	Repealed	16:2 VA.R. 218	11/10/99
18 VAC 125-20-150	Amended	16:2 VA.R. 218	11/10/99
18 VAC 125-20-150	Erratum	16:4 VA.R. 444	--
18 VAC 125-20-160	Amended	16:2 VA.R. 219	11/10/99
18 VAC 125-20-170	Amended	16:2 VA.R. 219	11/10/99
18 VAC 160-20-40	Amended	15:24 VA.R. 3490	11/1/99
Title 19. Public Safety			
19 VAC 30-20-80	Amended	16:9 VA.R. 1150	3/15/00
19 VAC 30-20-150	Amended	16:9 VA.R. 1150	3/15/00
19 VAC 30-70 Appendix A	Amended	15:25 VA.R. 3364	7/29/99
19 VAC 30-165-10 emer	Added	16:3 VA.R. 339	9/24/99-9/23/00
19 VAC 30-165-20 emer	Added	16:3 VA.R. 340	9/24/99-9/23/00
19 VAC 30-165-30 emer	Added	16:3 VA.R. 340	9/24/99-9/23/00
19 VAC 30-165-40 emer	Added	16:3 VA.R. 340	9/24/99-9/23/00
19 VAC 30-165-50 emer	Added	16:3 VA.R. 340	9/24/99-9/23/00
19 VAC 30-165-60 emer	Added	16:3 VA.R. 340	9/24/99-9/23/00
Title 22. Social Services			
22 VAC 40-50-10 et seq.	Repealed	15:24 VA.R. 3250	9/15/99
22 VAC 40-710-10 et seq.	Repealed	16:4 VA.R. 412	12/8/99
22 VAC 40-820-10 et seq.	Repealed	16:5 VA.R. 599	12/22/99
22 VAC 40-880-350	Amended	16:4 VA.R. 413	12/8/99
Title 24. Transportation and Motor Vehicles			
24 VAC 30-130-10	Amended	16:2 VA.R. 229	9/13/99

NOTICES OF INTENDED REGULATORY ACTION

Symbol Key

† Indicates entries since last publication of the *Virginia Register*

TITLE 4. CONSERVATION AND NATURAL RESOURCES

DEPARTMENT OF MINES, MINERALS AND ENERGY

† Withdrawal of Notice of Intended Regulatory Action

Notice is hereby given that the Department of Mines, Minerals and Energy has WITHDRAWN the Notice of Intended Regulatory Action for **4 VAC 25-90-10 et seq. Rules and Regulations Governing the Use of Diesel Powered Equipment in Underground Coal Mines**, which was published in 14:2 VA.R. 214 October 13, 1997.

Contact: Stephen A. Walz, Regulatory Coordinator, Department of Mines, Minerals and Energy, 202 N. Ninth Street, 8th Floor, Richmond, VA 23219-3402, telephone (804) 692-3211 or FAX (804) 692-3237.

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of Mines, Minerals and Energy intends to consider amending regulations entitled: **4 VAC 25-90-10 et seq. Rules and Regulations Governing the Use of Diesel Powered Equipment in Underground Coal Mines**. The purpose of the proposed action is to reflect relevant technological advances and industry standards to the diesel particulate monitoring and control, equipment operation, maintenance, and safety of diesel equipment used in underground coal mines. The agency intends to hold a public hearing on the proposed regulation after publication.

Statutory Authority: §§ 45.1-161.3, 45.1-161.106, and 45.1-161.206 of the Code of Virginia.

Public comments may be submitted until March 6, 2000.

Contact: Stephen A. Walz, Regulatory Coordinator, Department of Mines, Minerals and Energy, 202 N. Ninth St., 8th Floor, Richmond, VA 23219-3402, telephone 692-3211 or FAX (804) 692-3237.

VA.R. Doc. No. R00-85; Filed January 11, 2000, 3:20 p.m.

† Withdrawal of Notice of Intended Regulatory Action

Notice is hereby given that the Department of Mines, Minerals and Energy has WITHDRAWN the Notice of Intended Regulatory Action for **4 VAC 25-100-10 et seq. Regulations Governing Vertical Ventilation Holes and Mining Near Gas and Oil Wells**, which was published in 13:18 VA.R. 2091 May 26, 1997.

Contact: Stephen A. Walz, Regulatory Coordinator, Department of Mines, Minerals and Energy, 202 N. Ninth Street, 8th Floor, Richmond, VA 23219-3402, telephone (804) 692-3211 or FAX (804) 692-3237.

† Notice of Intended Regulatory Action

Notice is hereby given that the Department of Mines, Minerals and Energy intends to consider repealing regulations entitled: **4 VAC 25-100-10 et seq. Regulations Governing Vertical Ventilation Holes and Mining Near Gas and Oil Wells**. The Department of Mines, Minerals and Energy is proposing to repeal this regulation because the revisions are so extensive, both in text and format, that it is more efficient to repeal this regulation and simultaneously promulgate a new regulation in its place (4 VAC 25-101-10 et seq.). The agency intends to hold a public hearing on the proposed repeal of this regulation after publication.

Statutory Authority: §§ 45.1-161.3, 45.1-161.106, 45.1-161.121, 45.1-161.254 and 45.1-161.292 of the Code of Virginia.

Public comments may be submitted until March 6, 2000.

Contact: Stephen A. Walz, Regulatory Coordinator, Department of Mines, Minerals and Energy, 202 N. Ninth Street, 8th Floor, Richmond, VA 23219-3402, telephone (804) 692-3211 or FAX (804) 692-3237.

VA.R. Doc. No. R00-95; Filed

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of Mines, Minerals and Energy intends to consider promulgating regulations entitled: **4 VAC 25-101-10 et seq. Regulation Governing Vertical Ventilation Holes and Mining Near Gas and Oil Wells**. The purpose of the proposed action is to establish guidelines that govern drilling, equipping, and remove methane gas from underground coal mines and the practice of mining near or through vertical holes or gas wells. This regulation is being developed to replace the existing regulation. The agency intends to hold a public hearing on the proposed regulation after publication.

Statutory Authority: §§ 45.1-161.3, 45.1-161.106, 45.1-161.121, 45.1-161.254 and 45.1-161.292 of the Code of Virginia.

Public comments may be submitted until March 6, 2000.

Contact: Stephen A. Walz, Regulatory Coordinator, Department of Mines, Minerals and Energy, 202 N. Ninth Street, 8th Floor, Richmond, VA 23219-3402, telephone 692-3211 or FAX (804) 692-3237.

VA.R. Doc. No. R00-92; Filed January 11, 2000, 3:20 p.m.

TITLE 9. ENVIRONMENT

VIRGINIA WASTE MANAGEMENT BOARD

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Virginia Waste Management Board intends to consider amending regulations entitled: **9 VAC 20-70-10 et seq. Financial Assurance Regulations for Solid Waste Facilities.** The amendments further protect the public from bearing the burden of costs associated with abandoned solid waste treatment and disposal facilities. The board will review and evaluate the existing regulations to determine the most effective method of strengthening the existing financial assurance requirements.

Request for Comments. The board requests comments on the intended regulatory action, including ideas to assist the board in the development of a proposal. In addition, the board seeks comments on the costs and benefits of any stated alternative or other alternatives.

Public Meeting. The department will hold a public meeting to receive comments from the public on Thursday, March 2, 2000, at 9 a.m. in the 10th Floor Conference Room, Department of Environmental Quality's Office, 629 E. Main Street, in Richmond.

Technical Advisory Committee. Persons wishing to assist in the development of a proposal by serving on a technical advisory committee should contact Melissa Porterfield at (804) 698-4238.

The agency intends to hold a public hearing on the proposed regulation after publication.

Statutory Authority: § 10.1-1402 and 10.1-1410 of the Code of Virginia.

Public comments may be submitted until March 17, 2000.

Contact: Melissa Porterfield, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4238.

VA.R. Doc. No. R00-91; Filed January 12, 2000, 11:36 a.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Virginia Waste Management Board intends to consider amending regulations entitled: **9 VAC 20-130-10 et seq. Regulations for the Development of Solid Waste Management Plans.** The purpose of the proposed action is to consider all aspects of the regulations for amendment; however, focal issues are expected to include the definition of the terms defining the recycle rate and the structure, methodology and frequency of amendments to the plans. The establishment of progress reports may be considered, including the frequency, methodology and structure of the reports. The agency intends to hold a public hearing on the proposed regulation after publication.

Statutory Authority: § 10.1-1411 of the Code of Virginia.

Public comments may be submitted until February 1, 2000.

Contact: Robert G. Wickline, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4213.

VA.R. Doc. No. R00-60; Filed December 1, 1999, 8:46 a.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Virginia Waste Management Board intends to consider amending regulations entitled: **9 VAC 20-140-10 et seq. Regulations for the Certification of Recycling Machinery and Equipment for Tax Exemption Purposes.** The purpose of the proposed action is to amend the regulation to incorporate legislative changes made to the Code of Virginia since the regulations were adopted. The legislative changes include: (i) the increase in total credit allowable in a taxable year to 60%, as amended by the 1998 Acts of Assembly; (ii) carry over of tax credit from five to 10 years until the total credit amount is used and tax credit extended to year 2001, as amended by the 1996 Acts of Assembly; (iii) tax credit extended to January 1, 1997, as amended by the 1995 Acts of Assembly; (iv) the elimination of fixed location, as amended by the 1993 Acts of Assembly; and (v) the certification of items related to capitalized cost of equipment, as amended by the 1992 Acts of Assembly. The agency does not intend to hold a public hearing on the proposed regulation after publication.

Statutory Authority: §§ 10.1-1402, 58.1-3661 and 58.1-3664 of the Code of Virginia.

Public comments may be submitted until February 1, 2000.

Contact: John E. Ely, Director, Office of Waste Programs, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4249 or FAX (804) 698-4327.

VA.R. Doc. No. R00-59; Filed December 1, 1999, 8:46 a.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Virginia Waste Management Board intends to consider amending regulations entitled: **9 VAC 20-180-10 et seq. Regulations Governing the Commercial Transportation of Nonhazardous Municipal Solid Waste and Regulated Medical Waste by Truck.** The purpose of the proposed action is to adopt a regulation to govern the transportation of certain wastes by truck. The new regulation will establish requirements necessary to protect public health, safety and welfare and the environment from pollution, impairment or destruction. As part of this action, the board will consider what procedural rules and forms may be necessary for filing of reports, as required by the statute, concerning loss or spillage of waste during transport. It will also consider rules and forms necessary to assure the Commonwealth that losses or spills are contained and

Notices of Intended Regulatory Action

removed as required by the statute and in accordance with all federal, state and local laws and regulations.

The agency intends to hold a public hearing on the proposed regulation after publication.

Statutory Authority: § 10.1-1454.2 of the Code of Virginia.

Public comments may be submitted until February 1, 2000.

Contact: Robert G. Wickline, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4213 or (804) 698-4327.

VA.R. Doc. No. R00-58; Filed December 1, 1999, 8:46 a.m.

STATE WATER CONTROL BOARD

Notice of Intended Regulatory Action

† Extension of Public Comment Period

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Water Control Board intends to consider amending regulations entitled: **9 VAC 25-260-5 et seq. Water Quality Standards.** The purpose of the proposed action is to consider amending the water quality standards to update numerical or narrative criteria for dissolved oxygen for certain waters of the Chesapeake Bay and other naturally occurring low dissolved oxygen waters where current criteria are not appropriate.

Intent: The intent of this rulemaking is to protect designated and beneficial uses in the Commonwealth by adopting regulations that are technically correct and reasonable. These standards will be used in setting Virginia Pollutant Discharge Elimination System Permit limits and for evaluating the waters of the Commonwealth for inclusion in the federal Clean Water Act § 305(b) report and § 303(d) list. Waters not meeting standards will require development of a Total Maximum Daily Load under the federal Clean Water Act § 303(d).

Need: This rulemaking is needed because the current dissolved oxygen criteria (4mg/l minimum and 5mg/l daily average) are not appropriate in waters where the naturally occurring dissolved oxygen levels are below the existing criteria. These types of water may include the deep trenches of the Chesapeake Bay, the deep waters of stratified lakes and wetlands. Changes to these criteria are needed to facilitate permitting, monitoring and Total Maximum Daily Load development.

Alternatives Available to Meet the Need: Many alternatives in the subject areas listed will become available as DEQ staff and the public begin to review scientific data and the needs of permitting and monitoring. DEQ will work in conjunction with other state and federal agencies to consider various alternatives. Alternatives provided by the public will also be considered.

The department has not accepted nor rejected any alternatives as of yet. Some alternatives being considered by the agency now include, but are not limited to, the following:

- whether we should include alternative dissolved oxygen criteria for the Chesapeake Bay, wetlands and lakes;
- whether we should consider for adoption the Chesapeake Bay Living Resources Goals or Environmental Protection Agency criteria or some other criteria;
- whether zones for application of the criteria should be included and what these zones should be (i.e. application of a lower dissolved oxygen criterion one meter off the bottom (for the Bay), in the hypolimnion or below the thermocline (lakes), throughout the column (wetlands) or should some other zone be considered for application of the alternative criteria);
- whether to improve the specific narrative criterion that recognizes natural background differences for all waters. Currently natural conditions in surface water are recognized in the following sections of the regulation: 9 VAC 25-260-10.G, 9 VAC 25-260-50 and 9 VAC 25-260-250;

Request for Comments: Comments are requested on the intended regulatory action, including any ideas to assist the agency in the development of the proposal. Comments are requested on the costs and benefits of the stated alternatives or other alternatives. DEQ also requests comments as to whether the agency should use the participatory approach to assist the agency in the development of the proposal. The participatory approach is defined as a method for the use of (i) standing advisory committees, (ii) ad hoc advisory groups or panels, (iii) consultation with groups or individuals registering interest in working with the agency, or (iv) any combination thereof.

Public Meeting: A public meeting will be held on January 27, 2000, at 2 p.m. at the Virginia War Memorial, 621 South Belvidere Street, Richmond, Virginia 23220. The public comment period on the intended regulatory action has been extended until April 7, 2000. Please submit comments to Eleanore Daub, Office of Water Quality Programs, Department of Environmental Quality, 629 East Main Street, Richmond, VA 23219.

The agency intends to hold a public hearing on the proposed regulation after publication.

Statutory Authority: § 62.1-44.15 of the Code of Virginia.

Public comments may be submitted until April 7, 2000.

Contact: Eleanore Daub, Environmental Program Planner, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4111 or (804) 698-4522.

VA.R. Doc. No. R00-57; Filed December 1, 1999, 8:46 a.m.

Notices of Intended Regulatory Action

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Water Control Board intends to consider amending regulations entitled: **9 VAC 25-430-10 et seq. Roanoke River Basin Water Quality Management Plan.** The purpose of the proposed action is to amend 9 VAC 25-430-20 of the current water quality management plan for the Town of Chase City. The amendment would allow for increased wasteload allocations for the existing wastewater treatment plant based on the results of mathematical modeling of water quality in the receiving water body.

A discharger currently permitted under the Virginia Pollutant Discharge Elimination System (VPDES) has requested revised waste load allocations in its VPDES permit. The VPDES permitted discharge is Chase City Municipal Sewage Treatment Plant (VPDES No. VA0076881), which discharges to Little Bluestone Creek. Chase City is in Mecklenburg County in Water Quality Management Area VII as defined in the Roanoke River Basin WQMP; this discharge is currently limited by waste load allocations in the WQMP. The Roanoke River Basin Water Quality Management Plan was originally adopted by the State Water Control Board December 9, 1976, and most recently amended January 6, 1999. Regulatory action, in the form of an amendment to the existing Roanoke River Basin WQMP, is necessary because State Water Control Law requires that VPDES permits be consistent with approved water quality management plans. Any time the allowable discharge in a VPDES permit which is limited by a waste load allocation in a WQMP is changed, the WQMP must be amended to reflect the new waste load allocation.

Water quality management plans identify water quality problems, consider alternative solutions, and recommend control measures needed to attain or maintain water quality standards. The existing Roanoke River Basin WQMP states, AAs more data becomes available, alternative methods of analysis can be considered, and in future updates of this plan, the appropriate action item(s) can be amended to reflect the use of these other equations and methods of analysis. (9 VAC 25-430-20). This amendment addresses the results of such an analysis. The affected segment is Little Bluestone Creek.

The Little Bluestone Creek segment was originally modeled in 1976 using the TVA Flat Water Equation. In 1997, a Streeter-Phelps mathematical model characteristic of Little Bluestone Creek was developed by conducting an intensive stream survey (B&B Consultants, Inc., November 1997). In 1997, the Town of Chase City requested increased wasteload

allocations for their existing facility on the basis that a seasonally tiered approach would take advantage of higher flows and lower temperatures during winter months. Based on this model, waste load allocations were developed for the existing 0.600 mgd discharge which are predicted by the model to maintain the dissolved oxygen standard in Little Bluestone Creek.

Statement of Statutory Mandates: Water Quality Management Plans are required by § 303(e) of the federal Clean Water Act (WCA) [33 USC 1251] as implemented by 40 CFR 130, et seq. The State Water Control Law § 62.1-44.15(13) as implemented in the Permit Regulation states no permit may be issued: ... For any discharge inconsistent with a plan or plan amendment approved under Section 208(b) of the CWA; [9 VAC 25-31-50, Prohibitions C.7., July 1996].

Statement of Conclusions: The Roanoke River Basin WQMP is an existing regulation. The Town of Chase City requested changes to the waste load allocations in its VPDES discharge permit. The proposed waste load allocations for the Town of Chase City discharge were predicted, through mathematical modeling, to be adequate to maintain water quality standards in Little Bluestone Creek. This amendment to the Roanoke River Basin WQMP will satisfy the intent of the original plan, ensure existing beneficial uses of the affected water body are maintained, and accommodate the request of the VPDES permitted discharge.

The proposed Town of Chase City STP discharge waste load allocation will enable the Town to more effectively manage its limited resources in an effort to protect the health and safety of the citizens of the community, and the citizens of the Commonwealth.

Statement of Process for Considering Alternatives:

Alternative 1: Amend the Roanoke River Basin Water Quality Management Plan as proposed.

This alternative is recommended. The specific recommended changes to the wasteload allocations for the affected discharge are as follows:

Delete the § 303(e) Wasteload Allocation (BOD₅) for Chase City Regional STP in WQMA VII - Clarksville-Chase City-Boydton, from Table 2 - Wasteload Allocations for Significant Discharges for Selected Alternative (9 VAC 25-430-20), and substitute a reference to Table 3; and add to Table 3 - Wasteload Allocations for Discharges with Tiered Permits (9 VAC 25-430-20), as follows:

Water Quality Management Area (WQMA)	Study Area Name	Discharger	Months	Flow (mgd)	Effluent D.O. (mg/l)	cBOD ₅ (lbs/day)	BOD ₅ (mg/l)	Ammonia (mg/l)	TKN (mg/l)
WQMA VII	Clarksville-Chase City-Boydton	Chase City Regional STP	Dec-Apr May-Nov	0.60	7.0	125.22	25.0 ¹	3.4	8.8
				0.60	6.0	65.04	13.0 ¹	1.8	4.2

NOTES:

¹cBOD₅/BOD₅ = 25/30

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Alternative 2: Deregulate the existing Roanoke River Basin WQMP.

This alternative is not recommended at this time for this discharge. In the Executive Order 15 (94) review of the Water Quality Management Plan regulations, the Department of Environmental Quality (DEQ) proposed the repeal of 17 existing water quality management plans and replacement of the plans with one nonregulatory statewide plan. This proposal included the Roanoke River Basin WQMP. Deregulation and replacement of the current regulatory WQMP would eliminate the need for this proposed WQMP amendment. However, deregulation of the WQMP will not be completed in time to enable the affected discharge to increase loadings and remain in compliance with its VPDES permit.

Alternative 3: Maintain existing waste load allocations (No Action Alternative)

This alternative is not recommended. Receiving water quality modeling, based on data collected after the adoption of the existing WQMP, predicts that the proposed Town of Chase City waste load allocation will be adequate to maintain the dissolved oxygen water quality standard in the receiving water body. It is clear that the intent of the WQMP is to incorporate the results of analysis based on data made available after the adoption of the original WQMP. Additionally, because VPDES permitted discharges are required to be in conformance with WQMPs, unless the WQMP waste load allocations are changed, increased loadings requested by the permittee will not be permitted.

In compliance with the SWCB's Public Participation Guidelines (9 VAC 25-10-10 et seq.), the DEQ will, during the Notice of Intended Regulatory Action and the Notice of Public Comment, include the proposed amendment and alternatives, and request comments from the public on these and other alternatives. The DEQ will also request comments on the costs and benefits of these alternatives or any other alternatives the public may wish to provide.

The DEQ intends to hold one public meeting on this proposed amendment no less than 30 days after it is published in the Virginia Register of Regulations. The intent of the public meeting is to further explain the proposed amendment and to allow for verbal comments as requested from the public regarding the amendment. Additionally, the DEQ will form a Technical Advisory Committee to review the proposed amendment if there are more than five requests to do so within 30 days after publication of the Notice of Intended Regulatory Action in the Virginia Register of Regulations.

Statutory Authority: § 62.1-44.15 of the Code of Virginia.

Public comments may be submitted until January 31, 2000.

Contact: John van Soestbergen, Environmental Engineer Senior, Department of Environmental Quality, 4949-A Cox Rd., Glen Allen, VA 23060, telephone (804) 527-5043 or FAX (804) 527-5106.

VA.R. Doc. No. R00-56; Filed December 1, 1999, 8:46 a.m.



TITLE 11. GAMING

VIRGINIA RACING COMMISSION

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Virginia Racing Commission intends to consider amending regulations entitled: **11 VAC 10-150-10 et seq. Regulations Pertaining to Horse Racing with Pari-Mutuel Wagering: Standardbred Racing.** The purpose of the proposed action is to bring the regulation into conformance with the standards of the U.S. Trotting Association and provide uniformity from jurisdiction to jurisdiction. The agency intends to hold a public hearing on the proposed regulation after publication.

Statutory Authority: § 59.1-369 of the Code of Virginia.

Public comments may be submitted until February 16, 2000.

Contact: William H. Anderson, Policy Analyst, Virginia Racing Commission, 10700 Horsemen's Road, New Kent, VA 23124, telephone (804) 966-7404 or FAX (804) 966-7418.

VA.R. Doc. No. R00-72; Filed December 20, 1999, 3:25 p.m.



TITLE 12. HEALTH

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of Medical Assistance Services intends to consider amending regulations entitled: **12 VAC 30-10-10 et seq. State Plan under Title XIX of the Social Security Act Medical Assistance Program-General Provisions; 12 VAC 30-50-10 et seq. Amount, Duration, and Scope of Medical and Remedial Care Services; 12 VAC 30-80-10 et seq. Methods and Standards for Establishing Payment Rates-Other Types of Care; and 12 VAC 30-130-10 et seq. Amount, Duration and Scope of Selected Services.**

The purpose of the proposed action is to promulgate permanent regulations for the provision of residential psychiatric services for children and adolescents under the provisions of the Early and Periodic Screening, Diagnosis, and Treatment Program (42 CFR 440.40). The agency does not intend to hold a public hearing on the proposed regulation after publication.

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

Notices of Intended Regulatory Action

Public comments may be submitted until March 1, 2000, to Anita Cordill, Analyst, Policy Division, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219.

Contact: Victoria P. Simmons, Regulatory Coordinator, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 786-7959.

VA.R. Doc. No. R00-81; Filed January 6, 2000, 4:17 p.m.

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of Medical Assistance Services intends to consider amending regulations entitled: **12 VAC 30-50-10 et seq. Amount, Duration, and Scope of Medical and Remedial Care Services.** The purpose of the proposed action is to promulgate permanent regulations for the provision of expanded school-based services consistent with General Assembly mandates. The agency does not intend to hold a public hearing on the proposed regulation after publication.

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

Public comments may be submitted until March 1, 2000, to Jeff Nelson, Policy Division, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219.

Contact: Victoria P. Simmons, Regulatory Coordinator, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 786-7959 or FAX (804) 786-1680.

VA.R. Doc. No. R00-89; Filed January 12, 2000, 9:02 a.m.

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of Medical Assistance Services intends to consider amending regulations entitled: **12 VAC 30-50-10 et seq. Amount, Duration, and Scope of Medical and Remedial Care Services; 12 VAC 30-60-10 et seq. Standards Established and Methods Used to Assure High Quality Care; 12 VAC 30-80-10 et seq. Methods and Standards for Establishing Payment Rates-Other Types of Care;** and promulgating regulations entitled **12 VAC 30-129-100 et seq. Treatment Foster Care Providers.**

The purpose of the proposed action is to promulgate permanent regulations for the provision of case management services for treatment foster care. The agency does not intend to hold a public hearing on the proposed regulation after publication.

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

Public comments may be submitted until March 1, 2000, to Anita Cordill, Policy Division, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219.

Contact: Victoria P. Simmons, Regulatory Coordinator, Department of Medical Assistance Services, 600 E. Broad St.,

Suite 1300, Richmond, VA 23219, telephone (804) 786-7959 or FAX (804) 786-1680.

VA.R. Doc. No. R00-84; Filed January 6, 2000, 4:17 p.m.

STATE MENTAL HEALTH, MENTAL RETARDATION AND SUBSTANCE ABUSE SERVICES BOARD

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Mental Health, Mental Retardation and Substance Abuse Services Board intends to consider repealing regulations entitled: **12 VAC 35-110-10 et seq. Rules and Regulations to Assure the Rights of Residents of Facilities Operated by the Department of Mental Health, Mental Retardation and Substance Abuse Services.** The purpose of the proposed action is to repeal the regulation, which protects the legal and human rights of all clients who receive treatment in hospitals and training centers operated by the Department of Mental Health, Mental Retardation and Substance Abuse Services. The regulation is being superseded by a regulation that establishes a single standard for community and facility, public and private human rights programs; addresses consumer and family concerns; and reflects current practice and terminology. The agency does not intend to hold a public hearing on the proposed regulation after publication.

Statutory Authority: § 37.1-84.1 of the Code of Virginia.

Public comments may be submitted until February 3, 2000.

Contact: Rita Hines, Acting Director, Office of Human Rights, Department of Mental Health, Mental Retardation and Substance Abuse Services, P.O. Box 1797, Richmond, VA 23218-1797, telephone (804) 786-3988 or FAX (804) 371-2308.

VA.R. Doc. No. R00-68; Filed December 7, 1999, 9:29 a.m.

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD FOR CONTRACTORS

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board for Contractors intends to consider amending regulations entitled: **18 VAC 50-22-10 et seq. Board for Contractors Regulations.** The purpose of the proposed action is to (i) modify the board's regulations relating to disciplinary standards; (ii) clarify the board's regulations relating to new worth; (iii) revisit entry requirements, general definitions, contractor specialties, and renewal and reinstatement requirements; and (iv) make other changes which may be necessary pursuant to the board's

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periodic review of its regulations. The agency intends to hold a public hearing on the proposed regulation after publication.

Statutory Authority: §§ 54.1-201 and 54.1-1102 of the Code of Virginia.

Public comments may be submitted until February 3, 2000.

Contact: Kelley Hellams, Assistant Director, Board for Contractors, 3600 W. Broad St., 4th Floor, Richmond, VA 23230, telephone (804) 367-0841, FAX (804) 367-2474 or (804) 367-9753/TTY ☎, e-mail Contractors@dpor.state.va.us.

VA.R. Doc. No. R00-70; Filed December 7, 1999, 10:18 a.m.

REAL ESTATE BOARD

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Real Estate Board intends to consider amending regulations entitled: **18 VAC 135-40-10 et seq. Time Share Regulations.** The purpose of the proposed action is to incorporate changes into the regulations required by amendments to the Virginia Time-Share Act (§ 55-360 et seq. of the Code of Virginia) and to ensure compliance of the regulations with Executive Order 25 (98). The agency intends to hold a public hearing on the proposed regulation after publication.

Statutory Authority: § 55-396 of the Code of Virginia.

Public comments may be submitted until February 2, 2000.

Contact: Eric L. Olson, Regulatory Boards Administrator, Real Estate Board, 3600 W. Broad St., 4th Floor, Richmond, VA 23230, telephone (804) 367-8510, FAX (804) 367-2475 or (804) 367-9753/TTY ☎

VA.R. Doc. No. R00-69; Filed December 6, 12:57 p.m.

BOARD FOR PROFESSIONAL SOIL SCIENTISTS

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board for Professional Soil Scientists intends to consider amending regulations entitled: **18 VAC 145-20-10 et seq. Board for Professional Soil Scientists Regulations.** The purpose of the proposed action is to review entry requirements, general definitions and renewal and reinstatement requirements, and make other amendments which may be necessary pursuant to the board's periodic review of regulations. The agency intends to hold a public hearing on the proposed regulation after publication.

Statutory Authority: § 54.1-201 of the Code of Virginia.

Public comments may be submitted until February 3, 2000.

Contact: Kelley Hellams, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., 4th Floor, Richmond, VA 23230, telephone (804) 367-

0841, FAX (804) 367-2474 or (804) 367-9753/TTY ☎, e-mail Contractors@dpor.state.va.us.

VA.R. Doc. No. R00-71; Filed December 7, 1999, 10:13 a.m.

BOARD FOR WATERWORKS AND WASTEWATER WORKS OPERATORS

Notice of Intended Regulation Action

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board for Waterworks and Wastewater Works Operators intends to consider amending regulations entitled: **18 VAC 160-20-10 et seq. Board for Waterworks and Wastewater Works Operators Regulations.** The purpose of the proposed action is to seek public comment on existing regulations concerning the effectiveness and continued need for the regulations. The board is considering modifications to the definition section, the entry and experience requirements for licensure, and the procedures and provisions regarding license renewal and reinstatement. Further, the board intends to amend the regulations to implement the EPA Guidelines for the Certification and Recertification of the Operators of Community and Nontransient Noncommunity Public Water Systems, which were published in the February 5, 1999, edition of the Federal Register, by developing appropriate definitions; entry and experience standards; renewal, continuing professional education and reinstatement standards; and disciplinary standards for waterworks operators. The agency intends to hold a public hearing on the proposed regulation after publication.

Statutory Authority: § 54.1-201 of the Code of Virginia.

Public comments may be submitted until February 17, 2000.

Contact: Joseph Kossan, Assistant Administrator, Department of Professional and Occupational Regulations, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-8505, FAX (804) 367-2475 or (804) 367-9753/TTY ☎

VA.R. Doc. No. R00-74; Filed December 22, 1999, 11:50 a.m.

TITLE 24. TRANSPORTATION AND MOTOR VEHICLES

COMMONWEALTH TRANSPORTATION BOARD

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Commonwealth Transportation Board intends to consider promulgating regulations entitled: **24 VAC 30-65-10 et seq. State-Owned Urban Tunnel Safety Regulation.** The purpose of the proposed action is to promulgate a safety inspection regulation of LP gas valves of vehicles using LP gas for purposes other than propulsion at

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state-owned urban bridge-tunnels in the Suffolk construction district. The agency intends to hold a public hearing on the proposed regulation after publication.

Statutory Authority: §§ 33.1-12, 33.1-268 and 33.1-292 of the Code of Virginia.

Public comments may be submitted until March 1, 2000.

Contact: Perry C. Cogburn, Environmental Program Planner, Department of Transportation, Maintenance Division, 1221 E. Broad St., Richmond, VA 23219, telephone (804) 786-6824 or FAX (804) 786-7987.

VA.R. Doc. No. R00-87; Filed January 12, 2000, 8:56 a.m.

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Commonwealth Transportation Board intends to consider promulgating regulations entitled: **24 VAC 30-125-10 et seq. Regulation for Landscape Recognition and Identification Signs and Structures.** The purpose of the proposed action is to promulgate a new regulation concerning issues related to landscaping and nonregulatory signage placed on state-owned right of way. The regulation will address how donations will be accepted and used in VDOT's Wildflower Program, and the conditions under which localities, businesses, and subdivisions may place signs or related structures on state-owned right of way. The agency intends to hold a public hearing on the proposed regulation after publication.

Statutory Authority: §§ 33.1-12 and 33.1-292 of the Code of Virginia.

Public comments may be submitted until March 1, 2000.

Contact: James R. Barrett, Environmental Program Planner, Department of Transportation, Environmental Division, 1401 E. Broad St., Richmond, VA 23219, telephone (804) 786-6826 or FAX (804) 371-6827.

VA.R. Doc. No. R00-86; Filed January 12, 2000, 9:33 a.m.



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.

TITLE 20. PUBLIC UTILITIES AND TELECOMMUNICATIONS

STATE CORPORATION COMMISSION

REGISTRAR'S NOTICE: The State Corporation Commission is exempt from the Administrative Process Act in accordance with § 9-6.14:4.1 A 2 of the Code of Virginia, which exempts courts, any agency of the Supreme Court, and any agency which by the Constitution is expressly granted any of the powers of a court of record.

The distribution lists that are referenced as Appendices A, B and C in the following order are not being published. However, these lists are available for public inspection at the State Corporation Commission, Document Control Center, Tyler Building, 1st Floor, 1300 East Main Street, Richmond, Virginia 23219, from 8:15 a.m. to 5 p.m., Monday through Friday; or it may be viewed at the Virginia Code Commission, General Assembly Building, 2nd Floor, 910 Capitol Street, Richmond, Virginia 23219, during regular office hours.

Title of Regulation: **20 VAC 5-320-10 et seq. Regulations Governing Transfer of Transmission Assets to Regional Transmission Entities.**

Statutory Authority: §§ 12.1-13 and 56-579 of the Code of Virginia.

Summary:

Sections 56-577 and 56-579 of the Virginia Electric Utility Restructuring Act ("the Act"), Chapter 23 (§ 56-576 et seq.) of Title 56 of the Code of Virginia, require Virginia's incumbent electric utilities to (i) join or establish regional transmission entities ("RTE") by January 1, 2001, and (ii) seek authorization from the State Corporation Commission ("Commission") to transfer management and control of their transmission assets to such RTEs.

The proposed regulations establish elements of RTE structures essential to the public interest. These elements will be applied by the commission in determining whether to authorize transfer of management and control of incumbent utilities' transmission assets to RTEs. In addition, the proposed regulations prescribe the terms and conditions under which incumbent electric utilities owning, operating, controlling, or having an entitlement to transmission capacity within the Commonwealth, may transfer all or part of such control, ownership or responsibility to an RTE.

These proposed regulations, therefore, apply to any incumbent electric utility owning, operating, controlling, or having an entitlement to transmission capacity within the Commonwealth that is obligated to join or establish an RTE, or which is seeking to transfer to any person any

ownership or control of, or any responsibility to operate, any portion of any transmission system located in the Commonwealth.

Agency Contact: Cody Walker, Deputy Director, Division of Energy Regulation, State Corporation Commission, P.O. Box 1197, 1300 E. Main Street, Richmond, VA 23218, telephone (804) 371-9611.

AT RICHMOND, JANUARY 11, 2000

COMMONWEALTH OF VIRGINIA

At the relation of the

STATE CORPORATION COMMISSION

CASE NO. PUE990349

Ex Parte: In the matter concerning the participation of incumbent electric utilities in regional transmission entities

ORDER PRESCRIBING NOTICE AND INVITING COMMENTS

Sections 56-577 and 56-579 of the Virginia Electric Utility Restructuring Act ("the Act"), Chapter 23 (§ 56-576 et seq.) of Title 56 of the Code of Virginia, require Virginia's incumbent electric utilities to (i) join or establish regional transmission entities ("RTE") by January 1, 2001, and (ii) seek authorization from the State Corporation Commission ("Commission") to transfer their transmission assets to such RTEs.

Specifically, § 56-577 A states in pertinent part that:

[O]n or before January 1, 2001, each incumbent electric utility owning, operating, controlling, or having an entitlement to transmission capacity shall join or establish a regional transmission entity, which entity may be an independent system operator, to which such utility shall transfer the management and control of its transmission system, subject to the provisions of § 56-579.

Furthermore, § 56-579 A 1 provides in pertinent part that:

[N]o such incumbent electric utility shall transfer to any person any ownership or control of, or any responsibility to operate, any portion of any transmission system located in the Commonwealth without obtaining the prior approval of the Commission, as hereinafter provided.

The Commission is directed by § 56-579 B to adopt rules and regulations, with appropriate public input, establishing elements of RTE structures essential to the public interest. These elements are to be applied by the Commission in determining whether to authorize transfer or control of incumbent utilities' transmission assets to RTEs. The Commission is also directed by § 56-579 A 2 to develop rules and regulations under which incumbent electric utilities owning, operating, controlling, or having an entitlement to transmission capacity within the Commonwealth, may transfer

all or part of such control, ownership or responsibility to an RTE upon certain terms and conditions prescribed by the Commission.

On May 26, 1999, the Commission issued an order establishing an investigation and inviting comments by stakeholders and interested parties concerning the development of the rules required by §§ 56-577 and 56-579. Numerous, extensive responses were subsequently received and analyzed by Commission Staff. In a related development, the Federal Energy Regulatory Commission (FERC), with the recent issuance of FERC Order 2000 (*Regional Transmission Organizations*, Docket No. RM99-2-000, 89 FERC ¶ 61,285 (December 20, 1999)), has concluded its rulemaking proceeding concerning regional transmission organizations, or RTOs. Thus, these two proceedings, in conjunction with independent Commission Staff analysis, have contributed to the development of proposed regulations as required by §§ 56-577 and 56-579 of the Virginia Electric Utility Restructuring Act and proposed in this Order.

These proposed regulations, therefore, apply to any incumbent electric utility owning, operating, controlling, or having an entitlement to transmission capacity within the Commonwealth, that is obligated to join or establish an RTE, or which is seeking to transfer to any person any ownership or control of, or any responsibility to operate, any portion of any transmission system located in the Commonwealth.

Upon consideration whereof, the Commission is of the opinion and finds that the notice of this proposed rulemaking should be published in newspapers of general circulation throughout the Commonwealth; that this Order should be published in the *Virginia Register of Regulations*; and that interested persons should be afforded an opportunity to file written comments or request a hearing on the proposed regulations appended hereto as Attachment A. Accordingly,

IT IS ORDERED THAT:

(1) Interested persons may obtain a copy of this Order, together with a copy of the proposed rules upon which comment is sought (Attachment A hereto), by directing a request in writing for the same to Joel H. Peck, Clerk, State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218. Such requests shall refer to Case No. PUE990349.

(2) A copy of this Order and the proposed regulations shall also be made available for public review in the Commission's Document Control Center, located on the First Floor of the Tyler Building, 1300 East Main Street, Richmond, Virginia 23219, during its regular hours of operation, Monday through Friday, from 8:15 a.m. to 5:00 p.m.

(3) On or before February 11, 2000, any person desiring to comment upon the proposed regulations concerning RTEs shall file an original and fifteen (15) copies of their comments with the Clerk of the Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218-2118, Case No. PUE990349. Such comments should set forth the person's interest in this proceeding, and if such person objects to certain provisions of the proposed regulations,

proposed alternative language for the regulations should be included in such person's comments.

(4) Any person desiring a hearing in this matter shall file such a request with their comments on or before February 11, 2000, and shall state in detail why a hearing is necessary. Such a request should identify the factual issues likely in dispute upon which the person seeks a hearing, together with the evidence expected to be introduced at any hearing. If no sufficient request for a hearing is received, the Commission may enter an order promulgating regulations upon the basis of the written pleadings filed.

(5) On or before January 24, 2000, the Commission will cause to be published the following notice as classified advertising on one occasion in newspapers of general circulation throughout the Commonwealth of Virginia:

NOTICE TO THE PUBLIC OF A PROCEEDING
TO ESTABLISH REGULATIONS CONCERNING
THE PARTICIPATION OF INCUMBENT
ELECTRIC UTILITIES IN REGIONAL
TRANSMISSION ENTITIES
CASE NO. PUE990349

The Virginia Electric Utility Restructuring Act ("the Act"), in §§ 56-577 and 56-579 of the Code of Virginia, directs the State Corporation Commission ("Commission") to establish regulations governing the transfer of incumbent electric utilities' transmission asset to regional transmission entities ("RTEs"). Specifically, the Act requires the Commission to establish, by regulation, the elements of RTEs essential to the public interest. The Act also directs the Commission to establish regulations governing the transfer of the ownership or control of incumbent electric utilities' transmission assets to RTEs.

By Order entered on January 11, 2000, the Commission established a proceeding to consider regulations proposed by the Commission's Staff governing the transfer of incumbent electric utilities' transmission asset to RTEs, as required by the Act. Interested persons should obtain copies of the Commission's January 11, 2000, Order with attached proposed regulations from the Clerk of the Commission at the address listed below. The Order and proposed regulations will also appear in the January 31, 2000 issue of *The Virginia Register of Regulations*.

A copy of the Order Prescribing Notice and Inviting Comments, together with the proposed regulations, may be reviewed from 8:15 a.m. to 5:00 p.m., Monday through Friday, in the State Corporation Commission's Document Control Center located in 1300 East Main Street, Tyler Building, First Floor, Richmond, Virginia 23219.

Any person desiring to comment upon the proposed regulations concerning the transfer of incumbent electric utilities' transmission assets to regional transmission entities shall file, on or before February 11, 2000, an original and fifteen (15)

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copies of their comments with the Clerk of the Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218-2118. The comments should set forth the person's interest in this proceeding, and if a person objects to certain provisions in the proposed regulations, such person should propose alternative language for the regulations in their comments. All such comments should refer to Case No. PUE990349.

Any person desiring to request a hearing in this matter shall file such a request with their comments on or before February 11, 2000, and shall state in detail why a hearing is necessary. Such a request should identify the factual issues upon which the party seeks hearing, together with the evidence expected to be introduced at any hearing. If no sufficient request for hearing is received, the Commission may enter an order promulgating regulations upon the basis of the written pleadings filed.

All communications to the Commission should be directed to the Clerk of the State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218-2118, and should refer to Case No. PUE990349.

THE DIVISION OF ENERGY REGULATION OF THE VIRGINIA STATE CORPORATION COMMISSION

(6) On or before February 29, 2000, the Division of Energy Regulation shall file with the Clerk of the Commission proof of the publication of the notices required herein.

AN ATTESTED COPY hereof shall be sent by the Clerk of the Commission to: all Virginia Electric Cooperatives and Electric Utilities as set out in Appendix A to this Order; the gas utilities subject to the Commission's regulation as set out in Appendix B to this Order; the additional service list attached as Appendix C to this Order; Wendy N. Reed, Esquire, Wright & Talisman, P.C., 1200 G Street, N.W., Suite 600, Washington, D.C. 20005; Richard A. Drom, General Counsel, and Carla G. Pettus, Senior Counsel, PJM Interconnection, L.L.C., 955 Jefferson Avenue, Valley Forge Corporate Center, Norristown, Pennsylvania 19403-2497; Michael S. Wroblewski, Advocacy Coordinator, Federal Trade Commission, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580; Louis R. Monacell, Esquire, and Edward L. Petrini, Esquire, Christian & Barton, 909 East Main Street, Suite 1200, Richmond, Virginia 23219-3095; Howard H. Shafferman, Esquire, Ballard, Spahr, Andrews & Ingersoll, L.L.P., 601 13th Street, N.W., Suite 1000 South, Washington, D.C. 20005; Timothy R. Dunne, Senior Vice President, General Counsel, and Secretary, Tractebel Power, Inc., 1177 West Loop South, Suite 900, Houston, Texas 77027; Allen C. Barringer, Associate General Counsel, Potomac Electric Power Company, 1900 Pennsylvania Avenue, N.W., Room 841, Washington, D.C. 20068-0001; Douglas M. Brooks, Senior Counsel Specialist, Regulatory, LG&E Energy Corp., 220 West Main Street, P.O. Box 32010, Louisville, Kentucky 40232; Anthony Gambardella, Esquire, Woods, Rogers & Hazlegrove, P.L.C., 823 East Main Street,

Suite 1200, Richmond, Virginia 23219; James R. Bacha, Esquire, and Kevin F. Duffy, Esquire, American Electric Power Service Corporation, 1 Riverside Plaza, Columbus, Ohio 43215; Pamela Johnson, Esquire, and Michael C. Regulinski, Esquire, Virginia Electric and Power Company, P.O. Box 26666, Richmond, Virginia 23261-6666; John A. Pirko, Esquire, LeClair Ryan, P.C., 4201 Dominion Boulevard, Suite 200, Glen Allen, Virginia 23060; Thomas B. Nicholson, Esquire, Williams, Mullen, Clark & Dobbins, P.C., Two James Center, 1021 East Cary Street, P.O. Box 1320, Richmond, Virginia 23218-1320; Craig G. Goodman, Esquire, President, National Energy Marketers Association, 3333 K Street, N.W., Suite 425, Washington, D.C. 20007; Donald R. Hayes, Esquire, Washington Gas Light Company, 1100 H Street, N.W., Washington, D.C. 20080; Kenneth G. Hurwiter, Esquire, and Rita L. Wecker, Esquire, Venable, Baetjer, Howard & Civiletti, LLP, 1201 New York Avenue, N.W., 11th Floor, Washington, D.C. 20005; George O'Nale, Rt. 2, Box 1293, New Castle, Virginia 24127; Jeffrey M. Gleason, Esquire, Southern Environmental Law Center, 201 West Main Street, Suite 14, Charlottesville, Virginia 22902; Marleen L. Brooks, Esquire, and Robert T. Vogler, Esquire, Allegheny Power Building, 10435 Downsview Pike, Hagerstown, Maryland 21740; John F. Dudley, Senior Assistant Attorney General and Chief, Insurance and Utilities Regulatory Section, Office of Attorney General, Division of Consumer Counsel, 900 East Main Street, Second Floor, Richmond, Virginia 23219; Michael E. Kaufmann, Esquire, and Peter J. Mattheis, Esquire, Brickfield, Burchette & Ritts, P.C., 1025 Thomas Jefferson Street, N.W., Eighth Floor, West Tower, Washington, D.C. 20007; Julie Simon, Director of Policy, Electric Power Supply Association, 1401 H Street, N.W., Suite 760, Washington, D.C. 20005; Guy T. Tripp, III, Esquire, and Evans B. Brasfield, Esquire, Hunton & Williams, Riverfront Plaza, East Tower, 951 East Byrd Street, Richmond, Virginia 23219-4074; Philip F. Abraham, Esquire, Hazel & Thomas, P.C., P.O. Box 788, Richmond, Virginia 23206; The Electricity Consumers' Resource Council (ELCON), 1333 H Street, N.W., West Tower, 8th Floor, Washington, D.C. 20005; James L. Dobson, DVA, Donaldson, Lufkin & Jenrette, 140 Broadway, New York, New York 10005; James E. Franklin, Cogentrix Energy, Inc., 9405 Arrowpoint Boulevard, Charlotte, North Carolina 28273-8110; Lisa J. Gefen, Allied Signal, Inc., 6 Eastmans Road, Parsippany, New Jersey 07054; Eric R. Todderun, Esquire, Heller, Ehrman, White & McAuliffe, 200 S.W. Market Street, Suite 1750, Portland, Oregon 97201; Jean Ann Fox, Vice President, Virginia Citizens Consumer Council, 114 Coachman Drive, Yorktown, Virginia 23693; Dennis R. Bates, Senior Assistant County Attorney, Fairfax County, Virginia 22035-0064; Wayne S. Leary, Peat Energy, Inc., P.O. Box 14309, New Bern, North Carolina 28561-4309; Frederick H. Ritts, Esquire, and Vincent P. Duane, Esquire, 1025 Thomas Jefferson Street, Suite 800, Washington, D.C. 20007; Andrew Gelbaugh, C.C. Page Resources, 4375 Fairlakes Court, Suite 2000, Fairfax, Virginia 22033; Jim O'Reilly, McKinsey & Company, Inc., 1101 Pennsylvania Avenue, N.W., Suite 700, Washington, D.C. 20004; S. Lynn Sutcliffe, Sycom Enterprises, 1010 Wisconsin Avenue, Suite 340, Washington, D.C. 20007; Frann G. Francis, Apartment & Office Building Association, 1050 17th Street,

N.W., Washington, D.C. 20036; Michael Sarahan, Assistant City Attorney, City of Richmond, 900 East Broad Street, Suite 300, Richmond, Virginia 23219; Steven W. Ruback, The Columbia Group, Inc., 785 Washington Street, Canton, Massachusetts 02021; Mid-Atlantic Power Supply Association, Suzanne Daycock, 1153 Sycamore Lane, Mahwah, New Jersey 07430; Douglas D. Wilson, Esquire, Wilson & Associates, P.C., P.O. Box 8190, Roanoke, Virginia 24014; Joe Lenzi, Energy Engineer, CEK Consulting Engineering, P.O. Box 907, Mechanicsville, Virginia 23111; Carter Glass, IV, Esquire, Municipal Electric Power Association, P.O. Box 1122, Richmond, Virginia 23218-1122; James H. Gentry, Tennessee Valley Authority, 1101 Market Street, Chattanooga, Tennessee 37402-2801; David X. Kolk, PHD, Power Resource Managers, L.L.C., 1233 Shelburne Road, #200, South Burlington, Vermont 05403; Dasil R. Sizemore, System Council U-1, IBEW, P.O. Box 6537, Richmond, Virginia 23230; Sarah D. Sawyer, Legal Assistant, Bracewell & Patterson, L.L.P., 2000 K Street, N.W., Suite 500, Washington, D.C. 20006-1872; Gary T. Piacentini, Esquire, Maloney, Barr & Huennekens, 1111 East Main Street, Suite 800, Richmond, Virginia 23219-3103; Karen Sinclair, National Renewable Energy Lab, 1617 Cole Boulevard, Golden, Colorado 80401; Albert J. Francese, Esquire, 6597 Rockland Drive, Clifton, Virginia 22024; Legal Environmental Assistance Foundation, 1115 North Gadsden Street, Tallahassee, Florida 32303-6327; Glenn J. Berger, Esquire, Union Camp Corporation, 1440 New York Avenue, N.W., Washington, D.C. 20005-2111; Norman D. Reiser, Director, D.C. Public Service Commission, 450 5th Street, N.W., Washington, D.C. 20001; Richard Silkman, Richard Silkman & Associates, 163 Main Street, Yarmouth, Maine 04096; Robert Blohm, 3 Dover Road, Hamilton, New Jersey 08620; James R. Kibler, Jr., Esquire, Mezzullo & McCandlish, P.O. Box 796, Richmond, Virginia 23218; Sarah Hopkins Finley, Esquire, Williams, Mullen, Christian & Dobbins, P.O. Box 1320, Richmond, Virginia 23210; Josh Flynn, KPMG Peat Marwick, 8200 Greensboro Drive, #400, McLean, Virginia 22102; Donald A. Fickenscher, Vice President, General Counsel and Corporate Secretary, Virginia Natural Gas Company, 5100 East Virginia Beach Boulevard, Norfolk, Virginia 23502; H. Allen Glover, Jr., Esquire, and Michael J. Quinan, Esquire, Woods, Rogers & Hazlegrove, P.O. Box 14125, Roanoke, Virginia 24038-4125; J. Christopher Lagow, Esquire, Law Office of J. Christopher LaGow, 830 East Main Street, Suite 1500, Richmond, Virginia 23219; Susan G. George, Esquire, CNG Energy Services Corporation, 625 Liberty Avenue, Pittsburgh, Pennsylvania 15222; Howard Friedman, MC2, Inc., 701 East 22nd Street, Lombard, Illinois 60148-5072; Joelle K. Ogg, Esquire, John & Hengerer, 1200 17th Street, N.W., Suite 600, Washington, D.C. 20036; Susan Weinstock, AARP, 601 E Street, N.W., Washington, D.C. 20049; and the Commission's Divisions of Economics and Finance, Energy Regulation, and Public Utility Accounting.

CHAPTER 320.
REGULATIONS GOVERNING TRANSFER OF
TRANSMISSION ASSETS TO REGIONAL TRANSMISSION
ENTITIES.

20 VAC 5-320-10. Applicability and scope.

These regulations are promulgated pursuant to the provisions of the Virginia Electric Utility Restructuring Act (§ 56-576 et seq. of the Code of Virginia), and they apply to any incumbent electric utility owning, operating, controlling, or having an entitlement to transmission capacity within the Commonwealth. Sections 56-577 and 56-579 of the Act require Virginia's incumbent electric utilities to (i) join or establish regional transmission entities (RTEs) by January 1, 2001, and (ii) seek the commission's authorization to transfer their transmission assets to such RTEs.

Specifically, § 56-577 of the Code of Virginia requires that on or before January 1, 2001, incumbent electric utilities owning, operating, controlling, or having entitlement to transmission capacity join or establish RTEs. The utilities are required to transfer the management and control of their transmission systems to the RTEs, subject to the provisions of § 56-579 of the Code of Virginia.

Additionally, § 56-579 provides that no incumbent electric utility shall transfer to any person any ownership, control, or operation of any portion of any transmission system within the Commonwealth without obtaining the commission's prior approval.

Finally, certain transfers of utility assets are subject to the Utilities Transfers Act (§ 56-88 et seq. of the Code of Virginia).

In short, incumbent electric utilities who own, operate, control or have entitlement to transmission capacity are subject to three provisions: (i) the obligation to join or establish an RTE, (ii) the obligation to obtain commission approval before transferring ownership, control or operation to an RTE, and (iii) obligations imposed by the Utilities Transfers Act. Although these provisions are distinct, they overlap.

In the interest of administrative efficiency, the commission will utilize a single proceeding in which the utility seeks approval for a proposed transfer under § 56-579 of the Code of Virginia and under the Utilities Transfers Act. In that proceeding, the commission will determine whether (i) the RTE to which the applicant proposes to transfer transmission ownership, control or responsibility to operate satisfies the legislative criteria set forth in § 56-579 of the Code of Virginia, and (ii) the transfer otherwise satisfies § 56-579 and the Utilities Transfers Act.

Accordingly, these regulations establish:

- 1. The elements of regional transmission entity structures essential to the public interest, to be applied by the commission in determining whether to authorize transfer of ownership or control from an incumbent electric utility to a regional transmission entity, all as required by § 56-579 of the Code of Virginia;*
- 2. Filing requirements for entities required to comply with the mandate of § 56-577 of the Code of Virginia that*

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certain entities join or establish regional transmission entities, and seeking the commission's permission to transfer control, ownership or responsibility of or for transmission to a regional transmission entity pursuant to § 56-579 of the Code of Virginia and the Utilities Transfers Act; and

3. A schedule for such filings by the entities having obligations under § 56-577 of the Code of Virginia.

20 VAC 5-320-20. Definitions.

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

"Act" means the Virginia Electric Utility Restructuring Act.

"Commission" or "SCC" means the State Corporation Commission.

"FERC" means the Federal Energy Regulatory Commission.

"Incumbent electric utility" shall have the same meaning as set forth in § 56-576 of the Code of Virginia.

"Rate pancaking" means the practice of (i) requiring a transmission customer to pay a separate access charge each time the contract path associated with the customer's transaction crosses the boundary of another transmission owner, so as to count more than once the quantity transmitted or (ii) otherwise counting the quantity transmitted more than once in the calculation of the transmission customer's charges for transmission services, ancillary services or both.

"Regional transmission entities" or "RTEs" means any individual, corporation, municipality, partnership, association, company, business, trust, joint venture, or other private legal entity that may receive or has received, by transfer pursuant to this chapter, any ownership or control of, or any responsibility to operate, all or part of the transmission systems in the Commonwealth.

"Transmission assets" means those facilities and equipment owned, operated, or controlled by incumbent electric utilities, required for the transmission of electric energy. The term also includes facilities and equipment for the transmission of electric energy when incumbent electric utilities have entitlement to the transmission capacity thereof.

20 VAC 5-320-30. Elements of an appropriate regional transmission entity; general categories.

A. Section 56-579 of the Code of Virginia requires that RTEs (i) promote practices for the reliable planning, operating, maintaining, and upgrading of the transmission systems and any necessary additions thereto, and (ii) be consistent with meeting the transmission needs of electric generation suppliers both within and without this Commonwealth.

B. Accordingly, RTEs to which any incumbent electric utility proposes to transfer its transmission assets shall satisfy commission requirements in the following five essential categories before any such transfer will be approved: (i) reliability practices, (ii) pricing and access policies, (iii)

independent governance, (iv) consistency with FERC policy, and (v) fair compensation to the transferor.

20 VAC 5-320-40. Reliability practices.

RTE reliability practices shall, at a minimum:

1. Maintain short-term system reliability on an ongoing basis;
2. Identify system enhancements needed to maintain reliability over the long term and to facilitate the addition of needed improvements;
3. Assure that the RTE has the authority to construct or to compel the construction of needed transmission facilities;
4. Assure that reasonably priced ancillary services necessary for reliable service are available on an open-access basis;
5. Serve as an information resource to reliability councils or committees, potential market entrants, consumers, the FERC and state regulatory commissions;
6. Promote the construction of properly located generation facilities when such facilities represent optimal solutions for maintaining reliability; and
7. Provide for appropriate interconnection of new generating facilities.

20 VAC 5-320-50. Pricing and access practices.

A. RTEs shall promote policies for the pricing and access for service over such systems which are safe, reliable, efficient, not unduly discriminatory and consistent with the orderly development of competition in the Commonwealth as required in § 56-579 of the Code of Virginia.

B. Accordingly, such pricing and access policies must, at a minimum:

1. Provide for efficiently priced transmission access to competing generating resources over as broad a region as possible;
2. Use transmission rates that do not discourage economic transactions, and do not encourage uneconomic transactions;
3. Be adaptable for purchasers of electricity at wholesale or at retail;
4. Provide for the efficient relief of transmission congestion through the redispatch, by direct orders or by coordination with customers and generators, of competitively priced generation on an economically efficient basis;
5. Provide for the efficient pricing of transmission transactions between different regional transmission organizations;
6. Ensure that all transmission decisions, including pricing, access, planning and operational decisions, are made transparently;

7. Provide for effective market monitoring, including serving as a resource to assist the FERC and state regulatory commissions in the identification and resolution of market power abuses; and

8. Create an environment which facilitates the development of an efficient generation market.

20 VAC 5-320-60. Independent governance.

A. Section 56-579 of the Act requires RTE policies that are not unduly discriminatory and that are consistent with the orderly development of competition in the Commonwealth.

B. Accordingly, RTEs shall:

1. Be governed independently of all generation and other competitive interests;
2. Allow their decision-makers full discretion to achieve all the policies of this chapter; and
3. Provide to such decision-makers:
 - a. Strong, unimpeded incentives to exercise such discretion; and
 - b. No incentives to act inconsistently with the development of such competition.

20 VAC 5-320-70. Consistency with FERC policy.

Every transfer of transmission assets by an incumbent electric to an RTE pursuant to this regulation shall be consistent with the lawful requirements of the Federal Energy Regulatory Commission (FERC) as required by the provisions of § 56-579 of the Code of Virginia. Accordingly, such transfers shall conform to:

1. Any final rules issued by FERC, including FERC Orders 888¹, 889, 889-A, 889-B² and 2000³; and
2. Any orders issued by FERC in the area of transmission rates and regional transmission arrangements.

20 VAC 5-320-80. Fair compensation to transferor.

The RTE's method for acquiring control of transmission rights or assets transferred by an SCC-jurisdictional entity shall include terms that fairly compensate the transferor as

specified in § 56-579 of the Code of Virginia. Such policies shall, at a minimum:

1. Provide for a revenue stream sufficient to provide an adequate return on investment and recovery of reasonable operating expenses; or
2. Provide for a purchase price that reflects an appropriate value for the sale of any transmission assets.

20 VAC 5-320-90. Filing requirements; generally.

Each incumbent electric utility owning, operating, controlling, or having an entitlement to transmission capacity within the Commonwealth, intending to transfer all or part of the control, ownership or responsibility for such transmission capacity to an RTE, shall file an application with the commission. The application shall be prepared and submitted in two principal parts:

1. Part I shall consist of prefiled testimony and supporting exhibits or schedules necessary to demonstrate that the RTE to which the applicant proposes to make such transfer satisfies the elements set forth in this chapter.
2. Part II shall consist of prefiled testimony and supporting exhibits or schedules necessary to demonstrate that the transfer of transmission ownership, control or responsibility is consistent with all applicable statutory requirements.

20 VAC 5-320-100. Contents of incumbent utility filing, Part I.

Part I of the utility filing required pursuant to 20 VAC 5-320-90 shall include, at a minimum, the following:

1. Copies of all agreements entered into or to be entered into by the RTE, transmission owners, transmission users and other entities.
2. A description of the business structure of the RTE (e.g., public service corporation, limited liability company). Copies of the RTE's articles of incorporation, articles of organizations or similar documentation shall be provided in conjunction with this description.
3. A detailed description of the RTE's governance, including but not limited to explanations of the selection process for the RTE's board of directors and officers, codes of conduct, transmission owner rights and voting conditions.
4. A detailed description of the specific planning, operational, maintenance and other responsibilities that will be within the province of the RTE, and those that will remain within the province of the transmission owners. Such description should specify authorities and powers granted to the RTE. The list of responsibilities addressed should include, but not be limited to:

- a. Construction of facilities;
- b. Dispatch and redispatch of generation;
- c. Maintenance of facilities;

¹ Promoting Wholesale Competition Through Open Access Non-discriminatory Transmission Services by Public Utilities and Recovery of Stranded Costs by Public Utilities and Transmitting Utilities, Order No. 888, 61 FR 21,540 (May 10, 1996), FERC Stats. & Regs. ¶ 31,036 (1996) (Order No. 888), order on reh'g, Order No. 888-A, 62 FR 12,274 (March 14, 1997), FERC Stats. & Regs. ¶ 31,048 (1997) (Order No. 888-A), order on reh'g, Order No. 888-B, 81 FERC ¶ 61,248 (1997), order on reh'g, Order No. 888-C, 82 FERC ¶ 61,046 (1998), appeal docketed, Transmission Access Policy Study Group, et al. v. FERC, Nos. 97-1715 et al. (D.C. Cir.).

² Open Access Same-Time Information System (Formerly Real-Time Information Networks) and Standards of Conduct, Order No. 889, 61 FR 21,737 (May 10, 1996), FERC Stats. & Regs. ¶ 31,035 (1996), order on reh'g, Order No. 889-A, 62 FR 12,484 (March 14, 1997), FERC Stats & Regs. ¶ 31,049 (1997), order on reh'g, Order No. 889-B, 81 FERC ¶ 61,253 (1997).

³ Regional Transmission Organizations, Order No. 2000, 65 FR 810 (Dec. ____, 2000), FERC Stats. & Regs. ¶ ____ (2,000), reh'g pending.

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- d. Decision to order line loading relief;
 - e. Filing of initial tariffs at FERC;
 - f. Filing of changes to tariffs at FERC;
 - g. Acquisition of ownership or control of transmission facilities from transmission-owning members of the RTE;
 - h. Acquisition of ownership or control of transmission facilities from entities other than transmission-owning members of the RTE;
 - i. Admission of new members;
 - j. Establishment of fees;
 - k. Establishment of budget;
 - l. Hiring of staff leadership;
 - m. Planning activities for interconnecting new generating facilities;
 - n. Planning activities for transmission facilities controlled by the RTE;
 - o. Planning activities for transmission facilities not controlled by the RTE or distribution facilities to be interconnected with the RTE;
 - p. Open access transmission tariff (ATT) administration;
 - q. Transmission transaction scheduling;
 - r. Provision of energy imbalance services;
 - s. Procurement and provision of ancillary services;
 - t. Market monitoring activities;
 - u. Control area or security coordination responsibilities;
 - v. Calculation and posting of available transmission capacity (ATC);
 - w. Dissemination of reliability-related information and coordination with reliability councils or organizations; and
 - x. Coordination with generators and policies for interconnecting new generators.
5. A detailed description of each type of transmission-related decision over which a transmission owner will retain discretion, and the criteria which the transmission owner is free to apply to such discretion.
6. A detailed description of the plans for selecting the Board of Directors for the RTE.
7. A detailed description of the plans for hiring and training the employees of the RTE.
8. A description of the transmission rate or rates that will be collected by the RTE, including:
- a. The type of rates to be charged (e.g., zonal rates, grid-wide rates);
 - b. Provisions for transitioning to a particular type of rate or for modifying existing rates;
 - c. A statement indicating whether there will be any rate pancaking for transactions within the RTE and, if so, the following information shall be furnished:
 - (1) A precise description of how the pancaking occurs, with realistic hypothetical examples,
 - (2) A detailed analysis of the economic effect of the pancaking on representative types of transactions affecting customers in Virginia,
 - (3) A statement of how long the pancaking will last,
 - (4) An explanation of the rationale for permitting the pancaking, and
 - (5) A discussion of any FERC precedent relevant to determining the lawfulness or appropriateness of such pancaking, including a description of all commonalities and differences between the facts addressed in the FERC precedent and the facts in the RTE agreement at issue;
 - d. A statement indicating whether there is any charge, other than rate pancaking, which is intended to recover, or has the effect of recovering, from the transmission customer, revenues which one or more transmission owners would no longer receive as a result of the elimination of pancaked rates, and, if so, the following information shall be furnished:
 - (1) A precise description of how such charge operates, with realistic hypothetical examples,
 - (2) A detailed analysis of the economic effect of such charge on representative types of transactions affecting customers in Virginia,
 - (3) A statement of how long such charge will last,
 - (4) An explanation of the rationale for permitting the charge, and
 - (5) A discussion of any FERC precedent relevant to determining the lawfulness or appropriateness of such charge, including a description of all commonalities and differences between the facts addressed in the FERC precedent and the facts in the RTE agreement at issue;
 - e. A schedule comparing and contrasting the RTE's transmission charges and resulting RTE revenues with embedded retail transmission charges for each of the utility's Virginia jurisdictional rate classes;
 - f. An explanation of any special performance incentives;
 - g. An explanation of the transmission pricing applicable to transmission transactions with other regional transmission organizations; and
 - h. An explanation of the transmission pricing applicable to wheel-in, wheel-out, drive-through, and drive-within transactions.

9. A description of any complaint and dispute resolution procedure.

10. A detailed description of the facilities that will be subject to the RTE's control and/or that will be transferred to the RTE. Such description shall specify (i) whether the basis for determining which facilities are to be transferred is FERC's seven factor test set forth in FERC Order 888⁴ or some other method, (ii) how such test or method was applied, (iii) whether and how frequently such test will be reviewed and revisited, and (iv) who, as between the RTE and the owners, will require such review and any subsequent transfer made necessary by such review.

11. A detailed discussion of generation markets or hubs within the RTE and within one wheel of the RTE. Such discussion shall:

a. Compare and contrast historical and expected average prices in these markets with embedded generation charges for each of the utility's Virginia jurisdictional rate classes; and

b. Describe how the proposed RTE will promote improved access to each of these markets;

12. If an application to form an RTE already has been submitted to FERC, the filing shall include:

a. A copy of the application to the FERC (including applications made under § 203 and §§ 205 or 206 of the Federal Power Act); and

b. Any pleadings and orders issued in such FERC case;

13. If the FERC has approved or conditionally approved the RTE, describe any conditions or requirements imposed on the RTE and the RTE's plans for satisfying such conditions.

14. A detailed description of the RTE's experience in grid management. If the RTE is a new entity, describe the qualifications and/or personnel requirements for principal RTE employees who will be engaged in the management and operation of transmission facilities controlled by the RTE.

15. A detailed statement of how the proposed RTE will comply with each of the elements set forth in this section.

16. A detailed explanation of why the particular RTE was selected instead of other existing or possible RTEs, including an assessment of how any such alternative RTEs satisfy the required RTE elements set forth in this chapter. Such statements should include assessments of the financial and technical abilities of the proposed RTE as contrasted with alternative RTEs.

20 VAC 5-320-110. Contents of incumbent utility filing, Part II.

Part II of the utility filing required pursuant to 20 VAC 5-320-90 shall include, at a minimum, the following:

1. A copy of the transaction agreement signed by an appropriate utility official.

2. A description of the proposed transfer and the terms and conditions of the transaction to include historical and current use of property, proposed use of property, original cost of the property, current net book cost of the property, proposed sales price of the property and the method of determining the price, and the proposed accounting treatment of the transaction as well as current recording on company's books of record.

3. Assurances that adequate service to the public at just and reasonable rates will not be impaired by the proposed transfer.

4. If an actual sale of the facility is proposed:

a. A showing that the sales price was or will be determined at arms-length;

b. A description of whether the purchase price is at book cost, market value or some other measure;

c. A description of how the proceeds from the sale will be used;

d. A schedule of plant, book depreciation, and contributed property related to the assets to be transferred up to the current date;

e. An analysis of the anticipated impact of the transfer on the regulated company's rates and service, capital structure, and access to capital and financial markets, including copies of any pertinent published financial reports.

5. Discussion of favorable and unfavorable economic impacts on the Commonwealth of Virginia to include employee levels, facilities, and services provided.

6. Anticipated impact of the transfer on competition and market power.

20 VAC 5-320-120. Filing schedule.

Each incumbent electric utility required to obtain commission authorization for the transfer of its transmission assets to an RTE shall file the application required by 20 VAC 5-320-90 with the clerk of the commission not later than May 1, 2000.

VA.R. Doc. No. R00-90; Filed January 12, 2000, 11:12 a.m.

⁴ See *supra*, note 1.

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 change from the proposed text of the regulation.

TITLE 4. CONSERVATION AND NATURAL RESOURCES

MARINE RESOURCES COMMISSION

Title of Regulation: **4 VAC 20-252-10 et seq. Pertaining to the Taking of Striped Bass (amending 4 VAC 20-252-60, 4 VAC 20-252-85, 4 VAC 20-252-90, 4 VAC 20-252-100, 4 VAC 20-252-110, and 4 VAC 20-252-140.)**

Statutory Authority: §§ 28.2-201 and 28.2-204.1 of the Code of Virginia.

Effective Date: January 1, 2000.

Summary:

The amendments to the regulation (i) eliminate the spring/summer Potomac River tributaries of Virginia striped bass fishery; (ii) establish maximum size limits to apply to only one of the fish of the possession limit for the Bay Fall striped bass recreational fishery, the Potomac River tributaries fall striped bass recreational fishery, and the coastal striped bass recreational fishery; and (iii) change the open commercial season in the Chesapeake Bay, Potomac River tributaries and coastal area from February 1 through December 31 to February 1 through December 23.

Agency Contact: Copies of the regulation may be obtained from Deborah Cawthon, Marine Resources Commission, P.O. Box 756, Newport News, VA 23607, telephone (757) 247-2248.

4 VAC 20-252-60. Bay and Coastal Spring Trophy-size Striped Bass Recreational Fishery Fisheries.

A. The open season for the Bay Trophy-size Striped Bass Recreational Fishery shall be May 1 through June 15, inclusive; however, the season may be adjusted as set forth in subsection G of this section.

B. The area open for this ~~the Bay~~ fishery shall be the Chesapeake Bay and its tributaries, except the spawning reaches of the James, Pamunkey, Mattaponi, and Rappahannock Rivers.

C. The open season for the Coastal Spring Trophy-size Striped Bass Recreational Fishery shall be May 1 through May 15, inclusive; however, the season may be adjusted as set forth in subsection G of this section.

D. The area open for the Coastal Spring Trophy-size Striped Bass Recreational Fishery is the coastal area as described in 4 VAC 20-252-20.

E. The minimum size limit for the fisheries described in this section shall be 32 inches total length.

F. The possession limit for the fisheries described in this section shall be one fish per person.

G. ~~This fishery~~ *The Bay and Coastal fisheries*, combined with the fishery defined by 4 VAC 20-252-70, shall have a target take of 30,000 total fish coming from both the Virginia and Maryland portions of the Chesapeake Bay and any tributaries of the Chesapeake Bay and the Potomac River, and includes the area under the jurisdiction of the Potomac River Fisheries Commission. The season for this fishery shall be closed when it is determined that this total target has been reached.

H. Persons engaging in ~~this fishery~~ *the Bay and Coastal fisheries* shall report the retention of any striped bass to the commission. Filing the report shall be the responsibility of the person retaining the striped bass or, in the case of any charter boat or vessel, the captain of the charter boat or vessel. These reports are due 15 days after the close of this fishery and shall be on forms provided by the commission. There will be separate forms for persons and for charter boats or vessels.

4 VAC 20-252-85. ~~Potomac River Tributaries Spring/Summer Striped Bass Recreational Fishery.~~ (Repealed.)

~~A. The open season for the Potomac River Tributaries Spring/Summer Striped Bass Recreational Fishery shall correspond to the open spring season as established by the Potomac River Fisheries Commission for the mainstem Potomac River.~~

~~B. The area open for this fishery shall be the Potomac River tributaries.~~

~~C. The minimum size limit for this fishery shall be 18 inches total length.~~

~~D. The possession limit for this fishery shall correspond to the limit established by the Potomac River Fisheries Commission for the mainstem Potomac River.~~

4 VAC 20-252-90. Bay Fall striped bass recreational fishery.

A. The open season for the Bay Fall striped bass recreational fishery shall be October 4 through December 31, inclusive.

B. The area open for this fishery shall be the Chesapeake Bay and its tributaries.

C. The minimum size limit for this fishery shall be 18 inches total length.

D. The maximum size limit for this fishery shall be 34 inches total length; however, the maximum size limit shall only apply to one fish of the possession limit.

D- E. The possession limit for this fishery shall be two fish per person.

4 VAC 20-252-100. Potomac River tributaries fall striped bass recreational fishery.

A. The open season for the Potomac River tributaries fall striped bass fishery shall correspond to the open fall season as established by the Potomac River Fisheries Commission for the mainstem Potomac River.

B. The area open for this fishery shall be the Potomac River tributaries.

C. The minimum size limit for this fishery shall be 18 inches total length.

D. *The maximum size limit for this fishery shall be 34 inches total length; however, the maximum size limit shall only apply to one fish of the possession limit.*

D- E. The possession limit for this fishery shall be two fish per person.

4 VAC 20-252-110. Coastal striped bass recreational fishery.

A. The open seasons for the coastal striped bass recreational fishery shall be January 1 through March 31 and May 16 through December 31, inclusive.

B. The area open for this fishery shall be the coastal area as defined in this chapter.

C. The minimum size limit for this fishery shall be 28 inches total length.

D. *The maximum size limit for this fishery shall be 34 inches total length; however, the maximum size limit shall only apply to one fish of the possession limit.*

D- E. The possession limit for this fishery shall be two fish per person.

4 VAC 20-252-140. Commercial seasons, areas, and size limits.

Except as may be adjusted pursuant to 4 VAC 20-252-150, the open commercial striped bass fishing seasons, areas, and applicable size limits shall be as follows:

1. In the Chesapeake Bay and its tributaries and the Potomac River tributaries, the open commercial season shall be from February 1 through December 23, inclusive. The minimum size limit shall be 18 inches total length during the periods of February 1 through December 23. The maximum size limit shall be 28 inches from March 26 through June 15.

2. In the coastal area, the open commercial season shall be February 1 through December 23, inclusive, and the minimum size limit shall be 28 inches total length.

VA.R. Doc. No. R00-77; Filed December 28, 1999, 3:23 p.m.

TITLE 6. CRIMINAL JUSTICE AND CORRECTIONS

BOARD OF JUVENILE JUSTICE

Title of Regulation: **6 VAC 35-50-10 et seq. Standards for Interdepartmental Regulation of Residential Facilities for Children (REPEALED).**

See TITLE 22. SOCIAL SERVICES of the Final Regulation section of this issue of the Virginia Register of Regulations.

TITLE 8. EDUCATION

BOARD OF EDUCATION

Title of Regulation: **8 VAC 20-50-10 et seq. Standards for Interdepartmental Regulation of Residential Facilities for Children (REPEALED).**

See TITLE 22. SOCIAL SERVICES of the Final Regulation section of this issue of the Virginia Register of Regulations.

TITLE 12. HEALTH

BOARD OF MENTAL HEALTH, MENTAL RETARDATION AND SUBSTANCE ABUSE SERVICES

Title of Regulation: **12 VAC 35-30-10 et seq. Standards for Interdepartmental Regulation of Residential Facilities for Children (REPEALED).**

See TITLE 22. SOCIAL SERVICES of the Final Regulation section of this issue of the Virginia Register of Regulations.

TITLE 16. LABOR AND EMPLOYMENT

VIRGINIA WORKERS' COMPENSATION COMMISSION

Title of Regulation: **16 VAC 30-11-10 et seq. Public Participation Guidelines.**

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

Effective Date: March 1, 2000.

Summary:

The regulations outline the procedure which the Virginia Workers' Compensation Commission (the commission) will use as a means of seeking input from interested persons or groups in connection with any action the

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commission may take in promulgating regulations related to its administration of the Virginia Workers' Compensation Act (§ 65.2-100 et seq. of the Code of Virginia), the Virginia Compensating Victims of Crime Act (§ 19.2-368.1 et seq. of the Code of Virginia), and the Virginia Birth-Related Neurological Injury Compensation Act (§ 38.2-5000 et seq. of the Code of Virginia).

Summary of Public Comments and Agency's Response: No public comments were received by the promulgating agency.

Agency Contact: Copies of the regulation may be obtained from Sam Lupica, VWC Ombudsman, Virginia Workers' Compensation Commission, 1000 DMV Drive, Richmond, VA 23220, telephone (804) 367-8269.

CHAPTER 11.

PUBLIC PARTICIPATION GUIDELINES.

16 VAC 30-11-10. Definitions.

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

"Administrative Process Act" or "Act" means the Virginia Administrative Process Act (§ 9-6.14:1 et seq. of the Code of Virginia).

"Commission" means the Virginia Workers' Compensation Commission.

"Person" means an individual, corporation, partnership, association, governmental body, municipal corporation, or any other legal entity.

16 VAC 30-11-20. General.

A. The procedures in 16 VAC 30-11-30 shall be used for soliciting the input of interested persons in the formation and development, amendment or repeal of regulations subject to the Administrative Process Act. Except as specifically stated in these guidelines, these guidelines do not apply to actions of the commission exempted or excluded from the scope of the Administrative Process Act, by whatever authority.

B. The failure of any person to receive any notice or copies of any documents provided under these guidelines shall not affect the validity of any regulation.

16 VAC 30-11-30. Public participation procedures.

A. The commission shall establish and maintain a list or lists consisting of persons expressing an interest in the adoption, amendment or repeal of regulations. Any person wishing to be placed on any list may do so by writing the commission. In addition, the commission, at its discretion, may add to this list any person it believes will be interested in participating in the relevant commission action. Individuals and organizations may be periodically requested to indicate their desire to continue to receive documents or to be deleted from a list. Individuals and organizations may be deleted from any list at the request of the individual or organization, or at the discretion of the commission when mail is returned as undeliverable. Appropriate persons on this list will be identified and notified as to commission actions in which they are likely to be interested.

B. Where the commission intends to take regulatory action subject to the Administrative Process Act, it shall hold a public hearing where such hearing would be required under that Act. Additionally, the commission may hold a public hearing, at its discretion, where it believes such hearing would be beneficial.

1. Where such public hearing is required by the Administrative Process Act, notice of such hearing shall be given in accordance with the Act. Where the commission elects to hold a hearing not required by the Administrative Process Act, notice shall be provided by publication of the date, time and location of such hearing in the Virginia Register of Regulations no later than in the calendar month immediately preceding the calendar month in which the hearing is to take place. In all cases where a public hearing is to be held, notice of such hearing may also be sent to all persons included in the list described in subsection A of this section.

2. Public hearings may be held in such locations as the commission determines most appropriate for facilitating the process of obtaining input from interested persons.

C. Where the commission does not intend to take regulatory action that would be subject to the Administrative Process Act, it may, in its discretion, conduct an informal information gathering process. This process may include solicitation of input from persons the commission identifies as possessing information useful to the commission in administering the provisions of the Virginia Workers' Compensation Act. Information gathered by the commission in these proceedings may be used by the commission in determining whether regulatory action under Article 2 (§ 9-6.14:7.1 et seq.) of the Administrative Process Act would be appropriate. However, when taking regulatory action, the commission shall comply with the relevant provisions of the Administrative Process Act, and the informal information gathering process described in this subsection shall be in addition to the procedures provided in Article 2 of the Act.

D. In connection with any process under this section, the commission may, in its discretion, form and utilize standing or ad hoc advisory panels for the purpose of consultation. Additionally, the commission may, in its discretion, consult with groups and individuals registering an interest in the subject matter of the commission's action, or which the commission identifies as possessing knowledge, skill or expertise which would be beneficial to the commission in connection with the relevant commission action. These consultation procedures shall be used where the commission, in its discretion, concludes that the complexity of the issue under consideration so warrants.

VA.R. Doc. No. R99-198; Filed January 10, 2000, 2:05 p.m.



TITLE 20. PUBLIC UTILITIES AND TELECOMMUNICATIONS

STATE CORPORATION COMMISSION

REGISTRAR'S NOTICE: The State Corporation Commission is exempt from the Administrative Process Act in accordance with § 9-6.14:4.1 A 2 of the Code of Virginia, which exempts courts, any agency of the Supreme Court, and any agency which by the Constitution is expressly granted any of the powers of a court of record.

Title of Regulation: 20 VAC 5-400-10 et seq. **Telecommunications.**

Statutory Authority: § 12.1-13 of the Code of Virginia.

Effective Date: January 12, 2000.

Summary:

These procedural rules govern exemption from providing physical collocation pursuant to § 251(c)(6) of the Telecommunications Act of 1996. These rules take into account the comments of interested parties in response to the commission's "Order Inviting Comments" dated December 16, 1998, and the Federal Communications Commission regulations on physical collocation. The commission further modified the rules in response to additional comments by interested parties. In particular, the timeframes for filing applications for exemption requests have been changed, and carriers must now notify the commission of material changes in space availability once an exemption request has been granted.

Agency Contact: Kathleen Cummings, Division of Communications, State Corporation Commission, P.O. Box 1197, Richmond, Virginia 23218, telephone (804) 371-9420 or e-mail kcummings@scc.state.va.us.

AT RICHMOND, JANUARY 7, 2000

APPLICATION OF

BELL ATLANTIC-VIRGINIA, INC. CASE NO. PUC960164

For exemption from physical collocation

ORDER ADOPTING RULES AND RULING ON EXEMPTION REQUESTS

On October 1, 1999, Rhythms Links, Inc. - Virginia ("Rhythms") filed a motion to dismiss the supplemental application of Bell Atlantic-Virginia, Inc. ("BA-VA") for exemption from physical collocation in the Midlothian central office. On the same day Rhythms filed a petition for declaratory ruling requesting that the State Corporation Commission ("Commission") order BA-VA to provide Rhythms with physical collocation space in the Midlothian central office and that the Commission adopt its proposed collocation rules.

On October 12, 1999, the Staff of the Commission ("Staff") filed a motion requesting that the Commission accept BA-VA's withdrawal of its requests for exemptions from physical collocation at certain central offices, deny BA-VA's request for

exemptions for additional central offices, and finalize the procedural rules governing exemptions from providing physical collocation.

On October 19, 1999, the Commission entered an order permitting BA-VA and other interested parties to respond to the Rhythms' and Staff's motions. Comments were received from BA-VA, Central Telephone Company of Virginia, United Telephone-Southeast, Sprint Communications Company of Virginia, Inc., AT&T Communications of Virginia, Inc., GTE South Incorporated, Starpower Communications, LLC, Focal Communications Corporation of Virginia, Cavalier Telephone, LLC, and Rhythms.

The Commission has reviewed the comments together with the Federal Communications Commission's ("FCC") First Report and Order and Further Notice of Proposed Rulemaking, FCC 99-48, In re Deployment of Wireline Services Offering Advanced Telecommunications Capability, CC Docket No. 98-147 (released March 31, 1999) ("Advanced Services Order"). The FCC's new rules provide for additional minimum collocation standards, including the requirement that an incumbent local exchange carrier ("ILEC") make available cageless collocation space in any unused space,¹ and permit state commissions to adopt additional requirements consistent with the Telecommunications Act of 1996 and FCC regulations.²

NOW THE COMMISSION, having considered Rhythms' and the Staff's motions and the comments of numerous interested parties, is of the opinion and finds that the proposed rules, with certain language revisions suggested by several of the commenting parties, should be adopted. BA-VA should be required to supplement its remaining exemption requests so that they are consistent with the new rules. Further, BA-VA's withdrawal of its exemption requests for certain central offices is accepted.

Significantly, when space is reserved for more than two years, the rules will require ILECs to provide detailed explanations of why alternative space arrangements would not accommodate future space needs. The Commission has previously determined,³ and continues to believe, that two years is a reasonable reservation period for future space needs; however, the new rules recognize that there may be limited circumstances that justify a reservation period of more than two years. In these unique circumstances, the ILEC will assume the burden of proving that an extended reservation period is indeed necessary.

In light of the adoption of these rules, BA-VA must re-examine its pending requests. For each of the remaining exemption requests, BA-VA must supplement the request with information required by the new rules. In addition, with regard to the Midlothian central office, BA-VA should include

¹ Advanced Services Order at ¶ 42.

² Advanced Services Order at ¶¶ 8, 22, and 39.

³ Petition of AT&T Communications of Virginia, Inc. For arbitration of unresolved issues from interconnection negotiations with GTE South, Case No. PUC960117, 1996 S.C.C. Ann. Rep't 236, 237 (Final Order, Dec. 11, 1996).

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a detailed explanation of the specific universal service obligations for which it is reserving space.

BA-VA's withdrawal of its exemption requests for the Herndon, Lewinsville, Centreville, Crystal City, Fox Mill Road, Sterling, and Lake Fairfax central offices leaves only four remaining requests for exemption: Ashburn, Midlothian, Pentagon, and Dulles Corner. We will accept BA-VA's withdrawal of its exemption request for the Lake Fairfax wire center; however, the Commission takes no position on whether BA-VA is obligated to provide collocation space at this site.

By this Order, we deny Rhythms' October 1, 1999, motion to dismiss, and deny in part and grant in part both Rhythms' October 1, 1999, petition for declaratory ruling, and Staff's October 12, 1999, motion.

Accordingly, IT IS ORDERED THAT:

(1) The procedural rules governing exemption from providing physical collocation pursuant to § 251(c) of the Telecommunications Act of 1996, with modifications as shown in Attachment A, shall be adopted and published in the Virginia Register.

(2) On or before February 8, 2000, BA-VA shall supplement its remaining requests for exemption consistent with the rules adopted herein, or these requests will be denied without prejudice, subject to refiling.

(3) BA-VA's withdrawal of its requested exemptions for the Herndon, Lewinsville, Centreville, Crystal City, Fox Mill Road, Sterling, and Lake Fairfax central offices is accepted.

AN ATTESTED COPY of this Order shall be sent by the Clerk of the Commission to: Warner F. Brundage, Jr., Esquire, Bell Atlantic-Virginia, Inc., 600 East Main Street, 11th Floor, Richmond, Virginia 23219; Robin Cohn, Esquire, Russell M. Blau, Esquire, Dana Frix, Esquire, and Richard M. Rindler, Esquire, Swidler Berlin Shereff Friedman, L.L.P., 3000 K Street, N.W., Suite 300, Washington, D.C. 20007-5116; John F. Dudley, Senior Assistant Attorney General, Division of Consumer Counsel, Office of Attorney General, 900 East Main Street, Second Floor, Richmond, Virginia 23219; Steven H. Goodman, Director-Regulatory and Carrier Services, CFW Network Inc., 401 Spring Lane, Suite 300, P.O. Box 1990, Waynesboro, Virginia 22980-7590; Susan Jin Davis, Assistant General Counsel, Covad Communications Company, 6849 Old Dominion Drive, Suite 220, McLean, Virginia 22101; Wilma R. McCarey, Esquire, AT&T Communications of Virginia, Inc., 3033 Chain Bridge Road, Room 3-D, Oakton, Virginia 22185-0001; Donald G. Owens, Esquire, Mays & Valentine, L.L.P., P.O. Box 1122, Richmond, Virginia 23218-1122; Ernico C. Soriano, Esquire, Kelley Drye & Warren, LLP, 1200 19th Street, N.W., Suite 500, Washington, D.C. 20036; Eric M. Page, Esquire, and James P. Guy II, Esquire, LeClair Ryan, P.C., 4201 Dominion Boulevard, Suite 200, Glen Allen, Virginia 23060; James B. Wright, Senior Attorney, Sprint Mid-Atlantic Telecom, 14111 Capital Boulevard, Wake Forest, North Carolina 27587-5900; and the Commission's Division of Communications.

20 VAC 5-400-200. Procedural rules governing exemption from providing physical collocation pursuant to § 251(c)(6) of the Telecommunications Act of 1996.

A. 1. *The incumbent local exchange carrier (ILEC) shall submit an original and 15 copies of its application requesting exemption to provide physical collocation with the Clerk of the State Corporation Commission (commission), c/o Document Control Center, 1300 East Main Street, P.O. Box 2118, Richmond, Virginia 23218. Three copies of the floor plan required in subdivision B 2 of this section shall be provided to the commission's Division of Communications.*

2. *The ILEC shall file an exemption request only when no physical collocation space is available at the ILEC's premise.*

3. *The ILEC shall file an application requesting exemption to provide physical collocation at any premise within [45 30] days of a denial to a carrier of space as described in subdivision 2 of this subsection. If the exhaustion of space is determined outside of a denial to a carrier, the ILEC shall file its application within [30 45] days of such a determination.*

4. *A carrier that has been denied an amount of space or a specific collocation arrangement in a premise where some physical collocation space or alternative arrangements are still available may initiate a complaint with the commission in accordance with its Rules of Practice and Procedure (5 VAC 5-10-10 et seq.).*

5. *The ILEC shall furnish [written] notice of any request for exemption of physical collocation to all certificated local exchange carriers and interexchange carriers in Virginia. The ILEC shall provide a copy of the application to interested parties upon request. The ILEC shall also [~~provide a copy of~~ make available] any proprietary information provided under subsection B of this section to interested parties in a timely manner and pursuant to a confidentiality agreement.*

6. *The ILEC shall provide a tour of any premise to a carrier that has been denied collocation space or arrangement. In addition, the ILEC shall schedule tours of a premise for interested parties and commission staff once an exemption request has been filed with the commission. These tours shall be provided in a timely manner; however, the ILEC may coordinate any tours between the parties in order to minimize any disruption at the premise.*

7. *Any ILEC which has been granted an exemption to provide physical collocation at any premise shall file a status report yearly from the date the exemption was granted. The report shall identify any changes to the previously provided documentation required in subsection B of this section. [An ILEC shall notify the commission of any material changes that will make space available at an exempt premise within 30 days of a determination that the change will occur.]*

B. 1. *Any request submitted by an ILEC for an exemption from physical collocation shall specifically identify the*

premise (including exchange, wire center, CLLI code, brief description, V&H coordinates, and address) where the exemption is requested [, the expected duration of the exemption,] and the criteria for which the request is being made, i.e., space limitation and/or technical reason.

2. The ILEC shall submit current clearly labeled floor plans/diagrams of the premise of at least a 1/8"=1' scale which, at a minimum, identifies the following:

- a. Equipment in use and its function, i.e., mechanical, power, switching, transmission, etc.
- b. Equipment being phased out, not in use and/or stored.
- c. Space reserved by the ILEC for future use as of the preparation date of the floor plan/diagram.
 - (1) Within six months (imminent equipment placement).
 - (2) After six months but within two years.
 - (3) After two years.
- d. Physical collocation space.
- e. Administrative and other nonequipment space.

3. For any equipment being phased out, not in use and/or stored, identified in subdivision 2 b of this subsection, the ILEC shall provide the expected retirement and removal date or dates.

4. For any space reserved in subdivision 2 c of this subsection, the ILEC shall include the [specific] use [or uses] for which it is planned. In addition, for space reserved for more than two years, the ILEC shall specify the [~~timeframe~~ timeframes] reserved [and provide a detailed explanation of why alternative space (i.e. building additions, expected retirements, rearrangements) would not accommodate future space needs].

5. For collocation space identified in subdivision 2 d of this subsection, the ILEC shall identify the amount of space utilized by each available type of collocation arrangement. In addition, the ILEC shall identify the amount of space utilized and/or reserved by each carrier.

6. The ILEC shall submit a detailed description and analysis of any equipment rearrangements, administrative space relocation and/or building expansion plans, including timelines of each project for the premise in which the exemption is requested.

7. The ILEC shall provide a detailed description of any efforts or plans to avoid space exhaustion in the premise for which the exemption is requested. Such description should include the proposed timeline of any such plans and estimation of the duration of the exemption.

8. To the extent that an ILEC claims that space is unavailable due to security or access constraints, an explanation of any efforts the ILEC has undertaken to overcome such constraints shall be submitted.

TITLE 22. SOCIAL SERVICES

DEPARTMENT OF REHABILITATIVE SERVICES

Title of Regulation: **22 VAC 30-40-10 et seq. Protection of Participants in Human Research.**

Statutory Authority: §§ 51.5-5.1 and 51.5-14 of the Code of Virginia.

Effective Date: March 1, 2000.

Summary:

The regulation establishes protocols to approve research proposals involving customers of the department, Woodrow Wilson Rehabilitation Center, any employment services organizations (sheltered workshops) or Centers for Independent Living as mandated by state and federal law. The regulation establishes a human research review committee to implement these protocols, requires researchers to divulge their research plans to a committee to obtain approval for the research, and provides that human participants will be provided with information regarding the action and known consequences of the research.

Summary of Public Comments and Agency's Response: No public comment was received by the promulgating agency.

Agency Contact: Copies of the regulation may be obtained from Vanessa S. Rakestraw, Department of Rehabilitative Services, 8004 Franklin Farms Drive, P.O. Box K300, Richmond, VA 23288-0300, telephone (804) 662-7612.

CHAPTER 40.

PROTECTION OF PARTICIPANTS IN HUMAN RESEARCH.

22 VAC 30-40-10. Definitions.

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

"Affiliated with the institution" means employed by the institution or a member of a household containing an employee of the institution.

"Board" means the Board of Rehabilitative Services for the Department of Rehabilitative Services.

"Commissioner" means the Commissioner of the Department of Rehabilitative Services.

"Department" means the Department of Rehabilitative Services.

"Human participant" means a living individual about whom an investigator (whether professional or student) conducting research obtains (i) data through intervention or interaction with the individual or (ii) identifiable private information.

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"Human research" means any systematic investigation which utilizes human participants who may be exposed to physical or psychological injury as a consequence of participation and which departs from the application of established and accepted therapeutic methods appropriate to meet the participant's needs.

"Independent living center" means a consumer controlled, community based, cross disability, nonresidential private nonprofit agency that:

1. Is designed and operated within a local community by individuals with disabilities; and
2. Provides an array of independent living services.

"Institution" means the department, any center of independent living, sheltered workshop, Woodrow Wilson Rehabilitation Center, or any facility or program operated, funded, or licensed by the department.

"Interaction" includes communication or interpersonal contact between investigator and participant.

"Intervention" includes both physical procedures by which data are gathered (for example, venipuncture) and manipulations of the participant or participant's environment that are performed for research purposes.

"Legally authorized representative" means the parent or parents having custody of a prospective participant, the legal guardian of a prospective participant, or any person or judicial or other body authorized by law or regulation to consent on behalf of a prospective participant to such person's participation in the particular human research. For the purposes of this definition, any person authorized by law or regulation to consent on behalf of a prospective participant to his participation in the particular human research shall include an attorney-in-fact appointed under a durable power of attorney, to the extent the power grants the authority to make such a decision. The attorney-in-fact shall not be employed by the person, institution or agency conducting the human research and shall not be authorized to consent to nontherapeutic medical research. No official or employee of the institution or agency conducting or authorizing the research shall be qualified to act as a legally authorized representative.

"Minimal risk" means that the risks of harm 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.

"Nontherapeutic research" means human research in which there is no reasonable expectation of direct benefit to the physical or mental condition of the participant.

"Private information" includes information about the human participant's behavior that occurs when an individual can reasonably expect that no observation or recording is taking place, and information which has been provided for specific purposes by the human participant which the participant can reasonably expect will not be made public (for example, a medical record). Private information must be individually identifiable (i.e., the identity of the human participant is or may

readily be ascertained by the investigator or associated with the information) in order for obtaining the information to constitute research involving human participants.

"Research" means a systematic investigation, including research development, testing, and evaluation, designed to develop or contribute to general knowledge. Activities which meet this definition constitute research for purposes of these chapters, whether or not they are supported or funded under a program which is considered research for other purposes. For example, some "demonstration" and "service" programs may include research activities.

"Research investigator" means the person, whether professional or student, who conducts the research.

"Sheltered workshop" means a facility-based community rehabilitation program that provides directly or facilitates the provision of one or more of the following vocational rehabilitation services to individuals with disabilities to enable them to maximize their opportunities for employment, including career advancement:

1. Medical, psychiatric, psychological, social, and vocational services that are provided under one management;
2. Testing, fitting, or training in the use of prosthetic and orthotic devices;
3. Recreational therapy;
4. Physical and occupational therapy;
5. Speech, language, and hearing therapy;
6. Psychiatric, psychological, and social services, including positive behavior management;
7. Assessment for determining eligibility and vocational rehabilitation needs;
8. Rehabilitation technology;
9. Job development, placement, and retention services;
10. Evaluation or control of specific disabilities;
11. Orientation and mobility services for individuals who are blind;
12. Extended employment;
13. Psycho-social rehabilitation services;
14. Supported employment services and extended services;
15. Services to family members when necessary to the vocational rehabilitation of the individual;
16. Personal assistance services; or
17. Services similar to the services described in subdivisions 1 through 16.

"Voluntary informed consent" means the knowing, written consent of an individual, or the individual's legally authorized representative, so situated as to be able to exercise free power of choice without undue inducement or any element of force, fraud, deceit, duress or other form of constraint or

coercion. With regard to the conduct of human research, the basic elements of information necessary to such consent shall include in writing:

1. A statement that the study involves research, and a reasonable and comprehensible explanation to the human participant of the procedures that the researcher will follow and their purposes, including identification of any procedures which are experimental; the expected duration of the human participant's participation; a statement describing the extent, if any, to which confidentiality of records identifying the participant will be maintained; and if any data from this study are published, the individual will not be identified without his written permission;
2. A description of any attendant discomforts and risks to the human participant which may reasonably be expected and a statement that there may be other risks not yet identified;
3. A description of any benefits to the human participant or to others which may reasonably be expected;
4. A disclosure of any appropriate alternative procedures or therapies that might be advantageous for the human participant;
5. An offer to answer and answers to any inquiries by any individual concerning the procedure;
6. A statement that participation is voluntary, refusal to participate will involve no penalty or loss of benefits to which the human participant is otherwise entitled, and the human participant may discontinue participation at any time without penalty or loss of benefits to which he is otherwise entitled;
7. An explanation of whom to contact for answers to pertinent questions about the research and human research participants' rights, and whom to contact in the event of a research related injury;
8. For research involving more than minimal risk, an explanation as to whether any compensation or medical care is available if injury occurs and, if so, what it consists of or where further information may be obtained; and
9. An explanation of any costs or compensation which may accrue to the person and, if applicable, the availability of third party reimbursement for the proposed procedures or protocols.

22 VAC 30-40-20. (Reserved.)

22 VAC 30-40-30. Applicability.

These regulations shall apply to the Department of Rehabilitative Services, Woodrow Wilson Rehabilitation Center, any sheltered workshop or independent living center, and any facility operated, funded or licensed by the department which conducts or which proposes to conduct or authorize research which uses human participants.

22 VAC 30-40-40. Policy.

A. No human research may be conducted without the voluntary informed consent of the participant or his legally authorized representative. The consent of the participant or his legally authorized representative to participate in the research must be documented in writing and supported by the signature of a witness not involved in the conduct of the research, except as provided for in 22 VAC 30-40-100 F. The research investigator shall sign and provide participants of a research study with a copy of the written, voluntary informed consent statement as defined in 22 VAC 30-40-10. The investigator shall make arrangements for those who need special assistance in understanding the consequences of participating in the research.

B. Each human research study shall be approved by a committee composed of representatives of varied backgrounds who shall assure the competent, complete, and professional review of human research activities. An institution may establish its own research review committee, it may work with other institutions to establish a single committee, or it may use the department's established committee.

C. Nontherapeutic research using institutionalized participants is prohibited unless the research review committee determines that such nontherapeutic research will not present greater than minimal risk to the human participant.

D. The research investigator shall be required to notify all human participants in research of the risks caused by the research which are discovered after the research has concluded.

22 VAC 30-40-50. Certification process.

A. Institutions seeking to conduct or sponsor human research are required to submit statements to the research review committee assuring that all human research activities will be reviewed and approved by a research review committee. Institutions shall report annually to the commissioner giving assurance that a committee exists and is functioning. These reports should include a list of committee members, their qualifications for service on the committee, their institutional affiliation and a copy of the minutes of committee meetings.

B. Prior to the initiation of a human research project, institutions shall also send to the commissioner a description of the research project to be undertaken, which shall include a statement of the criteria for inclusion of a participant in the research project, a description of what will be done to the human participants, and a copy of the informed consent statement.

C. The commissioner may inspect the records of the research committee.

D. The chairman of the research committee shall report as soon as possible to the head of the institution and to the commissioner any violation of the research protocol which led the committee to either suspend or terminate the research.

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22 VAC 30-40-60. Composition of research review committees.

A. Each research committee shall have at least five members, appointed by the head of the institution or department, with varying backgrounds to provide complete and adequate review of activities commonly conducted by the institution. The committee shall be sufficiently qualified through the research experience, expertise, and diversity of its members, including consideration of race, gender and cultural background, to promote respect for its advice and counsel in safeguarding the rights and welfare of participants in human research. In addition to possessing the professional competence necessary to review specific activities, the committee must be able to ascertain the acceptability of applications and proposals in terms of institutional commitments and regulations, applicable law, standards of professional conduct and practice, and community attitudes. If a committee regularly reviews research that has an impact on an institutionalized or other vulnerable category of participants, including residents of mental health or mental retardation facilities, the committee shall have in its membership one or more individuals who are primarily concerned with the welfare of these participants and who have appropriate experience to serve in that capacity.

B. No committee shall consist entirely of men or entirely of women, or entirely of members of one profession.

C. Each committee shall include at least one of the following:

1. One member whose primary concerns are in nonscientific areas (e.g., lawyers, ethicists, members of the clergy);
2. One member who is not otherwise affiliated with the institution and who is not part of the immediate family of a person who is affiliated with the institution;
3. One consumer; and
4. One member whose primary concerns are in the scientific areas.

D. No member of a committee shall participate in the committee's initial or continuing review of any project in which the member is directly involved or for which he has administrative approval authority, except to provide information requested by the committee. The committee has responsibility for determining whether a member has a conflict of interest with any study. The committee member shall be replaced in the case of a conflict of interest resulting in a decrease of the committee below five persons.

E. 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.

F. A quorum of the committee shall consist of a majority of its members including at least one member whose primary concerns are in nonscientific areas.

G. The committee and the institution shall establish procedures and rules of operation necessary to fulfill the requirements of these regulations.

22 VAC 30-40-70. Elements of each committee's review process.

A. No human research shall be conducted or authorized by the Department of Rehabilitative Services, any independent living center, sheltered workshop, or Woodrow Wilson Rehabilitation Center unless the committee has reviewed and approved the proposed human research project giving consideration to:

1. The adequacy of the description of the potential benefits and risks involved and the adequacy of the methodology of the research;
2. The degree of the risk, and, if the research is nontherapeutic, whether it presents greater than minimal risk;
3. Whether the rights and welfare of the participants are adequately protected;
4. Whether the risks to the participants are outweighed by the potential benefits to them;
5. Whether the voluntary informed consent is to be obtained by methods that adequately and appropriately fulfill the requirements of these regulations and whether the written consent form is adequate and appropriate in both content and language for the particular research and for the particular participants of the research;
6. Whether the research investigators proposing to supervise or conduct the particular human research are appropriately competent and qualified;
7. Whether criteria for selection of participants are equitable, especially in research regarding the future development of mental or physical illness;
8. Whether the research conforms with such other requirements as the board may establish; and
9. Whether appropriate studies in nonhuman systems have been conducted prior to the involvement of human participants.

B. The committee shall review, at least annually, approved projects to ensure conformity with the approved proposal.

C. Research must be approved by the committee which has jurisdiction over the participant. When cooperating institutions conduct some or all of the research involving some or all of the participants, each cooperating institution is responsible for safeguarding the rights and welfare of human participants and for complying with this chapter, except that in complying with this chapter institutions may enter into joint review, rely upon the review of another qualified committee, or make similar arrangements aimed at avoiding duplication of effort. The committee chairperson may make such arrangements with the approval of a majority of the members present at a meeting of the committee.

D. The committee shall consider research proposals within 45 days after submission to the committee's chairman. 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 research investigators and the institution in writing of its decision to approve or disapprove the proposed research activity, or of modifications required to secure committee approval.

E. The committee shall develop a written description of the procedure to be followed by a human participant who has a complaint about a research project in which he is participating or has participated.

F. Any participant who has a complaint about a research project in which he is participating or has participated shall be referred to the chairperson of the committee who shall refer it to the committee to determine if there has been a violation of the protocol.

G. The committee shall require periodic reports. The frequency of such reports should reflect the nature and degree of risk of each research project.

22 VAC 30-40-80. Kinds of research exempt from committee review.

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 this chapter:

1. Research conducted in established or commonly accepted educational settings, involving commonly used educational practices, such as:
 - a. Research on regular and special education instructional strategies; or
 - b. Research on the effectiveness of or the comparison among instructional techniques, curriculum or classroom management methods.
2. Research involving solely the use and analysis of the results of standardized psychological, educational, diagnostic, aptitude, or achievement tests, if information taken from these sources is recorded in such a manner that participants cannot be reasonably identified, directly or through identifiers linked to the participants.
3. Research involving survey or interview procedures, unless 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, employability, or reputation; or
 - b. The research deals with sensitive aspects of the participant's own behavior, such as sexual behavior, drug or alcohol use, illegal conduct, or family planning.
4. Research involving solely the observation (including observation by participants) of public behavior, unless observations are recorded in such a manner that

participants can be identified, directly or through identifiers linked to the participants, and either:

- a. The observations recorded about the individual, if they became known outside the research, could reasonably place the human participant at risk of criminal or civil liability or be damaging to the participant's financial standing, employability, or reputation; or
- b. The research deals with sensitive aspects of the participant's own behavior such as illegal conduct, drug use, sexual behavior, or use of alcohol.

5. Research involving solely the collection or study of existing data, documents, records, or pathological or diagnostic specimens, 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.

22 VAC 30-40-90. Expedited review procedures for certain kinds of research involving no more than minimal risk.

A. The committee may conduct an expedited review of a human research project which involves no more than minimal risk to the participants if (i) another institution's or agency's human research review committee has reviewed and approved the project or (ii) the review involves only minor changes in previously approved research and the changes occur during the approved project period. Under an expedited review procedure, the committee chairperson and one or more experienced reviewers designated by the chairperson from among members of the committee may carry out the review. In reviewing the research, the reviewers may exercise all of the authorities of the committee except that the reviewers may not disapprove the research. A research activity may be disapproved only after review in accordance with the nonexpedited procedure set forth in 22 VAC 30-40-70.

B. Each committee which uses an expedited review procedure shall adopt a method for keeping all members advised of research proposals which have been approved under the expedited review procedure.

C. Research activities involving no more than minimal risk and in which the only involvement of human participants will be in one or more of the categories referred to in 34 CFR 97.110.

22 VAC 30-40-100. Informed consent.

A. No human research may be conducted in the department, any independent living center, any sheltered workshop, or Woodrow Wilson Rehabilitation Center or approved by the research committee in the absence of voluntary informed, written consent. If the participant is competent at the time the consent is required, then the consent must be subscribed to in writing by the participant and witnessed. If the participant is not competent at the time the consent is required, then the consent shall be subscribed to in writing by the participant's legally authorized representative and witnessed except as provided for in

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subsection F of this section. If the participant is a minor otherwise capable of rendering voluntary informed consent, the consent must be subscribed to in writing by both the minor and his legally authorized representative and witnessed. A research investigator 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. No individual shall participate in research unless this requirement is met for each individual. The giving of consent by a legally authorized representative shall be subject to the provisions of subsection C of this section. No voluntary informed consent shall include any language through which the participant waives or appears to waive any of his legal rights, including any release of any individual, institution or agency or any agents thereof from liability for negligence. Notwithstanding consent by a legally authorized representative, no person shall be forced to participate in any human research. Each human participant shall be given a copy of the signed consent form required by 22 VAC 30-40-40 A, except as provided for in 22 VAC 30-40-100 F.

C. No legally authorized representative may consent to nontherapeutic research unless the committee determines that such nontherapeutic research will present no more than a minor increase over minimal risk to the participant. No nontherapeutic research shall be performed without the consent of the human participant.

D. The committee may approve a consent procedure which does not include, or which alters some or all of the elements of informed consent set forth in 22 VAC 30-40-10. The committee may waive the requirements to obtain some or all informed consent provided the committee finds and documents that:

1. The research involves no more than minimal risk to the human participants;
2. The waiver or alteration will not adversely affect the rights and welfare of the human participants;
3. The research could not practicably be carried out without the waiver or alteration; and
4. Whenever appropriate, the human participants will be provided with additional pertinent information after participation.

E. Except as provided in subsection F of this section, the consent form may be either of the following:

1. A written consent document that embodies the elements of informed consent required by 22 VAC 30-40-10. This form may be read to the participant or the participant's legally authorized representative, but in any event, the investigator shall give either the participant or the representative adequate opportunity to read it before it is signed; or

2. A short form written consent document stating that the elements of informed consent required by 22 VAC 30-40-10 have been presented orally to the participant or the participant's legally authorized representative. When this method is used, there shall be a witness to the oral presentation. Also, the committee shall approve a written summary of what is to be said to the participant or the representative. Only the short form itself is to be signed by the participant or the representative. However, the witness shall sign both the short form and a copy of the summary, and the person actually obtaining consent shall sign a copy of the summary. A copy of the summary shall be given to the human participant or the representative, in addition to a copy of the short form.

F. The committee may waive the requirement for the research investigator 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 and there is no greater than a minimal risk of physical or mental harm to the human participant. Each participant will be asked whether the participant wants documentation linking the participant 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.

22 VAC 30-40-110. Committee records.

A. An institution, or when appropriate a committee, shall prepare and maintain adequate documentation of committee activities, including the following:

1. Copies of all research proposals reviewed, scientific evaluations, if any, that accompany the proposals, approved sample consent documents, progress reports submitted by investigators, and reports of injuries to participants;
2. Minutes of committee meetings which 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 controverted issues and their resolution;
3. Records of continuing review activities;
4. Copies of all correspondence between the committee and the research investigators;
5. A list of all committee members;
6. Written procedures for the committee; and
7. Statements of significant new findings provided to participants.

B. The records required by this chapter shall be retained for at least three years, and records relating to research which is conducted shall be retained for at least three years after completion of the research. All records shall be accessible for inspection and copying by authorized employees or agents of

the department at reasonable times and in a reasonable manner.

22 VAC 30-40-120. Mandatory reporting.

Each research review committee shall submit to the Governor, the General Assembly, and the commissioner or his designee at least annually a report on the human research projects reviewed and approved by the committee, including any significant deviations from the proposals as approved.

22 VAC 30-40-130. Role of the department, commissioner, and the board.

A. The commissioner shall establish and maintain records of institutional assurances, annual reports, and summary descriptions of research projects to be reviewed by the board.

B. The commissioner shall review communications from committees reporting violations of research protocols which led to suspension or termination of the research to ensure that appropriate steps have been taken for the protection of the rights of human research participants. The board shall be kept informed of all reviews of violations of research protocol.

C. The commissioner shall arrange for the printing and dissemination of copies of these regulations.

22 VAC 30-40-140. Applicability of state policies.

Nothing in this chapter shall be construed as limiting in any way the rights of participants in research under regulations promulgated by the board in response to § 37.1-84.1 of the Code of Virginia.

22 VAC 30-40-150. Applicability of federal policies.

Human research at institutions which is subject to policies and regulations for the protection of human participants promulgated by any agency of the federal government shall be exempt from this chapter. Such institutions shall notify the commissioner and the board annually of their compliance with the policies and regulations of federal agencies.

VA.R. Doc. No. R99-19; Filed January 11, 2000, 3:51 p.m.

BOARDS OF EDUCATION; JUVENILE JUSTICE; MENTAL HEALTH, MENTAL RETARDATION AND SUBSTANCE ABUSE SERVICES; AND SOCIAL SERVICES

Title of Regulation: 6 VAC 35-50-10 et seq. Standards for Interdepartmental Regulation of Residential Facilities for Children (REPEALED).

8 VAC 20-50-10 et seq. Standards for Interdepartmental Regulation of Residential Facilities for Children (REPEALED).

12 VAC 35-30-10 et seq. Standards for Interdepartmental Regulation of Residential Facilities for Children (REPEALED).

22 VAC 40-150-10 et seq. Standards for Interdepartmental Regulation of Residential Facilities for Children (REPEALED).

Statutory Authority: §§ 16.1-309.9, 22.1-321, 22.1-323, 22.1-323.2, 37.1-182, 37.1-189.1, 63.1-25, 63.1-217, 66-10 and 66-24 of the Code of Virginia.

Effective Date: July 1, 2000.

Summary:

These regulations, *Standards for the Interdepartmental Regulation of Residential Facilities for Children*, are being repealed as the revisions are so extensive that it is more efficient to repeal the existing regulations and promulgate a new regulation in its place. The new regulation, *22 VAC 42-10-10 et seq., Standards for the Interagency Regulation of Children's Residential Facilities*, is in this issue of the Virginia Register.

Summary of Public Comments and Agency's Response: A summary of comments made by the public and the agency's response may be obtained from the promulgating agency or viewed at the office of the Registrar of Regulations.

Agency Contact: Charlene Vincent, Office of Interdepartmental Regulation, Department of Social Services, 730 East Broad Street, Richmond, VA 23219-1849, telephone (804) 692-1960.

VA.R. Doc. No. R97-705; Filed January 11, 2000, 3:24 p.m.

Title of Regulation: 22 VAC 42-10-10 et seq. Standards for Interdepartmental Regulation of Children's Residential Facilities.

Statutory Authority: §§ 16.1-309.9, 22.1-321, 22.1-323, 22.1-323.2, 37.1-182, 37.1-189.1, 63.1-25, 63.1-217, 66-10 and 66-24 of the Code of Virginia.

Effective Date: July 1, 2000.

Summary:

The regulation is intended to ensure that a minimally acceptable level of care, treatment, and education are provided by children's residential facilities. The regulation replaces the current *Standards for Interdepartmental Regulation of Residential Facilities for Children* (6 VAC 35-50-10 et seq., 8 VAC 20-50-10 et seq., 12 VAC 35-30-10 et seq., and 22 VAC 40-150-10 et seq.), which are repealed in a separate regulatory action.

The regulation (i) reorganizes and simplifies the current regulations, (ii) ensures the regulation addresses only the generic elements of care related to children, (iii) increases licensees' flexibility to provide care based on their facility's programs and the populations served, (iv) increases licensees' and licensors' opportunities to use professional judgment, and (v) deletes requirements which restate law or outline the departments' policies or procedures and which are better incorporated in the departments' guidance materials. Major substantive changes include: (i) eliminating requirements addressed by the Virginia Statewide Fire Prevention Code, (ii) updating requirements governing tuberculosis screening as recommended by the Department of Health, (iii)

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eliminating exceptions to the number of successive work days for staff attending training or supervising excursions, (iv) increasing the number of staff members who must be certified in first aid or cardiopulmonary resuscitation, (v) requiring that all staff responsible for medication administration successfully complete a medication training program approved by the Board of Nursing or be licensed by the Commonwealth to administer medications, and (vi) requiring that personnel records be maintained for volunteers and contractual service providers for whom background investigations are statutorily required. A number of requirements have been eliminated or liberalized.

Since publication of the proposed regulation and due to public comment (i) the definition section was amended; (ii) several sections that were previously deleted from the current standards were reinstated including standards regarding heating and cooling systems, visitation policies, staff development, and standards allowing the investigation of complaints and allegations; (iii) standards were added to ensure that facilities had a process to appeal the denial or revocation of a license and that residents had a grievance process; (iv) standards were added to provide additional protection to residents including standards regarding medical issues, future planning for the resident, transportation, staff training and behavior management issues; (v) recordkeeping standards were clarified; (vi) primitive campsite standards were clarified; (vii) the exception for secure detention was changed to require secure detention to follow the standard if a resident was confined in detention with a suspended commitment to the Department of Juvenile Justice; and (viii) a new standard was added requiring facilities that allow staff to take residents to the staff's home to receive permission from the resident's legal guardian or placing agency before the visit occurs.

Summary of Public Comments and Agency's Response: A summary of comments made by the public and the agency's response may be obtained from the promulgating agency or viewed at the office of the Registrar of Regulations.

Agency Contact: Charlene Vincent, Office of Interdepartmental Regulation, Department of Social Services, 730 East Broad Street, Richmond, VA 23219-1849, telephone (804) 692-1960.

CHAPTER 10.
STANDARDS FOR [~~INTERAGENCY~~
INTERDEPARTMENTAL] REGULATION OF CHILDREN'S
RESIDENTIAL FACILITIES.

PART I.
GENERAL.

22 VAC 42-10-10. Definitions.

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

"Adaptive behavior" means the effectiveness or degree with which individuals with diagnosed mental disabilities meet the

standards of personal independence and social responsibility expected of their age and cultural group.

"Allegation" means an accusation that a facility is operating without a license or receiving public funds for services it is not certified to provide.

"Applicable state regulation" means any regulation which the promulgating state agency determines applies to the facility. The term includes, but is not necessarily limited to, modules, standards, and other regulations promulgated by the Departments of Education; Health; Housing and Community Development; Juvenile Justice; Mental Health, Mental Retardation and Substance Abuse Services; or other state agency.

"Applicant" means the person, corporation, partnership, association or public agency which has applied for a license or certificate.

"Application" means a document completed by the facility to furnish the regulatory authority details about the facility's operations and includes certifications that the facility understands and intends to comply with regulatory requirements. An application includes inspection reports necessary to verify compliance with applicable requirements of other state agencies. An application is complete when all required information is provided and the application is signed and dated by the individual legally responsible for operation of the facility.

"Aversive stimuli" means physical forces (e.g., sound, electricity, heat, cold, light, water, or noise) or substance (e.g., hot pepper, pepper sauce, or pepper spray) measurable in duration and intensity which when applied to a client are noxious or painful to the client, but in no case shall the term "aversive stimuli" include striking or hitting the client with any part of the body or with an implement or pinching, pulling, or shaking the client.

["Behavior management" means those principles and methods employed by a licensee to help a child achieve positive behavior and to address and correct a child's inappropriate behavior in a constructive and safe manner, in accordance with written policies and procedures governing program expectations, treatment goals, child and staff safety and security, and the child's service plan.]

"Body cavity search" means any examination of a resident's rectal or vaginal cavities except the performance of medical procedures by medical personnel.

"Boot camp" means a facility specifically approved to operate with highly structured components including, but not limited to, military style drill and ceremony, physical labor, education and rigid discipline and no less than six months of intensive aftercare.

"Case record" or "record" means up-to-date written or automated information relating to one resident. This information includes social and medical data, agreements, all correspondence relating to care of the resident, service plan with periodic revisions, aftercare plans and discharge summary, and any other data related to the resident.

"Chemical restraint" means use of any pharmacological substance for the sole purpose of controlling a resident's behavior in the absence of a diagnosed medical or psychiatric condition. Chemical restraint does not include the appropriate use of medications ordered by a licensed physician for treating medical or psychiatric conditions.

"Child" means any person legally defined as a child under state law. The term includes residents and other children coming in contact with the resident or facility (e.g., visitors). When the term is used, the requirement applies to every child at the facility regardless of whether the child has been admitted to the facility for care (e.g., staff/child ratios apply to all children present even though some may not be residents).

"Child-placing agency" means any person licensed to place children in foster homes or adoptive homes or a local board of public welfare or social services authorized to place children in foster homes or adoptive homes.

"Child with special needs" means a child in need of particular services because [~~he is mentally retarded, developmentally disabled, mentally ill, emotionally disturbed, a substance abuser,~~ the child has mental retardation, a developmental disability, mental illness, emotional disturbance, a substance abuse problem, is] in need of special educational services [~~for the handicapped,~~] or requires security services.

["Child with a visual impairment" means one whose vision after best correction limits the child's ability to profit from a normal or unmodified educational or daily living setting.]

"Client" means a person receiving treatment or other services from a program, facility, institution or other entity regulated under these standards whether that person is referred to as a patient, resident, student, consumer, recipient, family member, relative, or other term. When the term is used, the requirement applies to every client of the facility. Some facilities operate programs in addition to the children's residential facility; the requirement applies only to the clients of the children's residential facility and not to clients participating in other programs.

"Complaint" means an accusation against a licensed or certified facility regarding an alleged violation of standards or law.

["Compliance plan" means violations documented by the regulatory authority and the facility's corrective action to the documented violations within a specified time frame.

"Confined in detention with a suspended commitment to the Department of Juvenile Justice" means that a court has committed the juvenile to the Department of Juvenile Justice but has suspended the commitment and ordered the juvenile confined in a local detention home for a period not to exceed six months as found in § 16.1-284.1 B of the Code of Virginia.]

"Confinement" means staff directed temporary removal of a resident from contact with people through placing the resident alone in his bedroom or other normally furnished rooms. Confinement does not include timeout or seclusion.

"Contraband" means any item prohibited by law or by the rules and regulations of the agency, or any item which conflicts with the program or safety and security of the facility or individual residents.

"Corporal punishment" means [punishment administered through] the [intentional] inflicting of pain or discomfort to the body through (i) actions such as, but not limited to, striking or hitting with any part of the body or with an implement; (ii) through pinching, pulling, or shaking; or (iii) through any similar action which normally inflicts pain or discomfort.

"Day" means calendar day unless the context clearly indicates otherwise.

["Detention home" or "secure detention" means a local, regional or state, publicly or privately operated secure custody facility which houses juveniles who are ordered detained pursuant to the Code of Virginia. The term does not include juvenile correctional centers.]

["~~DJJ~~" means the ~~Department of Juvenile Justice.~~]

"DMHMRSAS" means the Department of Mental Health, Mental Retardation and Substance Abuse Services.

["~~Documented violation~~" means a ~~noncompliance which requires corrective action by the facility and is recorded on a compliance plan by a reviewer.~~]

"DOE" means the Department of Education.

"DSS" means the Department of Social Services.

"Emergency" means a sudden, generally unexpected occurrence or set of circumstances demanding immediate action. Emergency does not include regularly scheduled time off of permanent staff or other situations which should reasonably be anticipated.

"Emergency admission" means the sudden, unplanned, unexpected admittance of a child who needs immediate care except self-admittance to a temporary care facility [or a court ordered placement].

["Goal" means expected results or conditions that usually involve a long period of time and which are written in behavioral terms in a statement of relatively broad scope. Goals provide guidance in establishing specific short-term objectives directed toward the attainment of the goal.

"Good character and reputation" means findings have been established and knowledgeable and objective people agree that the individual maintains business or professional, family and community relationships which are characterized by honesty, fairness, truthfulness, and dependability, and has a history or pattern of behavior that demonstrates that the individual is suitable and able to care for, supervise, and protect children. Relatives by blood or marriage, and persons who are not knowledgeable of the individual, such as recent acquaintances, shall not be considered objective references.]

"Human research" means any systematic investigation utilizing human subjects which may expose such human subjects to physical or psychological injury as a consequence of participation as subjects and which departs from the

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application of established and accepted therapeutic methods appropriate to meet the subjects' needs.

[Immediately" means directly without delay.]

"Independent living program" means a program that is specifically approved to provide the opportunity for the residents to develop the skills necessary to live successfully on their own following completion of the program.

~~["Individual behavior management plan" means the planned, individualized, and systematic use of specific treatment techniques implemented by, or under the supervision of, personnel who have been trained in behavior management. The plan is designed and implemented to: (i) increase an individual's appropriate behaviors and (ii) modify his inappropriate or problem behaviors by replacing them with behaviors that are appropriate and socially acceptable.]~~

"Individualized service plan" means a written plan of action developed, and modified at intervals, to meet the needs of a specific resident. It specifies short and long-term goals, the methods and time frames for reaching the goals and the individuals responsible for carrying out a plan.

~~["Interagency Interdepartmental] standards" means the standards for residential care which are common to the departments and which must be met by a children's residential facility in order to qualify for a license or certificate.~~

"Intrusive aversive therapy" means a formal behavior management technique designed to reduce or eliminate severely maladaptive, violent, or self-injurious behavior through the application of aversive stimuli contingent upon the exhibition of such behavior. Intrusive aversive therapy does not include verbal therapies, seclusion, physical or mechanical restraints used in conformity with the applicable human rights regulations promulgated pursuant to the Code of Virginia, or psychiatric medications which are used for purposes other than intrusive aversive therapy.

["Juvenile correctional center" means a secure custody facility operated by, or under contract with, the Department of Juvenile Justice to house and treat persons committed to the department.]

"Legal guardian" means the natural or adoptive parents or other person, agency, or institution who has legal custody of a child.

"License or certificate" means a document verifying approval to operate a residential facility for children and which indicates the status of the facility regarding compliance with applicable state regulations.

["Licensee" means the person, corporation, partnership, association, or public agency to whom a license or certificate is issued and who is legally responsible for compliance with the standards and statutory requirements relating to the facility.]

"Live-in staff" means staff who are required to be on duty for a period of 24 consecutive hours or more during each work week.

"Living unit" means the space in which a particular group of children in care of a residential facility reside. A living unit

contains sleeping areas, bath and toilet facilities, and a living room or its equivalent for use by the residents of the unit. Depending upon its design, a building may contain one living unit or several separate living units.

~~["Management of resident behavior" means use of various practices, implemented according to group and individual differences, which are designed to teach situationally appropriate behavior and to reduce or eliminate undesirable behavior. The practices include, but are not limited to, individual behavioral contracting, point systems, rules of conduct, token economies, and individual behavior management plans.]~~

"Mechanical restraint" means use of devices to restrict the movement of an individual or the movement or normal function of a portion of the individual's body, but does not include the appropriate use of those devices used to provide support for the achievement of functional body position or proper balance and those devices used for specific medical and surgical treatment or treatment for self-injurious behavior.

["Medication error" means that an error has been made in administering a medication to a resident when any of the following occur: (i) the wrong medication is given to a resident; (ii) the wrong resident is given the medication; (iii) the wrong dosage is given to a resident; (iv) medication is given to a resident at the wrong time or not at all; and (v) the proper method is not used to give the medication to a resident.

"Objective" means expected short-term results or conditions that must be met in order to attain a goal. Objectives are stated in measurable, behavioral terms and have a specified time for achievement.]

"On duty" means that period of time during which a staff person is responsible for the supervision of one or more children.

"Parent" means a natural or adoptive parent or a surrogate parent appointed pursuant to DOE's regulations governing special education programs for students with disabilities. "Parent" means either parent unless the facility has been provided evidence that there is a legally binding instrument, a state law or a court order governing such matters as divorce, separation, or custody, which provides to the contrary.

"Pat down" means a thorough external body search of a clothed resident.

"Physical restraint" means the restraint of a resident's body movements by means of physical contact by staff members. Physical restraint does not include physical prompts or guidance used with individuals with diagnosed mental disabilities in the education or training of adaptive behaviors. (See definition of "adaptive behavior.")

"Placement" means an activity by any person which provides assistance to a parent or legal guardian in locating and effecting the movement of a child to a foster home, adoptive home, or to a residential facility for children.

"Premises" means the tracts of land on which any part of a residential facility for children is located and any buildings on such tracts of land.

~~["Professional child and family service worker" means an individual providing social services to a resident and his family.]~~

"Program" means a combination of procedures or activities carried out in order to meet a specific goal or objective.

"Public funding" means funds paid by, on behalf of, or with the financial participation of the state Departments of Education; Juvenile Justice; Mental Health, Mental Retardation and Substance Abuse Services; or Social Services.

~~["Regulant" means the person, corporation, partnership, association, or public agency to whom a license or certificate is issued and who is legally responsible for compliance with the standards and statutory requirements relating to the facility.]~~

"Regulatory authority" means the department or state board that is responsible under the Code of Virginia for the licensure or certification of a residential facility for children.

"Resident" means a person admitted to a children's residential facility for supervision, care, training or treatment on a 24-hour per day basis. Resident includes children making preplacement visits to the facility. When the term is used, the requirement applies only to individuals who have been admitted to the facility and those making preplacement visits.

"Residential facility for children" or "facility" means a publicly or privately operated facility, other than a private family home, where 24-hour per day care is provided to children separated from their legal guardians and which is required to be licensed or certified by the Code of Virginia except:

1. Any facility licensed by the Department of Social Services as a child-caring institution as of January 1, 1987, and which receives no public funds; and
2. Private psychiatric hospitals serving children [that are licensed by the Department of Mental Health, Mental Retardation and Substance Abuse Services under Rules and Regulations for the Licensure of Facilities and Providers of Mental Health, Mental Retardation and Substance Abuse, 12 VAC 35-102-10 et seq.

Group homes are included under this definition of residential facility for children. Group home means a community-based, home-like single dwelling, or its acceptable equivalent, other than the private home of the operator, and serves up to 12 residents.]

"Respite care facility" means a facility that is specifically approved to provide short-term, periodic residential care to children accepted into its program in order to give the legal guardians temporary relief from responsibility for their direct care.

"Responsible adult" means an adult, who may or may not be a staff member, who has been delegated authority and responsibility to make decisions and to take actions to manage the safety and well-being of children [~~assigned to his care~~]. The term implies that the facility has reasonable

grounds to believe that the responsible adult has sufficient knowledge, judgment and maturity to handle the situation [~~for which he has authority and responsibility~~].

"Rest day" means a period of not less than 32 consecutive hours during which a staff person has no responsibility to perform duties related to the facility. Two successive rest days means a period of not less than 48 consecutive hours during which a staff person has no responsibility to perform duties related to the facility. Each successive rest day immediately following the second shall consist of not less than 24 additional consecutive hours.

~~["Review" means an evaluation of a residential facility to determine its degree of compliance with the interagency standards and applicable state regulations and includes all activities conducted by reviewers.~~

~~"Reviewer" means an individual designated to conduct reviews. Reviewer includes individuals who also may be known as auditors, certification specialists, compliance monitors, licensing specialists, or other similar terms.]~~

"Right" is something to which one has a [~~natural~~;] legal or [~~moral~~ contractual] claim.

"Routine admission" means the admittance of a child following evaluation of an application for admission, completion of preplacement activities, and execution of a written placement agreement.

"Rules of conduct" means a listing of rules or regulations which is maintained to inform residents and others about behaviors which are not permitted and the consequences applied when the behaviors occur.

~~["Sanitize Sanitizing agent]" means [~~to wash or rinse with water containing~~] a laundry bleach with an active ingredient of 5.25% sodium hypochlorite. [~~The amount of bleach used may be in accordance with manufacturer's recommendation on the package.~~]~~

"Seclusion" means placing a resident in a room with the door secured in any manner that prevents the resident from opening it.

~~"Secure custody facility" means a [~~facility designed to provide secure environmental restrictions and appropriate treatment or services for children who must be detained and controlled on a 24-hour per day basis detention home or a juvenile correctional center~~].~~

"Self-admission" means the admittance of a child who seeks admission to a temporary care facility as permitted by Virginia statutory law without completing the requirements for "routine admission."

"Severe weather" means extreme environment or climate conditions which pose a threat to the health, safety or welfare of residents.

"Shall" means an obligation to act is imposed.

"Shall not" means an obligation not to act is imposed.

"Standard" means a statement which describes in measurable terms a required minimum performance level.

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["Strategies" means a series of steps and methods used to meet goals and objectives.]

"Strip search" means a visual inspection of the body of a resident when that resident's [outer] clothing [or total clothing] is removed and an inspection of the removed clothing [~~including wigs, dentures, etc., except the performance of medical procedures by medical personnel~~]. [Strip searches are conducted for the detection of contraband.]

"Student/intern" means an individual who simultaneously is affiliated with an educational institution and a residential facility. Every student/intern who is not an employee is either a volunteer or contractual service provider depending upon the relationship among the student/intern, educational institution, and facility.

[~~"Substantial compliance" means a facility has demonstrated full compliance with sufficient applicable standards to clearly demonstrate that its program and physical plant can provide reasonably safe and adequate care while approved plans of action to correct findings of noncompliance are being implemented, and there are no noncompliances which pose an immediate and direct danger to residents.~~]

[~~"Systemic" means the overall operation of the facility or one or more of its components. (See definition of "systemic deficiency.")~~]

"Systemic deficiency" means violations documented by [a reviewer the regulatory authority] which demonstrate defects in the overall operation of the facility [or one or more of its components]. [~~(See definitions of "documented violation" and "systemic.")~~]

"Target population" means individuals with a similar, specified characteristic or disability.

[~~"Team" means one or more representatives of the regulatory authorities responsible for reviewing a facility to determine its compliance with applicable standards and state regulations.~~]

"Temporary care facility" means a facility [or an emergency shelter] specifically approved to provide a range of services, as needed, on an individual basis [~~for a period~~] not to exceed [~~60~~ 90] days except that this term does not include secure detention facilities.

[~~"Therapist" means an individual (i) licensed as a therapist by the Department of Health Professions or (ii) who is eligible for licensure and working under the supervision of a licensed therapist.~~]

"Therapy" means provision of direct diagnostic, preventive and treatment services where functioning is threatened or affected by social and psychological stress or health impairment.

"Timeout" means temporarily removing a resident and placing the resident alone in a special timeout room that is unfurnished or sparsely furnished and which contains few reinforcing environmental stimuli.

"Treatment" means any action which helps a person in the reduction of disability or discomfort, the amelioration of symptoms, undesirable conditions or changes in specific physical, mental, behavioral or social functioning.

"Variance" means temporary or permanent waiver of compliance with a standard or portion of a standard, or permission to meet the intent of the standard by a method other than that specified in the standard, when the regulatory authority, in its sole discretion, determines: (i) enforcement will create an undue hardship; (ii) the standard is not specifically required by statute or by the regulations of another government agency; and (iii) resident care will not be adversely affected. The denial of a request for a variance is appealable when it leads to the denial or revocation of a license or certificate.

[~~"Visually impaired child" means one whose vision, after best correction, limits his ability to profit from a normal or unmodified educational or daily living setting.~~]

"Wilderness camp" means a facility specifically approved to provide a primitive camping program with a nonpunitive environment and an experience curriculum for residents nine years of age and older who cannot presently function in home, school and community. In lieu of or in addition to dormitories, cabins or barracks for housing residents, primitive campsites are used to integrate learning and therapy with real living needs and problems for which the resident can develop a sense of social responsibility and self-worth.

22 VAC 42-10-20. Applications.

A. Initial applications.

1. A completed application shall be submitted at least 60 days in advance of the planned opening date.
2. The applicant shall document funds or a line of credit sufficient to cover at least 90 days of operating expenses unless the facility is operated by a state or local government agency, board or commission.
3. A corporation, an unincorporated organization or association, an individual, or a partnership proposing to operate a facility shall submit with the initial application evidence of financial responsibility [and sufficient funds to operate]. This shall include:
 - a. A working budget showing projected revenue and expenses for the first year of operation; and
 - b. A balance sheet showing assets and liabilities.
4. Facilities operated by state or local government agencies, boards and commissions shall submit evidence of sufficient funds to operate including a working budget showing appropriated revenue and projected expenses for the coming year.

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

[22 VAC 42-10-25. The investigation.

The regulatory authority or regulatory authorities will arrange and conduct an onsite inspection of the facility; a thorough review of the services; and investigate the character, reputation, status, and responsibility of the applicant.]

[**22 VAC 42-10-30. Visitation of facilities.**

Representatives of the departments shall make announced and unannounced visits during the effective dates of the license/certificate. The purpose of these visits is to monitor compliance with applicable standards.]

[~~22 VAC 42-10-30.~~ **22 VAC 42-10-35.] General requirements.**

A. The facility shall demonstrate [~~substantial full~~] compliance with [~~these interagency standards and other applicable state regulations and shall submit an action plan acceptable to the regulatory authority to correct any noncompliance within a specified time~~] sufficient applicable standards to clearly demonstrate that its program and physical plant can provide reasonable, safe and adequate care while approved plans of action to correct findings of noncompliance are being implemented and there are no noncompliances which pose an immediate and direct danger to residents].

B. Corporations sponsoring residential facilities for children shall maintain their corporate status in accordance with Virginia law. Corporations not organized and empowered solely to operate residential facilities for children shall provide for such operations in their charters.

C. The facility shall comply with the terms of its license or certificate.

D. A license or certificate is not transferable and automatically expires when there is a change of ownership or sponsorship.

E. The current license or certificate shall be posted at all times in a place conspicuous to the public.

F. A license or certificate shall not be issued to a facility when noncompliance poses an immediate [~~and direct~~] danger to the [~~residents~~ resident's life, health or safety].

G. Intermediate sanctions authorized by statute may be imposed at the discretion of the regulatory authorities in addition to the sanctions specified in this chapter.

22 VAC 42-10-40. Licenses/certificates.

A. [~~A facility operating under certification by the Department of Juvenile Justice may be issued a license or certificate indicating the facility's status regarding compliance with the interagency standards and other applicable regulations and statutes. Such license or certificate shall be effective for the period specified by the Board of Juvenile Justice, unless it is revoked or surrendered sooner. The Board of Juvenile Justice shall issue a certificate to each facility regulated by the board, indicating the facility's certification status when the facility is in compliance with these interdepartmental standards, other applicable regulations issued by the board, and applicable statutes. The~~

certificate shall be effective for the period specified by the board unless it is revoked or surrendered sooner.]

B. Facilities regulated by DOE, DMHMRSAS, or DSS.

1. A triennial license or certificate shall be issued when the facility (i) applies for renewal while holding an annual or triennial license or certificate and (ii) substantially meets or exceeds the requirements of the [~~interagency interdepartmental~~] standards and other applicable regulations and statutes.

2. Annual licenses/certificates.

a. An annual license or certificate shall be issued when the facility:

(1) Applies for renewal while holding a conditional or provisional license or certificate and substantially meets or exceeds the requirements of the [~~interagency interdepartmental~~] standards and other applicable regulations and statutes; or

(2) Applies for renewal while holding an annual or triennial license or certificate and one systemic deficiency has been identified during the licensure or certification period without the facility taking acceptable, documented corrective action.

b. An annual license or certificate may be issued to a facility whose sponsor requests establishment of a new facility to serve the same target population as that currently being served by the sponsor in facilities regulated through the Interdepartmental Regulatory Program.

c. An annual license or certificate may be renewed, but an annual license or certificate and any renewals thereof shall not exceed a period of 36 successive months [for all annual licenses and renewals combined].

3. Provisional licenses/certificates.

a. A provisional license or certificate shall be issued when the facility:

(1) Applies for renewal while holding an annual or triennial license or certificate, and during the licensure or certification period there have been two or more occasions when systemic deficiencies have been identified without the facility taking acceptable, documented corrective action; or

(2) Applies for renewal while holding a conditional license or certificate and, during the licensure or certification period, has demonstrated that its programs and services do not substantially comply with the [~~interagency interdepartmental~~] standards or other applicable regulations or statutes.

b. A provisional license or certificate may be renewed, but a provisional license or certificate and any renewals thereof shall not exceed a period of six successive months [for all provisional licenses and renewals combined].

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c. A facility holding a provisional license or certificate shall demonstrate progress toward compliance.

4. Conditional licenses/certificates.

a. A conditional license or certificate shall be issued to a facility which demonstrates an acceptable level of compliance and is:

(1) Beginning initial operation and whose sponsor is not operating one or more additional facilities regulated through the Interdepartmental Regulatory Program; or

(2) Sponsored by a currently established Interdepartmental Regulatory Program sponsor who is beginning operation, at a new or currently regulated site, of a program serving a different target population than that being served by the sponsor.

b. A facility holding a conditional license or certificate shall demonstrate progress toward compliance.

c. A conditional license or certificate may be renewed, but a conditional license or certificate and any renewals thereof shall not exceed a period of six successive months [for all conditional licenses and renewals combined].

22 VAC 42-10-50. Application fee.

There shall be no fee to the [~~regulant~~ licensee] for licensure or certification.

22 VAC 42-10-60. Modification.

A. The conditions of a license or certificate may be modified during the term of the license or certificate with respect to the capacity, residents' age range, facility location, or changes in the services.

B. The [~~regulant~~ licensee] shall submit a written report of any contemplated changes in operation which would affect the terms of the license or certificate or the continuing eligibility for licensure or certification.

C. A change shall not be implemented prior to approval by the regulatory authority. A determination will be made as to whether changes will be approved and the license or certificate modified accordingly or whether an application for a new license or certificate must be filed. The [~~regulant~~ licensee] will be notified in writing within [30 60] days following receipt of the request as to whether the modification is approved or a new license or certificate is required.

22 VAC 42-10-70. Denial.

[A. An application for licensure or certification may be denied when the applicant:

1. Violates any provision of applicable laws or regulations made pursuant to such laws;
2. Has a founded disposition of child abuse or neglect after the appeal process has been completed;
3. Has been convicted of a crime listed in §§ 37.1-183.3 and 63.1-248.7:2 of the Code of Virginia;

4. Has made false statements on the application or misrepresentation of facts in the application process; or

5. Has not demonstrated good character and reputation as determined through references, background investigations, driving records, and other application materials.

B.] If denial of a license or certificate is recommended, the facility will be notified in writing of the deficiencies [~~and~~ ,] the proposed action [, the right to appeal, and the appeal process].

22 VAC 42-10-80. Revocation.

A. The license or certificate may be revoked when the [~~regulant~~ licensee]:

1. Violates any provision of applicable laws or applicable regulations made pursuant to such laws;
2. Permits, aids or abets the commission of any illegal act in the regulated facility;
3. Engages in conduct or practices which are in violation of statutes related to abuse or neglect of children;
4. Deviates significantly from the program or services for which a license or certificate was issued without obtaining prior written approval from the regulatory authority or fails to correct such deviations within the specified time; or
5. Engages in a willful action or gross negligence which jeopardizes the care or protection of residents.

B. If revocation of a license or certificate is recommended, the facility will be notified in writing of the deficiencies [~~and~~ ,] the proposed action [, the right to appeal, and the appeal process].

22 VAC 42-10-90. Variances.

A. Any request for a variance shall be submitted in writing to the regulatory authority.

B. A variance shall not be effected prior to approval of the regulatory authority.

[22 VAC 42-10-95. Investigation of complaints and allegations.

The Departments of Education; Juvenile Justice; Mental Health, Mental Retardation and Substance Abuse Services; and Social Services are responsible for complete and prompt investigation of all complaints and allegations at the facilities where they have regulatory authority, and for notification of the appropriate persons or agencies when removal of residents may be necessary. Suspected criminal violations shall be reported to the appropriate law-enforcement authority.]

PART II.
ADMINISTRATION.

22 VAC 42-10-100. Governing body.

A. The facility shall clearly identify the corporation, association, partnership, individual, or public agency that is the [~~regulant~~ licensee].

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

22 VAC 42-10-110. Responsibilities of the [~~regulant~~ licensee].

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

B. A qualified staff member shall be designated to assume responsibility for operation of the facility in the absence of the chief administrative officer.

C. The [~~regulant~~ licensee] shall develop a written statement of the philosophy and the objectives of the facility including a description of the target population and the program to be offered.

D. The [~~regulant~~ licensee] shall [review], at least annually, [~~prepare a written report on the facility's effectiveness in meeting it's the program of the facility in light of the population served and the] objectives [and shall make, as needed, appropriate changes to the facility's programs of the facility].~~

[E. The licensee shall review, develop and implement programs and administrative changes in accord with the defined purpose of the facility.]

22 VAC 42-10-120. Fiscal accountability.

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

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

[~~B. All funds shall be spent for the purpose for which they were collected.~~

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

22 VAC 42-10-130. Insurance.

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

B. The facility shall maintain liability insurance on vehicles operated by the facility.

C. The members of the governing body and staff who have been authorized to handle the facility's funds shall be bonded or otherwise indemnified.

22 VAC 42-10-140. Fund raising.

[A.] The facility shall not use residents in its fund-raising activities without written permission of legal guardian [and the permission of residents 14 years or older].

[~~B. The facility shall not use residents 14 years of age or older in its fund-raising activities without the residents' permission.]~~

22 VAC 42-10-150. Weapons.

The facility shall have and implement a written policy governing the possession and use of firearms, pellet guns, air rifles, and other weapons on the facility's premises. The policy shall provide that no firearms, pellet guns, air rifles, or other weapons shall be permitted on the premises unless the weapons are:

1. In the possession of licensed security personnel;
2. Kept [securely] under lock and key; or
3. Used under the supervision of a responsible adult in accord with policies and procedures developed by the facility for the weapons' lawful and safe use.

22 VAC 42-10-160. Relationship to regulatory authority.

A. The facility shall submit or make available to the regulatory authority such reports and information as the regulatory authority may require to establish compliance with these [~~interagency~~ interdepartmental] standards and other applicable regulations and statutes.

B. The governing body or its official representative shall notify the regulatory authorities within five working days of:

1. Any change in administrative structure or newly hired chief administrative officer; and
2. Any pending changes in the program including, but not necessarily limited to, the setting where services are performed, the services provided, staff qualifications, organizational structure, target population, or capacity.

22 VAC 42-10-170. Facilities serving persons over the age of 17 years.

Facilities which are approved to serve persons over the age of 17 years shall comply with these [~~interagency~~ interdepartmental] standards for all occupants regardless of age, except when it is determined by the regulatory authorities that housing programs, services, and supervision for such persons are provided separately from those for the residents.

22 VAC 42-10-180. Health information.

A. Health information required by this [~~chapter~~ section] shall be maintained for each staff member and for each individual who resides in a building occupied by residents,

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including each person who is not a staff member or resident of the facility.

B. Initial screening for tuberculosis.

1. Each individual shall obtain an evaluation documenting the absence of tuberculosis in a communicable form no earlier than 30 days before or no later than seven days after employment or contact with residents.
2. Each individual shall [annually] submit the results of a Mantoux tuberculin skin test, chest x-ray or bacteriological examination, as deemed appropriate by the examining physician, documenting that the individual is free of tuberculosis in a communicable form.
3. The documentation shall include all information contained on a "Report of Tuberculosis Screening" form recommended by the Virginia Department of Health.
4. An evaluation shall not be required for an individual who (i) has separated from employment with a facility licensed or certified by the Commonwealth of Virginia, (ii) has a break in service of six months or less, and (iii) submits the original statement of tuberculosis screening to his new employer.

C. Subsequent evaluations for tuberculosis.

1. An individual who comes in contact with a known case of infectious tuberculosis shall be screened as determined appropriate based on consultation with the local health department.
2. An individual who develops chronic respiratory symptoms of three weeks' duration shall be evaluated immediately for the presence of infectious tuberculosis.

~~[3. Any individual not previously reacting significantly to a Mantoux tuberculin skin test shall be retested annually. Annual chest x-rays are not required in the absence of symptoms.]~~

D. An individual suspected of having infectious tuberculosis shall not be permitted to return to work or have contact with staff or residents until a physician has determined that the individual is free of infectious tuberculosis.

E. The facility shall report any active case of tuberculosis developed by a staff member to the local health department.

22 VAC 42-10-190. Physical or mental health of personnel.

A. The [~~regulant~~ licensee] or the regulatory authority may require a report of examination by a licensed physician or mental health professional when there are indications that an individual's physical, mental or emotional health may jeopardize the care of residents.

B. An individual who [~~upon examination is determined~~] by a licensed physician or mental health professional [~~shows to show an~~] indication of a physical or mental condition which may jeopardize the safety of residents or which would prevent the performance of duties shall be removed immediately from contact with residents and food

served to residents until the condition is cleared as evidenced by a signed statement from the physician or mental health professional.

22 VAC 42-10-200. Qualifications.

A. Standards establishing minimum position qualifications shall be applicable to all facilities. In lieu of the minimum position qualifications contained in this chapter, facilities subject to (i) the rules and regulations of the Virginia Department of Personnel and Training or (ii) the rules and regulations of a local government personnel office may develop written minimum entry level qualifications in accord with the rules and regulations of the supervising personnel authority.

B. A person who assumes or is designated to assume the responsibilities of a position or any combination of positions described in these [~~interagency~~ interdepartmental] standards shall:

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

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

22 VAC 42-10-210. Job descriptions.

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

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

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

22 VAC 42-10-220. Written personnel policies and procedures.

A. The [~~regulant~~ licensee] shall approve written personnel policies and make its written personnel policies readily accessible to each staff member.

B. The facility shall develop and implement written policies and procedures to assure that persons employed in or designated to assume the responsibilities of each position possess the knowledge, skills and abilities specified in the job description for the position.

C. Written policies and procedures related to child abuse and neglect shall be distributed to all staff members. These shall include procedures for:

1. Handling accusations against staff;

2. Promptly referring, consistent with requirements of the Code of Virginia, suspected cases of child abuse and neglect to the local child protective services unit; and
3. Cooperating with the unit during any investigation.

22 VAC 42-10-230. Personnel records.

A. Separate up-to-date written or automated personnel records shall be maintained for each employee and for each volunteer and contractual service provider for whom background investigations are required by Virginia statute. Content of personnel records of volunteers and contractual service providers may be limited to documentation of compliance with requirements of Virginia laws regarding child protective services and criminal history background investigations.

B. The records of each employee shall include:

1. A completed employment application form or other written material providing the individual's name, address, phone number, and social security number;
2. Educational background and employment history;
3. Written references or notations of oral references;
4. Reports of required health examinations;
5. Annual performance evaluations;
6. Date of employment and separation; and
7. Documentation of compliance with requirements of Virginia laws regarding child protective services and criminal history background investigations.

C. Personnel records shall be retained in their entirety for three years after separation from employment, contractual service, or volunteer service.

22 VAC 42-10-240. Staff development.

A. New employees, relief staff, volunteers and students/interns shall within one calendar month of employment be given orientation and training regarding the objectives and philosophy of the facility, practices of confidentiality, other policies and procedures that are applicable to their positions, and their duties and responsibilities.

[B. The facility shall develop a staff training plan that addresses the knowledge, skills, and abilities that employees need to perform their job.

C. Regular supervision of staff shall not be the only method of staff development.

~~B. D.~~] All personnel shall receive documented training and other staff development activities as necessary to enable them to adequately perform their job responsibilities.

22 VAC 42-10-250. Supervision.

Regular supervision of staff, volunteers, and students/interns shall be provided.

22 VAC 42-10-260. Chief administrative officer.

A chief administrative officer appointed after [~~the effective date of this chapter~~ July 1, 2000,] shall have at least:

1. A baccalaureate degree from an accredited college or university in the field of human services, institutional management, social work, education or other allied discipline; or
2. A baccalaureate degree from an accredited college or university with two years of successful work experience with children in the field of institutional management, social work, education or other allied profession.

22 VAC 42-10-270. Program direction.

A. [~~The facility shall have at least one person qualified to direct the program.~~ The facility's program shall be directed by one or more qualified persons.]

B. Persons directing programs shall be responsible for the development and implementation of the programs and services offered by the facility.

C. Persons directing programs of a facility licensed or certified to care for 13 or more residents shall be full-time, qualified staff members.

[~~D. Any qualified person may serve as the program director.~~

~~E. D.~~] A person appointed after July 1, 1981, to direct programs shall have:

1. A baccalaureate degree from an accredited college or university with two years of successful work experience with children in the field of institutional management, social work, education or other allied discipline;
2. A graduate degree from an accredited college or university in a profession related to child care and development; or
3. A license or certificate issued by the Commonwealth of Virginia as a drug or alcoholism counselor/worker if the facility's purpose is to treat drug abuse or alcoholism.

22 VAC 42-10-280. Child care staff.

A. A designated staff member shall have responsibility for the development of the daily living program within each child care unit.

B. A designated staff member shall be responsible for the coordination of all services offered to each resident.

C. A designated staff member shall have responsibility for the orientation, training and supervision of child care workers.

D. An individual supervising child care [~~staff workers~~] shall have:

1. A baccalaureate degree from an accredited college or university and two years experience in the human services field, at least one of which shall have been in a residential facility for children; or
2. A high school diploma or a General Education Development Certificate (G.E.D.) and a minimum of five

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years experience in the human services field with at least two years in a residential facility for children.

E. The child care worker shall have direct responsibility for guidance and supervision of the children to whom he is assigned including:

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

F. A child care worker shall:

1. Be a high school graduate or have a General Education Development Certificate (G.E.D.); and
2. Have demonstrated, through previous life and work experiences, an ability to maintain a stable environment and to provide guidance to children in the age range for which the child care worker will be responsible.

G. An individual hired, promoted, demoted, or transferred to a child care worker's position after [~~the effective date of this chapter~~ July 1, 2000,] shall be at least 18 years old.

22 VAC 42-10-290. Relief staff.

[~~Sufficient~~] Qualified relief staff shall be employed [as necessary] to maintain required staff/child ratios at all times [and to maintain a structured program of care in accordance with 22 VAC 42-10-690].

22 VAC 42-10-300. Medical staff.

A. Services of a licensed physician shall be available for treatment of residents as needed.

B. Each nurse shall hold a current nursing license issued by the Commonwealth of Virginia.

C. At all times that children are present there shall be at least one responsible adult on the premises who has received within the past three years a basic certificate in standard first aid issued by the American Red Cross or other recognized authority for each 16 children, or portion thereof, on the premises. Each nurse on the premises who holds a current nursing license issued by the Commonwealth of Virginia may be considered to hold a current certificate in first aid.

D. At all times that children are present there shall be at least one responsible adult on the premises who has a current certificate in cardiopulmonary resuscitation issued by the American Red Cross or other recognized authority for each 16 children, or portion thereof, on the premises.

22 VAC 42-10-310. Volunteers and students/interns.

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

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

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

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

E. Volunteers and students/interns shall comply with all regulations governing confidential treatment of personal information.

F. Volunteers and students/interns shall be informed of liability protection, if any, provided by the facility.

22 VAC 42-10-320. Support functions.

A. Child care workers and other staff responsible for child care may assume the duties of nonchild care personnel only when these duties do not interfere with their child care responsibilities.

B. Residents shall not be solely responsible for support functions including, but not necessarily limited to, food service, maintenance of building and grounds, and housekeeping.

PART III. RESIDENTIAL ENVIRONMENT.

22 VAC 42-10-330. Buildings, inspections and building plans.

A. All buildings and building-related equipment shall be inspected and approved by the local building official. Approval shall be documented by a certificate of occupancy indicating that the building is classified for its proposed use.

B. The facility shall document at the time of its original application and annually thereafter that buildings and equipment are maintained in accordance with the Virginia Statewide Fire Prevention Code (13 VAC 5-51-10 et seq.).

C. At the time of the original application and at least annually thereafter the buildings shall be inspected and approved by state or local health authorities, whose inspection and approval shall include:

1. General sanitation;
2. The sewage disposal system;
3. The water supply;
4. Food service operations; and
5. Swimming pools.

D. The buildings shall [provide adequate space and shall] be [of a design that is] suitable to house the programs and services provided.

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

[22 VAC 42-10-335. Heating systems, ventilation and cooling systems.

A. Heat shall be evenly distributed in all rooms occupied by the residents such that a temperature no less than 65°F is maintained, unless otherwise mandated by state or federal authorities.

B. Natural or mechanical ventilation to the outside shall be provided in all rooms used by residents.

C. Air conditioning or mechanical ventilating systems, such as electric fans, shall be provided in all rooms by residents when the temperature in those rooms exceeds 85°F.]

22 VAC 42-10-340. Lighting.

A. Artificial lighting shall be by electricity.

B. All areas within buildings shall be lighted for safety.

C. Lighting in halls and bathrooms shall be adequate and shall be continuous at night.

D. Lighting shall be sufficient for the activities being performed.

E. Operable flashlights or battery-powered lanterns shall be available for each staff member on the premises [between dusk and dawn] to use in emergencies.

F. Outside entrances and parking areas shall be lighted for protection against injuries and intruders.

22 VAC 42-10-350. Plumbing.

A. Plumbing shall be maintained in good operational condition.

B. An adequate supply of hot and cold running water shall be available at all times.

C. Precautions shall be taken to prevent scalding from running water.

D. Mixing faucets shall be installed in all newly constructed buildings and when making structural modifications or additions to existing buildings.

22 VAC 42-10-360. Toilet facilities.

A. There shall be at least one toilet, one hand basin and one shower or bathtub in each living unit.

B. There shall be at least one bathroom equipped with a bathtub in each facility.

C. There shall be at least one toilet, one hand basin and one shower or tub for every eight residents.

D. There shall be one toilet, one hand basin and one shower or tub for every four residents in any building constructed or structurally modified after July 1, 1981, except secure detention facilities.

E. The maximum number of staff members on duty in the living unit shall be counted in determining the required number of toilets and hand basins when a separate bathroom is not provided for staff.

F. There shall be at least one mirror securely fastened to the wall at a height appropriate for use in each room where hand basins are located except in security rooms in hospitals and secure custody facilities.

22 VAC 42-10-370. Personal necessities.

A. An adequate supply of personal necessities shall be available to the residents at all times for purposes of personal hygiene and grooming. Personal necessities include, but are not necessarily limited to, soap, toilet tissue, toothpaste, individual tooth brushes, individual combs and shaving equipment.

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

C. When residents are incontinent or not toilet trained:

1. Provision shall be made for sponging, diapering or other similar care on a nonabsorbent changing surface which shall be cleaned with warm soapy water after each use.

2. A covered diaper pail, or its equivalent, with leak-proof disposable liners shall be available. If both cloth and disposable diapers are used, there shall be a diaper pail for each.

3. Adapter seats and toilet chairs shall be cleaned immediately after each use with warm soapy water.

4. Staff shall thoroughly wash their hands with warm soapy water immediately after assisting a child or themselves with toileting.

22 VAC 42-10-380. Sleeping areas.

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

B. No more than four children may share a bedroom or sleeping area except as provided by other applicable state regulations governing juvenile correctional centers and boot camps.

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

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

E. Sleeping quarters in facilities licensed by the DSS prior to July 1, 1981, and facilities established, constructed or structurally modified after July 1, 1981, [except for primitive campsites,] shall have:

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

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

3. Ceilings at least 7-1/2 feet in height.

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

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

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H. Mattresses and pillows shall be clean.

I. Mattresses shall be fire retardant as evidenced by documentation from the manufacturer.

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

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

L. The sleeping areas' environment shall be conducive to sleep and rest.

[~~M. Smoking shall be prohibited in sleeping areas.~~]

[22 VAC 42-10-385. Smoking prohibition.

Smoking shall be prohibited in living areas and in areas where residents participate in programs.]

22 VAC 42-10-390. Residents' privacy.

A. When bathrooms are not designated for individual use, except in secure custody facilities:

1. Each toilet shall be enclosed for privacy; and
2. Bathtubs and showers shall provide visual privacy for bathing by use of enclosures, curtains or other appropriate means.

B. Windows in bathrooms, sleeping areas, and dressing areas shall provide for privacy.

C. Every sleeping area shall have a door that may be closed for privacy or quiet, and this door shall be readily opened in case of fire or other emergency. [In secure custody facilities, the door may be equipped with an observation window.]

22 VAC 42-10-400. Living rooms and indoor recreation space.

A. Each living unit shall have a living room, or other area for informal use, for relaxation and entertainment. The furnishings shall provide a comfortable, home-like environment that is appropriate to the ages of the residents.

B. Facilities licensed or certified to care for 13 or more residents shall have indoor recreation space that contains recreation equipment appropriate to the ages and interests of the residents. The indoor recreation space shall be distinct from the living room, but recreation space is not required in every living unit.

22 VAC 42-10-410. Study space.

A. Facilities serving a school-age population shall provide study space. Study space may be assigned in areas used interchangeably for other purposes.

B. Study space shall be well-lighted, quiet and equipped with tables or desks and chairs.

22 VAC 42-10-420. Kitchen and dining areas.

A. Meals shall be served in areas equipped with sturdy tables and benches or chairs which are size and age appropriate for the residents.

B. Adequate kitchen facilities and equipment shall be provided for preparation and serving of meals.

C. Walk-in refrigerators, freezers, and other enclosures shall be equipped to permit emergency exits.

22 VAC 42-10-430. Laundry areas.

Appropriate space and equipment in good repair shall be provided if laundry is done at the facility.

22 VAC 42-10-440. Storage.

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

22 VAC 42-10-450. Staff quarters.

A. A separate, private [~~bathroom and~~] bedroom shall be provided for staff and their families when a staff member is on duty for 24 consecutive hours or more.

[B.] A [separate,] private bathroom [~~is not required~~ shall be provided] for staff [and their families] when there are [~~no~~] more than four persons [~~, including staff and family of staff, residing in, or on duty,~~] in the living unit [and the staff person is on duty for 24 consecutive hours or more].

[~~B. C.~~] Staff and members of their families shall not share bedrooms with residents.

[~~G. D.~~] When 13 or more residents reside in a living unit, a separate, private living room shall be provided for child care staff who are required to be in the living unit for 24 hours or more [, except at primitive campsites].

[~~D. E.~~] When child care staff are on duty for less than 24 hours, a bed shall be provided for use of each staff member on duty during night hours unless the staff member is required to stay awake.

22 VAC 42-10-460. Office space.

Space shall be provided for administrative activities including, as appropriate to the program, confidential conversations and provision for storage of records and materials.

22 VAC 42-10-470. Buildings and grounds.

A. The facility's grounds shall be safe, properly maintained, and free of clutter and rubbish. The grounds include, but are not limited to, all areas where residents, staff, and visitors may reasonably be expected to have access, including roads, pavements, parking lots, open areas, stairways, railings, and potentially hazardous or dangerous areas.

B. The interior and exterior of all buildings shall be safe, properly maintained, clean and in good working order. This includes, but is not limited to, required locks, mechanical devices, indoor and outdoor equipment, and furnishings.

C. Outdoor recreation space shall be available and appropriately equipped for the residents' use.

22 VAC 42-10-480. Equipment and furnishings.

A. All furnishings and equipment shall be safe, clean, and suitable to the ages and number of residents.

B. There shall be at least one continuously operable, nonpay telephone accessible to staff in each building in which children sleep or participate in programs.

22 VAC 42-10-490. Housekeeping and maintenance.

A. All buildings shall be well-ventilated and free of stale, musty or foul odors.

B. Adequate provision shall be made for the collection and legal disposal of garbage and waste materials.

C. Buildings shall be kept free of flies, roaches, rats and other vermin.

D. All linens shall be kept clean and in good repair.

E. A sanitizing agent shall be used in the laundering of bed, bath, table and kitchen linens.

22 VAC 42-10-500. Farm and domestic animals.

A. Horses and other animals maintained on the premises shall be quartered at a reasonable distance from sleeping, living, eating and food preparation areas.

B. Stables and corrals shall be located so as to prevent contamination of water supplies.

C. Manure shall be removed from stalls and corrals as often as necessary to prevent fly problems.

D. Animals maintained on the premises shall be tested, inoculated and licensed as required by law.

E. The premises shall be kept free of stray domestic animals.

F. Pets shall be provided with clean quarters and adequate food and water.

22 VAC 42-10-510. Campsites.

A. This section is applicable exclusively to the residential environment and equipment at wilderness camps. Permanent buildings and other aspects of the residential environment at a wilderness camp shall comply with all other standards in this part.

B. Campsites shall be well-drained and free from depressions in which water may stand.

C. Natural sink-holes and other surface collectors of water shall be either drained or filled to prevent the breeding of mosquitoes.

D. Campsites shall not be located in proximity to conditions that create or are likely to create offensive odors, flies, noise, traffic, or other hazards.

E. Campsites shall be free from debris, noxious plants, and uncontrolled weeds or brush.

F. Drinking water used at campsites and during activities away from permanent campsites shall be from a source known to be free of coliform organisms or shall be treated before use in a manner approved by the Virginia Department of Health.

G. An adequate supply of water, under pressure where possible, shall be provided at the cooking area for hand washing, dish washing, food preparation and drinking.

H. Food shall be obtained from approved sources and shall be properly identified.

I. Milk products shall be pasteurized.

J. Food and drink shall be maintained and stored using methods that prevent contamination.

K. Utensils shall be used to minimize the handling of food.

L. Fruits and vegetables shall be properly washed prior to use.

M. Food and food containers shall be covered and stored (i) off the ground and (ii) on clean surfaces. Refrigerated food shall be covered.

N. Sugar and other condiments shall be packaged or served in closed dispensers.

O. Poisonous and toxic materials shall be properly used, properly identified and stored separately from food.

P. Persons with wounds or communicable diseases shall be prohibited from handling food.

Q. Persons who handle food and eating utensils for the group shall maintain personal cleanliness, keep their hands clean at all times, and thoroughly wash their hands with soap and water after each visit to the toilet.

R. Food contact surfaces shall be kept clean.

S. All eating utensils and cookware shall be properly stored.

T. Disposable and single-use dishes, receptacles and utensils shall be properly stored, handled and used only once.

U. Eating utensils shall not be stored with food or other materials and substances.

V. Use of a common drinking cup shall be prohibited.

W. Only food which can be maintained in wholesome condition with the available equipment shall be used.

X. Ice which comes in contact with food or drink shall be obtained from an approved source and shall be made, delivered, stored, handled and dispensed in a sanitary manner and shall be free from contamination.

Y. When ice and ice chests are used, meats and other perishable foods shall not be stored for more than 24 hours.

Z. Eating utensils and cookware shall be washed after each use.

AA. No dish, receptacle or utensil used in handling food for human consumption shall be used or kept for use if chipped,

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cracked, broken, damaged or constructed in a manner that prevents proper cleaning and sanitizing.

BB. Solid wastes which are generated shall be disposed of at an approved sanitary landfill or similar disposal facility. Where sanitary landfill facilities are not available, solid wastes shall be disposed of daily by burial under at least two feet of compacted earth cover in a location which is not subject to flooding.

CC. Sanitary-type privies or portable toilets shall be provided where a water supply is not available. Such facilities shall be constructed as required by the Virginia Department of Health.

DD. All facilities provided for excreta and liquid waste disposal shall be maintained and operated in a sanitary manner to eliminate possible health or pollution hazards, to prevent access of flies and animals to their contents, and to prevent fly breeding.

EE. Privies shall be located at least 150 feet from streams, lakes, and wells and at least 75 feet from sleeping and housing facilities.

FF. Campsites which do not have approved permanent toilet facilities shall have a minimum ratio of one toilet seat for every 15 persons.

GG. If chemical control is used to supplement good sanitation practices, proper pesticides and other chemicals shall be used safely and in strict accordance with label instructions.

HH. Bedding shall be clean, dry [~~and~~ ,] sanitary [, and in good repair].

II. Bedding shall be adequate to ensure protection and comfort in cold weather.

JJ. Sleeping bags, if used, shall be fiberfill and rated for 0°F.

KK. Linens shall be changed as often as required for cleanliness and sanitation but not less frequently than once a week.

LL. Bed wetters shall have their bedding changed or dried as often as it is wet.

MM. Mattresses, if used, shall be clean.

NN. Mattresses shall be fire retardant as evidenced by documentation from the manufacturer.

OO. A mattress cover shall be provided for each mattress.

PP. Sleeping areas shall be protected by screening or other means to prevent admittance of flies and mosquitoes.

QQ. A separate bed, bunk or cot shall be made available for each person.

RR. Each resident shall be provided with an adequate supply of clean clothing which is suitable for outdoor living and is appropriate to the geographic location and season.

SS. Sturdy, water-resistant outdoor footwear shall be provided for each resident.

TT. Each resident shall have an adequate personal storage area.

UU. Fire extinguishers of a 2A 10BC rating shall be maintained so that it is never necessary to travel more than 75 feet to a fire extinguisher from combustion-type heating devices, campfires or other source of combustion.

[VV. Artificial lighting shall be provided in a safe manner.

WW. All areas of the campsite shall be lighted for safety when occupied by residents.

XX. Staff of the same sex may share a sleeping area with the residents.

YY. A telephone or other means of communication is required at each area where residents sleep or participate in programs.]

PART IV. PROGRAMS AND SERVICES.

22 VAC 42-10-520. Acceptance of children.

Children shall be accepted only by court order or by written placement agreement with legal guardians. This requirement does not apply to temporary care facilities when self-admission is made according to Virginia law.

22 VAC 42-10-530. Admission procedures.

A. The facility shall have written criteria for admission which shall include:

1. A description of the population to be served;
2. A description of the types of services offered; and
3. Intake and admission procedures.

B. The facility's criteria for admission shall be accessible to prospective residents, legal guardians, and placing agencies.

C. The facility shall accept and serve only those children whose needs are compatible with the services provided through the facility unless a child's admission is ordered by a court of competent jurisdiction.

D. Acceptance of a child as eligible for respite care by a facility approved to provide residential respite care is considered admission to the facility. Each individual period of respite care is not considered a separate admission.

22 VAC 42-10-540. Maintenance of residents' records.

A. A separate written or automated case record shall be maintained for each resident. [In addition, all correspondence and documents received by the facility relating to the care of that resident should be maintained as part of the case record.]

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

C. The facility shall make information available only to persons/organizations legally authorized to have access to the information under federal and state laws.

D. The facility shall have and implement written policies and procedures to protect the confidentiality of records. The

policy shall address acquiring information, access, duplication, and dissemination of any portion of the records. The policy shall specify what information is available to the resident.

E. Records shall be kept in areas which are accessible to authorized staff and protected from unauthorized access, fire, and flood.

[~~F. Active and inactive~~ 1. When not in use] written records shall be stored in a metal file cabinet or other metal compartment.

[~~G. Records not in use shall be kept in a locked compartment or in a locked room.~~ 2. Facility staff shall assure the confidentiality of the residents' records by placing them in a locked cabinet or drawer or in a locked room when the staff member is not present.]

[~~H. F.~~] All portions of each resident's written records shall be consolidated prior to the resident's discharge.

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

[~~J. H.~~] The face sheet [~~and discharge information~~] shall be retained permanently unless otherwise specified by state or federal requirements.

[~~K. I.~~] The facility shall have a written policy to provide for:

1. The preservation of records in the event the facility ceases operation;
2. Notifying the regulatory authority of the preservation plan; and
3. Retention of and access to automated records.

[~~L. J.~~] Facilities using automated records shall develop and implement procedures for backing up records.]

22 VAC 42-10-550. Interstate Compact on the Placement of Children.

A. Documentation of the prior approval of the administrator of the Interstate Compact on the Placement of Children, Virginia Department of Social Services, shall be retained in the record of each resident admitted from outside Virginia. The requirements of this section shall not apply to a facility providing documentation that the administrator of the interstate compact has determined the facility is statutorily exempt from the compact's provisions.

B. No later than 10 days after discharge the resident's record shall contain documentation that the administrator of the Interstate Compact on the Placement of Children was notified of the discharge.

22 VAC 42-10-560. Participation of residents in human research.

The facility shall:

1. Implement a written policy stating that residents will not be used as subjects of human research; or

2. Document [~~appropriate~~] approval, as required by the [appropriate] regulatory authorities, for each research project using residents as subjects of human research.

22 VAC 42-10-570. Emergency and self-admissions.

Facilities accepting emergency or self-admissions shall:

1. Have and implement written policies and procedures governing such admissions which shall include procedures to make and document prompt efforts to obtain (i) a written placement agreement signed by the legal guardian or (ii) the order of a court of competent jurisdiction;
2. Place in each resident's record the order of a court of competent jurisdiction, a written request for care, or documentation of an oral request for care; and
3. Have and implement written policies and procedures for obtaining (i) a written placement agreement signed by the legal guardian or (ii) the order of a court of competent jurisdiction.

22 VAC 42-10-580. Application for admission.

A. Admission, other than an emergency or diagnostic admission, shall be based on evaluation of an application for admission. The requirements of this section do not apply to (i) temporary care facilities, (ii) court ordered placements, or (iii) transfer of a resident between residential facilities located in Virginia and operated by the same sponsor.

B. Facilities accepting routine admissions shall develop, and fully complete prior to acceptance for care, an application for admission which is designed to compile information necessary to determine:

1. The physical needs of the prospective resident;
2. The educational needs of the prospective resident;
3. The mental health, emotional and psychological needs of the prospective resident;
4. The physical health needs of the prospective resident;
5. The protection needs of the prospective resident;
6. The suitability of the prospective resident's admission;
7. Whether the prospective resident's admission would pose any significant risk to (i) the prospective resident or (ii) the facility's residents or staff; and
8. Information necessary to develop a service plan.

C. The resident's record shall contain a completed application for admission at the time of a routine admission or within 30 days after an emergency admission.

22 VAC 42-10-590. Preplacement activities documentation.

At the time of each routine admission, the facility shall document:

1. A preplacement visit by the resident accompanied by a family member, agency representative or other responsible adult;

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2. Preparation through sharing information with the family or placing agency and with the resident about the facility, the staff, the population served, activities and criteria for admission; and

3. Written confirmation of the admission decision to the legal guardian and to the placing agency.

22 VAC 42-10-600. Written placement agreement.

A. The facility, except a facility which accepts admission only upon receipt of the order of a court of competent jurisdiction, shall develop a written placement agreement which:

1. Authorizes the resident's placement;
2. Addresses acquisition of and consent for any medical treatment needed by the resident;
3. Addresses the rights and responsibilities of each party involved;
4. Addresses financial responsibility for the placement;
5. Addresses resident absences from the facility; and
6. Addresses visitation with the resident.

B. Each resident's record shall contain, prior to a routine admission, a completed placement agreement signed by the legal guardian or placing agency [, except as permitted for temporary emergency shelters pursuant to § 63.1-204 of the Code of Virginia].

C. The record of each person admitted based on a court order shall contain a copy of the court order.

22 VAC 42-10-610. Face sheet.

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

B. Missing information shall be obtained promptly and information shall be updated when changes occur.

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

D. The face sheet for infants shall also include the type of delivery, weight and length at birth, any medications or allergies, the current formula for the infant and the name and address, if known, of the biological mother and father, unless the infant has been released for adoption.

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

1. Date of discharge;
2. Reason for discharge;
3. Names and addresses of persons to whom the resident was discharged; and

4. Forwarding address of the resident, if known.]

22 VAC 42-10-620. Initial objectives and strategies.

Within [~~72 hours~~ three days] following admission, [individualized] objectives and strategies for the first 30 days shall be developed, distributed to affected staff and the resident, and placed in the resident's record. The objectives and strategies shall be based on the reasons for admitting the resident. The requirements of this section do not apply to secure detention facilities [, except when a juvenile is confined in detention with a suspended commitment to the Department of Juvenile Justice].

22 VAC 42-10-630. Service plan.

A. An individualized service plan shall be developed and placed in the resident's record within 30 days following admission [, ~~except the requirements of this section do not apply to secure detention facilities~~ and implemented immediately thereafter].

B. Individualized service plans shall describe the:

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

C. Each plan shall be updated quarterly, or more frequently if necessary, and shall report the:

1. Resident's progress toward meeting the plan's objectives;
2. Family's involvement;
3. Continuing needs of the resident;
4. Resident's progress towards discharge;
5. Status of discharge planning; and
6. Revisions, if any, to the plan.

D. Each plan and update shall include the date it was developed and the signature of the person who developed it.

E. Staff responsible for daily implementation of the resident's individualized service plan shall be able to describe the resident's behavior in terms of the objectives in the plan.

F. The following parties shall participate, unless clearly inappropriate, in developing the individualized service plan and in updating the plan quarterly, or more frequently if necessary:

1. The resident;

2. The resident's family, legal guardian, or legally authorized representative;
3. The placing agency; and
4. Facility staff.

G. The initial individualized service plan, each update, and all other revisions shall be distributed to the parties who participated in development of the plan. Documentation of distribution shall be included in the resident's record.

[H. The requirements of this section do not apply to secure detention facilities except when a juvenile is confined in detention with a suspended commitment to the Department of Juvenile Justice.]

22 VAC 42-10-640. Resident transfer between residential facilities located in Virginia and operated by the same sponsor.

A. Except when transfer is ordered by a court of competent jurisdiction, the receiving facility shall document at the time of transfer:

1. Preparation through sharing information with the resident, the family and the placing agency about the facility, the staff, the population served, activities and criteria for admission;
2. Written confirmation of the admission decision to the legal guardian and to the placing agency;
3. Receipt from the sending facility of a written summary of the resident's progress while at the facility and the resident's current strengths and needs; and
4. Receipt of the resident's record.

B. The sending facility shall retain a copy of the face sheet and a written summary of the child's progress while at the facility and shall document the date of transfer.

22 VAC 42-10-650. Discharge.

A. The facility shall have written criteria for discharge that shall include:

1. Criteria for a resident's completing the program which are consistent with the facility's programs and services;
2. Conditions under which a resident may be discharged before completing the program; and
3. Procedures for assisting placing agencies in placing the residents should the facility cease operation.

B. The facility's criteria for discharge shall be accessible to prospective residents, legal guardians, and placing agencies.

C. The record of each resident discharged upon receipt of the order of a court of competent jurisdiction shall contain a copy of the court order.

D. Residents shall be discharged only to the legal guardian or legally authorized representative.

E. A facility approved to provide residential respite care shall discharge a resident when the legal guardian no longer intends to use the facility's services.

F. Information concerning current medications, need for continuing therapeutic interventions, educational status, and other items important to the resident's continuing care shall be made available to or provided to the legal guardian or legally authorized representative [~~as appropriate~~].

G. Unless discharge is ordered by a court of competent jurisdiction, prior to the planned discharge date each resident's record shall contain:

1. Documentation that discharge has been planned and discussed with the parent, legal guardian, child-placing agency, and resident; and
2. A written discharge plan.

H. Discharge summaries.

[~~1. In lieu of a comprehensive discharge summary, the record of each resident discharged upon receipt of the order of a court of competent jurisdiction shall contain a copy of the court order.~~

~~2.~~ 1.] No later than 30 days after discharge, a comprehensive discharge summary shall be placed in the resident's record and sent to the persons or agency which made the placement. The discharge summary shall review:

- a. Services provided to the resident;
- b. The resident's progress toward meeting service plan objectives;
- c. The resident's continuing needs and recommendations, if any, for further services and care;
- d. Reasons for discharge and names of persons to whom resident was discharged;
- e. Dates of admission and discharge; and
- f. Date the discharge summary was prepared and the signature of the person preparing it.

[2. In lieu of a comprehensive discharge summary, the record of each resident discharged upon receipt of the order of a court of competent jurisdiction shall contain a copy of the court order.]

22 VAC 42-10-660. Placement of residents outside the facility.

A resident shall not be placed outside the facility prior to the facility's obtaining a child-placing agency license from the Department of Social Services except as permitted by statute or by order of a court of competent jurisdiction.

22 VAC 42-10-670. [~~Counseling and~~] Social services.

A. The program of the facility, except a secure detention facility [in which juveniles are not confined with a suspended commitment to the Department of Juvenile Justice], shall be designed to provide [~~counseling and~~] social services which address:

1. Helping the resident and the parents or legal guardian to understand the effects on the resident of separation from the family and the effect of group living;

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2. *Assisting the resident and the family [~~or placing agency~~] to maintain their relationships and prepare for the resident's future care;*
3. *Utilizing appropriate community resources to provide services and maintain contacts with such resources;*
4. *Helping the resident strengthen his capacity to function productively in interpersonal relationships; [~~and~~]*
5. *Conferring with the child care staff to help them understand the resident's needs in order to promote adjustment to group living [- ; and*
6. *Working with the resident and with the family or any placing agency that may be involved in planning for the resident's future and in preparing the resident for the return home or to another family, for independent living, or for other residential care.]*

B. The provision of [~~counseling and~~] social services shall be documented in each resident's record.

C. [~~Counseling and~~] Social services consistent with the goals of the service plan shall be provided to meet the specific needs of each resident, except residents of secure detention facilities [who are not confined with a suspended commitment to the Department of Juvenile Justice], in one of the following ways:

1. *By or under the direct supervision of a staff member who (i) holds a bachelor's degree in psychology, counseling, social work, or other discipline specifically approved by the regulatory authority and (ii) has completed two years of successful experience in psychology, counseling, social work, or other field specifically approved by the regulatory authority (In lieu of two years experience, the person may work under the direct supervision of a qualified supervisor for a period of two years);*
2. *By service staff of the agency that placed the resident provided such staff is available on an as-needed basis rather than on a limited basis (e.g., quarterly or semi-annually);*
3. *On a contract basis by a professional licensed to practice in the Commonwealth of Virginia, other state or the District of Columbia; or*
4. *On a contract basis by a professional child and family service worker who is working under the auspices of a public or private, nonprofit agency sponsored by a community-based group.*

22 VAC 42-10-680. Therapy.

Therapy, if provided, shall be provided by [~~a therapist~~ an individual (i) licensed as a therapist by the Department of Health Professions or (ii) who is licensure eligible and working under the supervision of a licensed therapist, unless exempted from these requirements under the Code of Virginia].

22 VAC 42-10-690. Structured program of care.

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

1. *Meet the residents' physical and emotional needs;*
2. *Provide protection, guidance and supervision; and*
3. *Meet the objectives of any required service plan.*

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

C. A daily activity log shall be maintained to inform staff of significant happenings or problems experienced by residents.

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

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

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

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

22 VAC 42-10-700. Health care procedures.

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

[~~1. Assessing the immunization status and administering age-appropriate vaccines;~~

2. 1.] Providing [or arranging for the provision of] medical and dental services for health problems identified at admission;

[~~2.] Providing [or arranging for the provision of] routine ongoing and follow-up medical and dental services after admission;~~

[~~3.] Providing emergency services for each resident as provided by statute or by the agreement with the resident's legal guardian; and~~

[~~4.] Providing emergency services for any resident experiencing or showing signs of suicidal or homicidal thoughts, symptoms of mood or thought disorders, or other mental health problems.~~

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

1. *Name, address, and telephone number of the physician and dentist to be notified;*

2. *Name, address, and telephone number of a relative or other person to be notified;*

3. *Medical insurance company name and policy number or Medicaid number [~~except that this requirement does not apply to secure detention facilities~~];*

4. *Information concerning:*

a. Use of medication;

b. Medication allergies;

c. ~~[Any history of] Substance abuse [except that this requirement does not apply to secure detention facilities]~~; and

d. Significant past or present medical problems; and

5. Written permission for emergency medical care, dental care, and obtaining immunizations or a procedure and contacts for obtaining consent ~~[except this requirement does not apply to secure detention facilities.~~; and

6. Subdivisions 3 and 5 of this subsection do not apply to secure detention facilities except when a resident is confined in detention with a suspended commitment to the Department of Juvenile Justice.]

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

22 VAC 42-10-710. Medical examinations and treatment.

A. Each child accepted for care shall have a physical examination by or under the direction of a licensed physician no earlier than 90 days prior to admission to the facility or no later than seven days following admission except (i) the report of an examination within the preceding 12 months shall be acceptable if a child transfers from one residential facility licensed or certified by a state agency to another, (ii) a physical examination shall be conducted within 30 days following an emergency admission if a report of physical examination is not available, and (iii) this requirement does not apply if a child is admitted to a secure detention facility or to a temporary care facility.

B. Each resident's record shall include written documentation of (i) the initial physical examination, (ii) an annual physical examination by a licensed physician [including any recommendation for follow-up care], and (iii) [documentation of the provision of] follow-up medical care recommended by the physician or as indicated by the needs of the resident. ~~[This requirement does not apply to secure detention facilities or temporary care facilities.]~~

C. Each physical examination report shall include:

1. Information necessary to determine the health and immunization needs of the resident [; , including:]

- a. Immunizations administered;
- b. Vision exam;
- c. Hearing exam;
- d. General physical condition, including documentation of apparent freedom from communicable disease including tuberculosis;
- e. Allergies, chronic conditions, and handicaps, if any;
- f. Nutritional requirements, including special diets, if any;
- g. Restrictions on physical activities, if any; and
- h. Recommendations for further treatment, immunizations, and other examinations indicated;]

2. Date of the physical examination; and

3. Signature of a licensed physician, the physician's designee, or an official of a local health department.

D. A child with a communicable disease shall not be admitted unless a licensed physician certifies that:

- 1. The facility is capable of providing care to the child without jeopardizing residents and staff; and
- 2. The facility is aware of the required treatment for the child and the procedures to protect residents and staff.

[The requirements of] this subsection shall not apply to [temporary emergency shelters and] secure detention [and temporary care] facilities.

E. Each resident's record shall include written documentation of (i) an annual examination by a licensed dentist and (ii) [documentation of] follow-up dental care recommended by the dentist or as indicated by the needs of the resident. This requirement does not apply to secure detention facilities, temporary care facilities, and respite care facilities.

F. Each resident's record shall include notations of health and dental complaints and injuries and shall summarize symptoms and treatment given.

G. Each resident's record shall include, or document the facility's efforts to obtain, treatment summaries of ongoing psychiatric or other mental health treatment and reports, if applicable. This subsection does not apply to secure detention facilities [except when a juvenile is confined in detention with a suspended commitment to the Department of Juvenile Justice].

H. Written policies and procedures, which include use of universal precautions, shall be developed and implemented to address communicable and contagious medical conditions.

I. A well-stocked first-aid kit shall be maintained and readily accessible for minor injuries and medical emergencies.

22 VAC 42-10-720. Medication.

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

B. All staff responsible for medication administration shall have successfully completed a medication training program approved by the Board of Nursing or be licensed by the Commonwealth of Virginia to administer medications.

C. Medication shall be administered only by staff authorized to do so by the director.

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

E. A program of medication shall be initiated for a resident only when prescribed in writing by a licensed physician.

F. Medication prescribed by a licensed physician shall be [delivered administered] as prescribed.

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G. A daily log shall be maintained of all medicines received by each resident and shall identify the individual who [~~delivered~~ administered] the medication.

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

I. The telephone number of a regional poison control center shall be posted on or next to [~~at least one~~ each] nonpay telephone [that has access to an outside line] in each building in which children sleep or participate in programs.

J. At least one [unexpired] 30 cc bottle of Syrup of Ipecac [and one unexpired container of activated charcoal] shall be available on the premises of the facility for use at the direction of the poison control center or physician [and shall be kept locked when not in use].

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

22 VAC 42-10-730. Nutrition.

A. Each resident shall be provided a daily diet which (i) consists of at least three nutritionally balanced meals and an evening snack, (ii) includes an adequate variety and quantity of food for the age of the resident, and (iii) meets minimum nutritional requirements and the U.S. Dietary Guidelines.

B. Menus shall be kept on file for at least six months.

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

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

E. There shall [~~be no~~ not be] more than 15 hours between the evening meal and breakfast the following day [~~except there shall be no more than 17 hours when the facility is operating on a weekend or holiday schedule~~].

[F. Facilities shall assure that food is available to residents who wish to eat breakfast before the 15 hours have expired.

G. Facilities shall receive approval from their regulatory authority if they wish to extend the time between meals on weekends and holidays. There shall never be more than 17 hours between the evening meal and breakfast the following day on weekends and holidays.]

22 VAC 42-10-740. Staff supervision of children.

A. No member of the child care staff shall be on duty more than six consecutive days [~~between rest days~~ without a rest day] except in an emergency.

B. Child care staff shall have an average at least two rest days per week in any four-week period. Rest days shall be in addition to vacation time and holidays.

C. Child care staff other than live-in staff shall not be on duty more than 16 consecutive hours except in an emergency.

D. There shall be at least one [~~responsible adult~~ trained child care worker] on the premises, on duty and actively supervising children at all times that one or more children are present.

E. Supervision policies.

1. The facility shall develop and implement written policies and procedures which address staff supervision of children.

2. Written policies and procedures governing supervision of children shall be reviewed and approved by the regulatory authority prior to implementation.

3. The supervision policies or a summary of the policies shall be provided, upon request, to the placing agency or legal guardian prior to placement.

F. During the hours that children are scheduled to be awake there shall be at least one child care staff member awake, on duty and responsible for supervision of every 10 children, or portion thereof, on the premises or participating in off-campus, facility-sponsored activities except:

1. Independent living programs shall have at least one child care staff member awake, on duty and responsible for supervision of every 15 children on the premises or participating in off-campus, facility-sponsored activities;

2. For children under four years of age, there shall be at least one child care staff member awake, on duty and responsible for supervision of every three children who are on the premises or participating in off-campus, facility-sponsored activities except that this requirement does not apply to severely multihandicapped, nonambulatory children;

3. For severely multihandicapped, nonambulatory children, there shall be at least one child care staff member awake, on duty and responsible for supervision of every six children;

4. Programs that accept mothers and their [~~offspring~~ children] shall have at least one child care staff member awake, on duty and responsible for supervision of every six children (counting both mothers and their [~~offspring~~ children]); and

5. [Except when exempted by the regulatory authorities,] programs that are licensed or certified [by the Department of Mental Health, Mental Retardation and Substance Abuse Services] to provide treatment services for children with diagnosed mental illness or diagnosed severe emotional or behavioral problems where close supervision is indicated shall have at least one child care staff member awake, on duty and responsible for supervision of every eight children.

G. During the hours that residents are scheduled to sleep, there shall be no less than one child care staff member on duty and responsible for supervision of every 16 children, or portion thereof, on the premises [, except for programs that accept mothers and their children, there shall be at least one child care staff member in the building, on duty and responsible for every 10 residents].

H. There shall be at least one child care staff member [~~awake and~~] on duty [and responsible for the supervision of residents] in each building where [~~16 or more children~~ residents] are sleeping. [When there are 16 or more residents in a building, the staff person shall remain awake, and the ratio of one staff person to every 16 residents or portion thereof shall be maintained. For less than 16 residents in the building, the staff person may sleep but shall be on duty and responsible for supervision.] This requirement does not apply to approved independent living programs.

I. [On each floor where children are sleeping,] there shall be at least one child care staff member awake and on duty [~~on each floor where 30 or more children are sleeping for every 30 children or portion thereof~~].

[~~J. There shall be at least one child care staff member awake and on duty on each major wing of each floor where 30 or more children are sleeping.~~]

22 VAC 42-10-750. Emergency telephone numbers.

A. Residents who are away from the facility and the adults responsible for their care during the absence shall be furnished with a telephone number where a responsible facility staff member or other responsible adult may be reached at all times. This subsection does not apply to [residents of] secure detention facilities.

B. When children are on the premises of the facility, the staff on duty shall be furnished with a telephone number where the administrator or his designee may be reached at all times.

22 VAC 42-10-760. Children's privacy.

Children shall be provided privacy from routine sight supervision by staff members of the opposite gender while bathing, dressing, or conducting toileting activities. This section does not apply to medical personnel performing medical procedures, to staff providing assistance to infants, or to staff providing assistance to children whose physical or mental disabilities dictate the need for assistance with these activities as justified in the client's record.

22 VAC 42-10-770. Searches.

A. Strip searches and body cavity searches are prohibited except:

1. As permitted by other applicable state regulations; or
2. As ordered by a court of competent jurisdiction.

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

C. A facility that conducts pat downs shall develop and implement written policies and procedures governing them which shall provide that:

1. Pat downs shall be limited to instances where they are necessary to prohibit contraband;

2. Pat downs shall be conducted only [~~in the specific circumstances listed~~] in [accordance with] the written policies and procedures;

3. Pat downs shall be conducted by personnel of the same gender as the client being searched;

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

5. [~~The client's privacy~~ Pat downs] shall be [~~ensured~~] conducted in such a way as to protect the subject's dignity and in the presence of one or more witnesses].

22 VAC 42-10-780. Management of resident behavior.

A. The facility shall have and implement written policies and procedures [for behavior management and] for documenting and monitoring [the] management of resident behavior. Rules of conduct, if any, shall be included in the written policies and procedures.

B. Written information concerning management of resident behavior shall be provided prior to admission to prospective residents, except those with diagnosed mental disabilities resulting in the loss of the cognitive ability to understand the information, to legal guardians, and to referral agencies. For court ordered and emergency admissions, this information shall be provided to:

1. Residents, except those with diagnosed mental disabilities resulting in the loss of the cognitive ability to understand the information, within 12 hours following admission;

2. Referral agencies within 72 hours following the resident's admission; and

3. Legal guardians within 72 hours following the resident's admission except that this requirement does not apply:

a. To secure detention facilities [except when a juvenile is confined in detention with a suspended commitment to the Department of Juvenile Justice];

b. When a facility is providing temporary care of 30 days or less while conducting a diagnostic evaluation to identify the most appropriate long-term placement for a child who has been committed to the Department of Juvenile Justice; and

c. When a state mental hospital is evaluating a child's treatment needs as provided by the Code of Virginia.

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

1. Residents prior to implementation, except for those residents with diagnosed mental disabilities resulting in the loss of the cognitive ability to understand the information; and

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2. Legal guardians and referral agencies except that this requirement does not apply:

- a. To secure detention facilities;
- b. When a facility is providing temporary care of 30 days or less while conducting a diagnostic evaluation to identify the most appropriate long-term placement for a child who has been committed to the Department of Juvenile Justice; and
- c. When a state mental hospital is evaluating a child's treatment needs as provided by the Code of Virginia.

D. Only trained staff members may manage resident behavior.

22 VAC 42-10-790. Confinement.

A. The facility shall have and implement written policies and procedures governing the conditions under which a resident may be confined and the maximum period of confinement. The conditions and maximum period of confinement shall be based on the resident's chronological and developmental level.

B. The room in which a resident is confined shall not be locked nor the door secured in a manner that prevents the resident from opening it, except that this subsection does not apply to secure custody facilities.

C. A confined resident shall be able to communicate with staff.

D. Staff shall check on the [resident in the] room at least every 30 minutes [and more often depending on the nature of the resident's disability, condition and behavior].

E. Use of confinement [and staff checks on the residents] shall be documented when confinement is used for managing resident behavior.

22 VAC 42-10-800. Prohibitions.

The following actions are prohibited:

1. Deprivation of drinking water or food necessary to meet a resident's daily nutritional needs except as ordered by a licensed physician for a legitimate medical purpose and documented in the resident's record;
2. Limitation on contacts and visits with the resident's attorney, a probation officer, regulators or a placing agency representative;
3. Bans on contacts and visits with family or legal guardians except as permitted by other applicable state regulations or by order of a court of competent jurisdiction;
4. Delay or withholding of incoming or outgoing mail except as permitted by other applicable state and federal regulations or by order of a court of competent jurisdiction;
5. Any action which is humiliating, degrading, or abusive;
6. Corporal punishment;
7. Subjection to unsanitary living conditions;

8. Deprivation of opportunities for bathing or access to toilet facilities except as ordered by a licensed physician for a legitimate medical purpose and documented in the resident's record;

9. Deprivation of health care;

10. Deprivation of appropriate services and treatment;

11. Application of aversive stimuli except as permitted pursuant to other applicable state regulations [~~(i) as part of an approved intrusive aversive therapy plan or (ii) as a means of controlling violent behavior in a secure custody facility~~];

12. Administration of laxatives, enemas, or emetics except as ordered by a licensed physician or poison control center for a legitimate medical purpose and documented in the resident's record;

13. Deprivation of opportunities for sleep or rest except as ordered by a licensed physician for a legitimate medical purpose and documented in the resident's record; and

14. Limitation on contacts and visits with advocates employed by the Department of Mental Health, Mental Retardation and Substance Abuse Services or the Department for Rights of Virginians with Disabilities.

22 VAC 42-10-810. Mechanical or chemical restraints.

A. Use of mechanical restraints is prohibited except as permitted by other applicable state regulations or as ordered by a court of competent jurisdiction.

B. Use of chemical restraints is prohibited.

22 VAC 42-10-820. Physical restraint.

A. The facility shall have and implement written policies and procedures governing use of physical restraint.

B. The facility's procedures shall include methods to be followed should physical restraint, less intrusive interventions, or measures permitted by other applicable state regulations prove unsuccessful in calming and moderating the resident's behavior.

C. Use of physical restraint shall be limited to that which is minimally necessary to protect the resident or others.

D. Trained staff members may physically restrain a resident only after less intrusive interventions have failed or when failure to restrain would result in harm to the resident or others.

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

1. Date;
2. Time;
3. Staff involved;
4. Circumstances;
5. Reasons for using physical restraint;
6. Duration;

7. Method or methods of physical restraint used; and

8. Less intrusive interventions which were unsuccessfully attempted prior to using physical restraint.

F. Each staff member responsible for supervision of children shall receive basic orientation to the facility's physical restraint procedures and techniques and to less intrusive interventions within seven days following employment [~~and prior to working alone while supervising one or more residents~~].

[1. Physical restraint shall be applied only by staff who have been trained in the facility's physical restraint procedures and techniques.

2. Staff shall review the facility's training in physical restraint and less intrusive interventions at least annually.]

22 VAC 42-10-830. Seclusion.

Seclusion is allowed only as permitted by other applicable state regulations.

22 VAC 42-10-840. Timeout.

Timeout is allowed only as permitted by other applicable state regulations.

22 VAC 42-10-850. Education.

A. Each resident of compulsory school attendance age shall be enrolled in an appropriate educational program as provided in the Code of Virginia.

B. The facility shall ensure that educational guidance and counseling in selecting courses is provided for each resident and shall ensure that education is an integral part of the resident's total program.

C. Facilities operating educational programs for children with disabilities shall operate those programs in compliance with applicable state and federal statutes and regulations.

[D. When a child with disabilities has been placed in a residential facility without the knowledge of school division personnel in the resident's home locality, the facility shall contact the superintendent of public schools in the locality in order to effect compliance with applicable state and federal requirements relative to the education of children with disabilities.]

[~~D. E.~~] A facility which has an academic or vocational program that is not certified or approved by the Department of Education shall document that teachers meet the qualifications to teach the same subjects in the public schools.

22 VAC 42-10-860. Religion.

A. The facility shall have and implement written policies regarding opportunities for residents to participate in religious activities.

B. The facility's policies on religious participation shall be available to residents and any individual or agency considering placement of a child in the facility.

C. Residents shall not be coerced to participate in religious activities.

22 VAC 42-10-870. Recreation.

A. The facility shall have a written description of its recreation program which describes activities which are consistent (i) with the facility's total program and (ii) with the ages, developmental levels, interests, and needs of the residents.

B. The facility shall have and implement a recreation program which is consistent with the written description and which includes the following:

1. Opportunities for individual and group activities;
2. Free time for residents to pursue personal interests which shall be in addition to a formal recreation program except this subdivision does not apply to secure custody facilities;
3. Use of available community recreational resources and facilities except this subdivision does not apply to secure custody facilities;
4. Scheduling of activities so that they do not conflict with meals, religious services, educational programs or other regular events; and
5. Regularly scheduled indoor and outdoor recreational activities that are structured to develop skills and attitudes.

C. Recreational programs and field trips shall be directed and supervised by adults who are knowledgeable in the safeguards required for the activities.

22 VAC 42-10-880. Community relationships.

A. Opportunities shall be provided for the residents to participate in activities and to utilize resources in the community except this section does not apply to secure custody facilities.

B. The facility shall have and implement written procedures for evaluating [~~community interest in residents and efforts on their behalf to determine whether~~ persons or organizations in the community who wish to associate with residents on the premises or take residents off the premises. The procedures shall cover how the facility will determine if] participation [in such community activities or programs] would be in the residents' best interest.

22 VAC 42-10-890. Clothing.

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

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

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

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

22 VAC 42-10-900. Allowances and spending money.

A. The facility shall provide opportunities appropriate to the ages and developmental levels of the residents for learning the value and use of money except this requirement does not apply to secure detention facilities.

B. There shall be a written policy regarding allowances which shall be made available to legal guardians at the time of admission except that this requirement does not apply to secure detention facilities.

C. The facility shall have and implement written policies for safekeeping and for recordkeeping of any money that belongs to residents.

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

22 VAC 42-10-910. Work and employment.

A. Assignment of chores, which are paid or unpaid work assignments, shall be in accordance with the age, health, ability, and service plan of the resident.

B. Chores shall not interfere with school programs, study periods, meals or sleep.

C. Work assignments or employment outside the facility, including reasonable rates of pay, shall be approved by the program director with the knowledge and consent of the legal guardian except this requirement does not apply to secure detention facilities.

D. The facility shall have and implement written procedures to ensure that the work and pay of residents complies with applicable laws governing wages and hours and laws governing labor and employment of children. In both work assignments and employment, the program director shall evaluate the appropriateness of the work and the fairness of the pay.

22 VAC 42-10-920. Visitation at the facility and to the resident's home.

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

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

C. In secure detention, except when a juvenile is confined in detention with a suspended commitment to the Department of Juvenile Justice, and temporary care facilities, written visitation policies and procedures shall be provided upon

request to parents, legal guardians, residents, and other interested persons important to the residents.

22 VAC 42-10-925. Resident visitation at the homes of staff.

If a facility permits staff to take residents to the staff's home, the facility must receive written permission of the resident's legal guardian or placing agency before the visit occurs.]

22 VAC 42-10-930. Vehicles and power equipment.

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

- 1. Vehicle safety and maintenance;*
- 2. Licensure of vehicles;*
- 3. Licensure of drivers; and*
- 4. Child passenger safety, including requiring children to wear appropriate seat belts or restraints for the vehicle in which they are being transported.*

B. There shall be written safety rules [which shall include taking head counts at each stop], which are appropriate to the population served, for transportation of children.

C. The facility shall have and implement written safety rules for use and maintenance of vehicles and power equipment.

22 VAC 42-10-940. Reports to court.

When the facility has received legal custody of a child pursuant to the Code of Virginia, copies of any foster care plans submitted to the court shall be placed in the resident's record.

22 VAC 42-10-950. Emergency reports.

A. Any serious incident, accident or injury to the resident; any overnight absence from the facility without permission; any runaway; and any other unexplained absence shall be reported within 24 hours: (i) to the placing agency, (ii) to either the parent or legal guardian, [or both as appropriate] and (iii) noted in the resident's record.

B. The facility shall document the following:

- 1. The date and time the incident occurred;*
- 2. A brief description of the incident;*
- 3. The action taken as a result of the incident;*
- 4. The name of the person who completed the report;*
- 5. The name of the person who made the report to the placing agency and to either the parent or legal guardian; and*
- 6. The name of the person to whom the report was made.*

22 VAC 42-10-960. Suspected child abuse or neglect.

[A. Written policies and procedures related to child abuse and neglect shall be distributed to all staff members. These shall include procedures for:

1. Handling accusations against staff; and
2. Promptly referring, consistent with requirements of the Code of Virginia, suspected cases of child abuse and neglect to the local child protective services unit and for cooperating with the unit during any investigation.]

[~~A. B.~~] Any case of suspected child abuse or neglect shall be reported [~~immediately~~] to the local child protective services unit as required by the Code of Virginia.

[~~B. C.~~] Any case of suspected child abuse or neglect [~~which is related to the~~ occurring at the] facility [, on a facility-sponsored event or excursion, or involving facility staff] shall be reported immediately (i) to the regulatory authority and placing agency and (ii) to either the parent or legal guardian [, or both, as appropriate].

[~~C. D.~~] When a case of suspected child abuse or neglect is reported to child protective services, the resident's record shall include:

1. The date and time the suspected abuse or neglect occurred;
2. A description of the incident;
3. Action taken as a result of the incident; and
4. The name of the person to whom the report was made at the local child protective services unit.

[22 VAC 42-10-965. Grievance procedures.

The licensee shall develop, adopt, follow and maintain on file written policies and procedures governing the handling of grievances by children. If not addressed by other applicable standards, the policies and procedures shall:

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

PART V.
DISASTER OR EMERGENCY PLANNING.

22 VAC 42-10-970. Emergency [and evacuation] procedures.

A. Written procedures shall be developed and implemented for responding to emergencies, including but not necessarily limited to:

1. Severe weather;
2. Loss of utilities;
3. Missing persons;
4. Severe injury; and
5. Emergency evacuation, including alternate housing.

B. Written procedures shall address responsibilities of staff and residents regarding:

1. Sounding of an alarm;
2. Emergency evacuation including assembly points, head counts, primary and secondary means of egress, evacuation of children with special needs, and verifying complete evacuation of the buildings;
3. Alerting emergency authorities; and
4. Use of emergency equipment.

[C. Emergency procedures shall address the handling of residents with special needs.]

[~~C. D.~~] Floor plans showing primary and secondary means of egress shall be posted on each floor in locations where they can easily be seen by staff and residents.

[~~D. E.~~] The procedures and responsibilities reflected in the emergency procedures shall be communicated to all residents within seven days following admission or a substantive change in the procedures.

[~~E. F.~~] The telephone numbers of the authorities to be called in case of an emergency shall be prominently posted on or next to each telephone.

[~~F. G.~~] At least one [~~emergency~~ evacuation] drill (the simulation of the facility's emergency procedures) shall be conducted each month in each building occupied by residents.

[~~G. Emergency H. Evacuation~~] drills shall include, at a minimum:

1. Sounding of emergency alarms;
2. Practice in evacuating buildings;
3. Practice in alerting emergency authorities; and
4. Simulated use of emergency equipment.

[~~H. I.~~] During any three consecutive calendar months, at least one [~~emergency~~ evacuation] drill shall be conducted during each shift.

[~~I. J.~~] The facility shall assign at least one staff member responsibility for conducting and documenting [~~emergency~~ evacuation] drills.

[~~J. K.~~] A record shall be maintained for each [~~emergency~~ evacuation] drill and shall include the following:

1. Buildings in which the drill was conducted;
2. The date and time of drill;
3. The amount of time to evacuate the buildings;

Final Regulations

4. Specific problems encountered;
5. Staff tasks completed including:
 - a. Head count; and
 - b. Practice in notifying emergency authorities;
6. A summary; and
7. The name of the staff members responsible for conducting and documenting the drill and preparing the record.

[~~K. L.~~] The record for each [~~emergency~~ evacuation] drill shall be retained for three years after the drill.

[~~L. M.~~] The facility shall assign one staff member responsibility for the [~~emergency~~ evacuation] drill program at the facility who shall:

1. Ensure that [~~emergency~~ evacuation] drills are conducted at the times and intervals required by these [~~interagency~~ interdepartmental] standards and the facility's emergency procedures;
2. Review [~~emergency~~ evacuation] drill reports to identify problems in conducting the drills and in implementing the requirements of the emergency procedures;
3. Consult with the local emergency authorities, as needed, and plan, implement and document training or other actions taken to remedy any problems found in implementing the procedures; and
4. Consult and cooperate with local emergency authorities to plan and implement an educational program for facility staff and residents on topics in safety.

[~~M. Emergency procedures shall address the handling of residents with special needs.~~

[~~N. Emergency procedures shall be communicated to each resident, as appropriate.~~]

22 VAC 42-10-980. Notifications.

In the event of a disaster, fire, emergency or any other condition at the facility that may jeopardize the health, safety or well-being of the children, the facility shall:

1. Take appropriate action to protect the health, safety and well-being of the children;
2. Take appropriate actions to remedy the conditions as soon as possible, including reporting to and cooperating with local health, fire, police or other appropriate officials; and
3. Notify the regulatory authorities as soon as possible of the conditions at the facility and the status of the residents.

22 VAC 42-10-990. Written fire plan.

A. The facility shall develop a written plan to be implemented in case of a fire.

B. Procedures and responsibilities reflected in the written fire plan shall be communicated to all residents within seven days following admission or a substantive change in the plan.

C. The telephone number of the fire department to be called in case of fire shall be prominently posted on or next to each telephone.

22 VAC 42-10-1000. Staff training.

A. Each staff member shall be trained in fire procedures in accordance with the Virginia Statewide Fire Prevention Code (13 VAC 5-51-10 et seq.).

B. Each new staff member shall be trained in emergency [and evacuation] procedures and their implementation prior to working alone while supervising one or more children and within seven days of employment.

<p>NOTICE: The forms used in administering 22 VAC 42-10-10 et seq., Standards for Interdepartmental Regulation of Children's Residential Facilities, are listed below and are published following the listing.</p>

FORMS

Initial Application for a Virginia State License/Certificate to Operate a Residential Facility for Children, 032-05-553 5 [Effective same date as standards become effective eff. 7/1/00].

Renewal Application for a Virginia State License/Certificate to Operate a Residential Facility for Children, 032-05-554 5 [Effective same date as standards become effective eff. 7/1/00].

Renewal Application for a Facility Holding a Conditional License/Certificate, 032-05-588 (eff. [2/98 7/1/00]).

INTERDEPARTMENTAL REGULATION OF CHILDREN'S RESIDENTIAL FACILITIES

Initial Application

Page :

INITIAL APPLICATION FOR A VIRGINIA STATE LICENSE/CERTIFICATE TO OPERATE A RESIDENTIAL FACILITY FOR CHILDREN

FACILITY CATEGORY(IES)

(Check all applicable categories. "Child Caring Institution" includes all facilities regulated by the Department of Social Services.)

Child Caring Institution (CCI)	Independent Living Program (ILP)	Respite Care Facility (RC)
Emergency Shelter (ES)	Juvenile Correctional Facility (JCF)	School for Individuals with Disabilities (SH)
Facility for Mentally Ill/Emotionally Disturbed (MED)	Less Secure Detention (LSD)	Secure Detention (SDH)
Facility for Mentally Retarded (NIR)	Post-Dispositional Group Home (POS)	Temporary Care Facility (TC)
Facility for Substance Abusers (SA)	Pre-Dispositional Group Home (PRE)	Wilderness Program (SH)
	Boot Camp (BC)	

A completed application including any supplemental information required shall be submitted at least 60 days in advance of the planned opening date. (See § 20A1 of the *Interagency Standards*.) The licensure/certification study will begin after a complete application is received.

Application is hereby made to operate a residential facility for children pursuant to provisions of the *Code of Virginia*.

IDENTIFYING INFORMATION

Facility's Name _____
 Address: Street _____
 City/State/Zip _____
 County: _____ Telephone Number at Facility: _____
 Mailing Address, if different from Street Address: _____

II. POPULATION

Capacity	Gender	Minimum Age	Maximum Age

III. ORGANIZATIONAL INFORMATION

1. The facility is operated by a(n):

Corporation	Public Agency	Unincorporated Organization or Association
Individual	Partnership	

2. The facility is operated:

For Profit	Not For Profit

Directions to Facility: _____

Sponsoring Organization's Name: _____

Sponsor's Address: _____
 Sponsor's Telephone: _____

Name and Title of Chief Administrative Officer: _____

Name of Program Director(s): _____

Anticipated dates the facility will be closed and anticipated dates that residents will be off campus for extended trips and events during the next 24 months: _____

Initial Application

Attached	Name of Attachment
	Supervision Plan - Staff Information Sheet. A list of staff members with designated positions, qualifications, etc., in the same format as the attached form (see attached Staff Information Sheet - Form # 032-05-552)
	Supervision Plan - Narrative describing planned deviations, if any, from established staff child ratios (see § 740)
	Job Descriptions corresponding to the positions listed on the staff information sheet (§ 210)
	Statement of Philosophy and Objectives of facility including a comprehensive description of the population to be served and the program to be offered. Please include any brochures/pamphlets distributed to the public and to agencies using your program (see § 110C).
	Criteria for Admission (see § 530)
	Documentation that buildings and Equipment are Maintained According to the VA Statewide Fire Prevention Code (see § 330B)
	Report of Sanitation Inspection (See attached form # 032-05-555 and § 330C.) Attach last completed inspection form or give date inspection is scheduled
	Certificate of Occupancy: Issued by the local building official no more than 90 days prior to the date of this application, indicating that the building is classified for its proposed licensed/certified purposes. (see § 330A) Note: Buildings owned and operated by the Department of Education; Department of Juvenile Justice; and the Department of Mental Health, Mental Retardation and Substance Abuse Services are not required to have a certificate of occupancy.
FINANCIAL INFORMATION - PRIVATE FACILITIES	
	Documentation of funds or line of credit sufficient for 90 days operating expenses. (see § 20A2)
	Balance sheet showing assets and liabilities. (see § 20A3b)
	Working budget showing projected revenue and expenses for the first year of operation. (see § 20A3a)

Initial Application

IV. RESIDENTIAL ENVIRONMENT

A. List all buildings below. Attach additional pages if necessary. In addition, a sketch of the grounds may be included, if desired.

Name of Building	Date of Construction	Date of Occupancy	Function	Number of Residents

B. Name and address of owner of physical plant.

Name	
Address	

V. RECORDS

Identify the location of the following records:

Financial Records	
Personnel Records	
Resident's Records	

VI. ATTACHMENTS

Attached	Name of Attachment
	Facility Floor Plans indicating the exact dimensions of rooms to be used, including room length, width, and ceiling heights; designating the function(s) of each room; and indicating the number of basins, tubs, commodes, and showers in the bathrooms.

Attached	Name of Attachment
	Financial Information - State and Local Government Operated Facilities
	A working budget showing appropriated revenue and projected expenses for the coming year (see § 20A4)
	Facilities Operated by a Corporation
	For a facility operated by a Virginia corporation, submit a copy of the Articles of Incorporation, the By-laws, and the Certificate of Incorporation (or Certificate of Amendment) from the Virginia State Corporation Commission of the appropriate state office.
	For a facility located in Virginia that is operated by an out-of-state corporation, submit a copy of the Articles of Incorporation, the By-laws, and the Certificate of Authority issued by the Virginia State Corporation Commission.
	Facilities with a Governing Board
	A list of all members of the Board, the Executive Committee, or, for a public agency, all members of the legally accountable governing body . Each list should include the name, address and office/title of each individual.
For Facilities Operated by a Corporation, an Unincorporated Organization or an Association	References for three officers of the Board including the President, Secretary, Treasurer and a Member-at-Large. (See attached Reference Sheet for each Owner/Operator.)

VII. CERTIFICATIONS

In making this application, I certify that:

1. I am in receipt of and have read a copy of the *Standards for Interagency Regulation of Children's Residential Facilities* and all applicable certification standards.
2. It is my intent: (a) to comply with applicable statutes and the aforementioned *Interagency, Standards* and certification standards, and (b) to maintain compliance with them.
3. I understand that representatives of the Departments of Education; Juvenile Justice; Mental Health; Mental Retardation and Substance Abuse Services; and Social Services are authorized to investigate all aspects of facility operation, to inspect the facility, and to make any investigations necessary concerning the circumstances surrounding this application. I understand that if the facility is licensed/certified, the departments' representatives will make announced and unannounced visits to determine continuing compliance.
4. I understand that sanitation inspections and documentation that building and equipment are maintained in accordance with the Virginia Statewide Fire Prevention Code are required on an annual basis, as applicable, and intend to obtain the required inspections and submit inspection reports.
5. I understand that, in the event this application is denied, I have appeal rights as provided by the Administrative Process Act, § 9-6.14.1 et. Seq. of the *Code of Virginia*.
6. To the best of my knowledge and belief, all information related to this application is accurate and complete. Additional information will be supplied as requested during investigation of this application and all subsequent investigations.

(Signature)¹ (Title)

(Name Printed) (Date)

9/22/05-6-653 5-012-961a.mppis.208

¹This application shall be signed by the individual legally responsible for the operation of the residential facility for children, or, if the facility is to be operated by a board/governing body, by an officer of the board/governing body, preferably the chair. If the facility is to be operated by a governmental entity, the person employed by that government to operate the facility may sign the application.

INTERDEPARTMENTAL REGULATION OF CHILDREN'S RESIDENTIAL FACILITIES

RENEWAL APPLICATION FOR A VIRGINIA STATE LICENSE/CERTIFICATE TO OPERATE A RESIDENTIAL FACILITY FOR CHILDREN

A completed renewal application, including any supplemental information required, should be submitted within 30 days of receipt. (See § 20B of the Interagency Standards.) The licensure/certification study will begin after a complete application is received.

Application is hereby made to continue operation of a residential facility for children pursuant to provisions of the *Code of Virginia*

I IDENTIFYING INFORMATION

Facility's Name _____

Address: Street _____

City/State/Zip _____

County: _____ Telephone Number at Facility: _____

Mailing Address, if different from Street Address: _____

Directions to Facility: _____

Sponsoring Organizations's Name _____

Sponsor's Address: _____

_____ Sponsor's Telephone: _____

Name and Title of Chief Administrative Officer: _____

Renewal Application

Name of Program Director(s): _____

Anticipated dates the facility will be closed and anticipated dates that residents will be off campus for extended trips and events during the next 36 months: _____

FACILITY CATEGORY(IES)

(Check all applicable categories. "Child Caring Institution" includes all facilities regulated by the Department of Social Services.)

Child Caring Institution (CCI)	Independent Living Program (ILP)	Respite Care Facility (RC)
Emergency Shelter (ES)	Juvenile Correctional Facility (JCF)	School for Individuals with Disabilities (SH)
Facility for Mentally Ill/Emotionally Disturbed (MED)	Less Secure Detention (LSD)	Secure Detention (SDH)
Facility for Mentally Retarded (NIR)	Post-Dispositional Group Home (POS)	Temporary Care Facility (TC)
Facility for Substance Abusers (SA)	Pre-Dispositional Group Home (PRE)	Wilderness Program (SH)
	Boot Camp (BC)	

II POPULATION

Capacity	Gender	Minimum Age	Maximum Age

III ORGANIZATIONAL INFORMATION

I. The facility is operated by a(n):

Corporation Individual	Public Agency Partnership	Unincorporated Organization or Association

Renewal Application

VI. ATTACHMENTS

Attached	No Change Since Last Approved by Licensing	<p>Facility Floor Plans indicating the exact dimensions of rooms to be used, including room length, width, and ceiling heights; designating the function(s) of each room, and indicating the number of basins, tubs, commodes, and showers in the bathrooms.</p> <p>Certificate of Occupancy: Required for private sector facilities and facilities owned by local government if a new building has been constructed or if there has been a change of use or additions/alterations to buildings that have been previously licensed (see § 330A)</p> <p>Note: Buildings owned and operated by the Department of Education; Department of Juvenile Justice; and the Department of Mental Health, Mental Retardation and Substance Abuse Services are not required to have a certificate of occupancy.</p>
		<p>Facilities Operated by a Corporation</p> <p>For a facility operated by a Virginia corporation, submit a copy of the Articles of Incorporation, the By-laws, and the Certificate of Incorporation (or Certificate of Amendment) from the Virginia State Corporation Commission of the appropriate state office.</p> <p>For a facility located in Virginia that is operated by an out-of-state corporation, submit a copy of the Articles of Incorporation, the By-laws, and the Certificate of Authority issued by the Virginia State Corporation Commission.</p>

Attached	<p>Supervision Plan - Staff Information Sheet: A list of staff members with designated positions, qualifications, etc., in the same format as the attached form (see attached Staff Information Sheet - Form # 032-05-552)</p> <p>Supervision Plan - Narrative describing planned deviations, if any, from established staff:child ratios (see § 740)</p>
----------	---

Renewal Application

2. The facility is operated:

<input type="checkbox"/> For Profit	<input type="checkbox"/> Not For Profit
-------------------------------------	---

IV. RESIDENTIAL ENVIRONMENT

A. List all buildings below. Attach additional pages if necessary. In addition, a sketch of the grounds may be included, if desired.

Name or Number of Building	Date of Construction	Date of Occupancy	Function	Number of Residents

B. Name and address of owner of physical plant.

Name	
Address	

V. RECORDS

Identify the location of the following records:

Financial Records	
Personnel Records	
Resident's Records	

Attached	
	Job Descriptions corresponding to the positions listed on the staff information sheet (§ 210)
	Statement of Philosophy and Objectives of facility including a comprehensive description of the population to be served and the program to be offered. Please include any brochures/pamphlets distributed to the public and to agencies using your program (see § 110C).
	Criteria for Admission (see § 530)
	Documentation that Buildings and Equipment are Maintained According to V.A. Statewide Fire Prevention Code (see § 330B)
	Report of Sanitation Inspection (See attached form # 032-05-555 and § 330C.) Attach last completed inspection form or give date inspection is scheduled _____
	Financial Information - Private Facilities
	Operating Statement showing revenue and expenses for the past year.
	Working Budget showing projected revenue and expenses for the coming year.
	Balance Sheet showing assets and liabilities
	Financial Information - State and Local Government Operated Facilities
	A working budget showing appropriated revenue and projected expenses for the coming year (See § 20A4)
	Facilities with a Governing Board
	A list of all members of the Board, the Executive Committee, or, for a public agency, all members of the legally accountable governing body. Each list should include the name, address and office/title of each individual.
	Facilities Scheduled for a Self-Certification Study
	A completed "Self-Certification Study Compliance Form: Part A" (See attached form #032-05-583.)
	If the program has a wilderness program, a completed "Self-Certification Compliance Form: Part A: Primitive Campsites Supplement" (See attached form #032-05-585.)

VII. CERTIFICATIONS

In making this application, I certify that:

- I am in receipt of and have read a copy of the *Standards for Interagency Regulation of Children's Residential Facilities* and all applicable certification standards.
- It is my intent: (a) to comply with applicable statutes and the aforementioned *Interagency Standards* and certification standards, and (b) to maintain compliance with them.
- I understand that representatives of the Departments of Education, Juvenile Justice, Mental Health, Mental Retardation and Substance Abuse Services; and Social Services are authorized to investigate all aspects of facility operation, to inspect the facility, and to make any investigations necessary concerning the circumstances surrounding this application. I understand that if the facility is licensed/certified, the departments' representatives will make announced and unannounced visits to determine continuing compliance.
- I understand that sanitation inspections and documentation that buildings and equipment are maintained in accordance with the Virginia Statewide Fire Prevention Code are required on an annual basis, as applicable, and intend to obtain the required inspections and submit inspection reports.
- I understand that, in the event this application is denied, I have appeal rights as provided by the Administrative Process Act, § 9-6.14.1 et. Seq. of the *Code of Virginia*.
- To the best of my knowledge and belief, all information related to this application is accurate and complete. Additional information will be supplied as requested during investigation of this application and all subsequent investigations.

(Signature)

(Title)

(Name Printed)

(Date)

032065544.5 (01/96) renewal app 2/98

¹ A renewal application shall be signed by the facility's director, chief administrative officer, or Board President. A renewal application for a facility operated by a governmental organization may be signed by the person employed by the organization to manage the facility.

COMMONWEALTH OF VIRGINIA

INTERDEPARTMENTAL REGULATION OF CHILDREN'S RESIDENTIAL FACILITIES

RENEWAL APPLICATION FOR A FACILITY HOLDING A CONDITIONAL LICENSE/CERTIFICATE

Application is hereby made¹ to continue operation of a residential facility for children pursuant to provisions of the Code of Virginia.

I. IDENTIFYING DATA

Facility's Name: _____
Address: _____

II. OPERATIONAL STATUS

During the licensure/certification period, have there been any changes in the philosophy and objectives, target population, programs and services, policies and procedures, or other phase(s) of facility operation?
There have been no changes []
A copy or description of all changes is attached. []

III. CERTIFICATIONS

In making this application, I certify that:

- 1. I am in receipt of and have read a copy of the Standards for Interagency Interdepartmental Regulation of Children's Residential Facilities and all applicable certification standards.

¹ A completed application for a renewal of conditional licensure/certification should be submitted 30 days prior to expiration of the conditional license/certificate.

Renewal Application: Facility Holding a Conditional License/Certificate
Page 2 of 2 pages

- 2. It is my intent: (a) to comply with applicable statutes and the aforementioned Interagency Interdepartmental Standards and certification standards, and (b) to maintain compliance with them.
3. I understand that representatives of the Departments of Education; Juvenile Justice; Mental Health, Mental Retardation and Substance Abuse Services; and Social Services are authorized to investigate all aspects of facility operation, to inspect the facility, and to make any investigations necessary concerning the circumstances surrounding this application. I understand that if the facility is licensed/certified, the departments' representatives will make announced and unannounced visits to determine continuing compliance.
4. I understand that, in the event this application is denied, I have appeal rights as provided by the Administrative Process Act, § 9-6.14:1 et. seq. of the Code of Virginia.
5. To the best of my knowledge and belief, all information related to this application is accurate and complete. Additional information will be supplied as requested during investigation of this application and all subsequent investigations.

(Signature)² _____ (Position) _____

(Name Printed) _____ (Date) _____

032-05-588 (10/99) SPDFORMS/RENEWAPP.CON

² A renewal application shall be signed by the facility's director/chief administrative officer or board president. A renewal application for a facility operated by a governmental organization may be signed by the person employed by the organization to manage the facility.

EMERGENCY REGULATIONS

TITLE 4. CONSERVATION AND NATURAL RESOURCES

MARINE RESOURCES COMMISSION

Title of Regulation: 4 VAC 20-891-10 et seq. Pertaining to the Conch-Pot Fishery.

Statutory Authority: §§ 28.2-201 and 28.2-210 of the Code of Virginia.

Effective Dates: January 1, 2000, through January 31, 2000.

Summary:

This emergency regulation specifies harvest areas for the limited entry conch-pot fishery for channeled whelk in Virginia tidal waters. Its provisions are designed to provide for a viable commercial fishery, while minimizing the potential for overfishing the channeled whelk stock in Virginia.

Agency Contact: Copies of the regulation may be obtained from Deborah Cawthon, Marine Resources Commission, P.O. Box 756, Newport News, VA 23607, telephone (757) 247-2248.

CHAPTER 891.

PERTAINING TO THE CONCH-POT FISHERY.

4 VAC 20-891-10. Purpose.

The purpose of this chapter is to conserve Virginia channeled whelk stocks and minimize the potential for overfishing this channeled whelk stock.

4 VAC 20-891-20. Prohibitions.

It shall be unlawful for any person licensed under the provisions of 4 VAC 20-890-25 A as a commercial conch-pot fisherman to do any of the following unless otherwise specified:

- 1. Place, set or fish any conch pot in Virginia waters, other than the mainstem of Chesapeake Bay or in the Territorial Sea (up to the three-mile limit line).*
- 2. Place, set or fish any conch pot within any channel.*
- 3. Fail to inscribe each conch-pot buoy with the letter "W," followed by the last four numbers of the licensee's Commercial Registration License.*

4 VAC 20-891-30. Penalty.

As set forth in § 28.2-903 of the Code of Virginia, any person violating any provision of this chapter shall be guilty of a Class 3 misdemeanor, and a second or subsequent violation of any provision of this regulation committed by the same person within 12 months of a prior violation is a Class 1 misdemeanor.

/s/ William A. Pruitt
Commissioner



TITLE 12. HEALTH

DEPARTMENT OF HEALTH

Title of Regulation: 12 VAC 5-65-10 et seq. Rules and Regulations Governing the Durable Do Not Resuscitate Program.

Statutory Authority: §§ 32.1-12, 32.1-111.4, and 54.1-2987.1 of the Code of Virginia.

Effective Dates: January 3, 2000, through January 2, 2001.

Preamble:

These emergency regulations are necessary because an enactment clause of SB 1174 (1999) requires that the regulations be in effect within 280 days from the bill's enactment, and the regulations are not exempt under the provisions of subdivision C4 of § 9-6.14:4.1.

The proposed regulations governing Durable Do Not Resuscitate Orders specify the requirements for qualified health care personnel to withhold resuscitation measures from patients who have documented their decision not to be resuscitated. These regulations are necessary to provide easy identification of such patients in a uniform and consistent manner by all health care personnel and are authorized to be adopted using the emergency process of the Administrative Process Act by Senate Bill 1174 (1999).

Agency Contact: David E. Cullen, Jr., Department of Health, Office of Emergency Medical Services, 1538 East Parham Road, Richmond, VA 23228, telephone (804) 371-3500, FAX (804) 371-3543 or e-mail dcullen@vdh.state.va.us.

PART I. DEFINITIONS.

12 VAC 5-65-10. Definitions.

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

"Agent" means an adult appointed by a competent adult patient the declarant under an advance directive, executed or made in accordance with the provisions of Section 54.1-2983 of the Code of Virginia, to make health care decisions for him. The declarant may also appoint an adult to make, after the declarant's death, an anatomical gift of all or any part of his body pursuant to Article 2 (§ 32.1-289 et seq.) of Chapter 8 of Title 32.1.

"Attending physician" means the primary physician who has responsibility for the treatment and care of the patient.

"Authorized decision maker" means, in order of priority, designated agent, guardian or committee, spouse, adult child, parent, adult brother or sister, other relative in descending order of blood relationship, provided, however, that when two or more persons in the same class with equal decision-making priority are in disagreement, a majority authorization shall be controlling.

"Board" means the State Board of Health.

"Cardiac arrest" means the cessation of a functional heartbeat.

"Cardiopulmonary resuscitation" means medical procedures including cardiac compression, endotracheal intubation and other advanced airway management, artificial ventilation, and defibrillation, administration of cardiac resuscitation medications and related procedures.

"Commissioner" means the State Health Commissioner.

"Durable Do Not Resuscitate Order or Durable DNR Order" means an order written by the attending physician directing that a particular patient not be resuscitated, with such order including the patient's full legal name, the physician's signature, and the date issued. *a written physician's order issued pursuant to § 54.1-2987.1 in a form authorized by the Board to withhold cardiopulmonary resuscitation from an individual in the event of cardiac or respiratory arrest. For purposes of this chapter, cardiopulmonary resuscitation shall include cardiac compression, endotracheal intubation and other advanced airway management, artificial ventilation, and defibrillation and related procedures. As the terms "advance directive" and "Durable Do Not Resuscitate Order" are used in this article, a Durable Do Not Resuscitate Order is not and shall not be construed as an advance directive. When used in these regulations, the term "Durable DNR Order" shall include any authorized alternate form of identification issued in conjunction with an original Durable DNR Order form.*

"Emergency Medical Services (EMS)" means the services utilized in responding to the perceived individual needs for immediate medical care in order to prevent loss of life, aggravation of physiological or psychological illness or injury including any or all services which could be described as first response, basic life support, advanced life support, specialized life support, patient transportation, medical control, and rescue. rendered by an agency licensed by the Virginia Office of Emergency Medical Services, an equivalent agency licensed by another state or a similar agency of the federal government when operating within this Commonwealth.

"Emergency Medical Services Agency (EMS Agency)" means any person, as defined herein, firm, corporation, or organization licensed by the Board, which is properly engaged to engage in the business, service, or regular activity, whether or not for profit, of providing emergency transporting and/or rendering immediate medical care to such persons who are sick, injured, wounded or otherwise incapacitated or helpless.

~~"Emergency Medical Services Do Not Resuscitate Order" ("EMS/DNR Order") means a written physician's order in a form approved by the Board which authorizes qualified emergency medical services personnel [and hospital emergency department health care providers] to withhold or withdraw cardiopulmonary resuscitation from a particular patient in the event of cardiac or respiratory arrest.~~

~~"Emergency medical services personnel" ("EMS personnel") means persons responsible for the direct provision of emergency medical services in a given medical~~

~~emergency including any or all persons who could be described as a first responder, attendant, attendant-in-charge, or operator.~~

~~"Qualified emergency medical services personnel" means EMS personnel who are authorized to follow EMS/DNR Orders. This shall include any person (i) holding current certification to provide emergency medical patient care or treatment by the Department of Health, including those certified as EMS First Responders, Emergency Medical Technicians (EMT), EMT Shock/Trauma, EMT-Cardiac, and EMT-Paramedic and (ii) acting in accordance with EMS/DNR Order Implementation Protocols.~~

"Incapable of making an informed decision" means the inability of an adult patient, because of mental illness, mental retardation, or any other mental or physical disorder which precludes communication or impairs judgment and which has been diagnosed and certified in writing by his physician with whom he has a bona fide physician/patient relationship and a second physician or licensed clinical psychologist after personal examination of such patient, to make an informed decision about providing, withholding or withdrawing a specific medical treatment or course of treatment because he is unable to understand the nature, extent or probable consequences of the proposed medical decision, or to make a rational evaluation of the risks and benefits of alternatives to that decision. For purposes of this article, persons who are deaf, dysphasic or have other communication disorders, who are otherwise mentally competent and able to communicate by means other than speech shall not be considered incapable of making an informed decision.

~~"Hospital emergency department health care provider" means a licensed physician or a registered nurse working in a hospital emergency department."~~

"Persistent vegetative state" means a condition caused by injury, disease or illness in which a patient has suffered a loss of consciousness, with no behavioral evidence of self-awareness or awareness of surroundings in a learned manner, other than reflex activity of muscles and nerves for low level conditioned response, and from which, to a reasonable degree of medical probability, there can be no recovery.

"Person Authorized to Consent on the Patient's Behalf" means any person authorized by law to consent on behalf of the patient incapable of making an informed decision or, in the case of a minor child, the parent or parents having custody of the child or the child's legal guardian or as otherwise provided by law.

"Physician" means a person licensed to practice medicine in the Commonwealth of Virginia or in the jurisdiction where the treatment is to be rendered or withheld.

"Qualified emergency medical services personnel," means personnel as defined by § 32.1-111.1 when acting within the scope of their certification.

"Qualified Health Care Personnel" means any licensed person functioning in any facility, program or organization operated or licensed by the State Board of Health, or by the Department of Mental Health, Mental Retardation and

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Substance Abuse Services or operated, licensed or owned by another state agency. For the purposes of these regulations, this definition shall include any qualified emergency medical services personnel.

“Respiratory arrest” means cessation of breathing.

“Terminal condition” means a condition caused by injury, disease or illness from which, to a reasonable degree of medical probability, a patient cannot recover and (i) the patient’s death is imminent or (ii) the patient is in a persistent vegetative state, as defined in Section 54.1-2982 of the Code of Virginia.

PART II. PURPOSE AND APPLICABILITY.

12 VAC 5-65-20. Authority for Regulation.

Section 54.1-2987.1 of the Code of Virginia (1950), as amended, vests authority for the regulation of ~~EMS/DNR Durable DNR Orders in the State Board of Health and directs the Board to prescribe by regulation the procedures, including the requirements for forms, to authorize qualified health care personnel to follow Durable DNR Orders. All EMS DNR Orders issued or in effect between July 1, 1999 and the effective date of this regulation are to be considered Durable DNR Orders and shall remain valid until revoked.~~

~~Section 32.1-151 of the Code directs the Board to prescribe by regulation the procedures, including the requirements for forms, to authorize qualified EMS personnel [and hospital emergency department health care providers] to follow EMS/DNR Orders pursuant to Section 54.1-2987.1. Section 32.1-153 further states that the Board shall prescribe those qualifications necessary for authorization to follow EMS/DNR Orders pursuant to Section 54.1-2987.1. Section 32.1-12 provides broad authority to the Board to promulgate regulations necessary to carry out the provisions of the Health Title, Title 32.1 of the Code.~~

12 VAC 5-65-30. Purpose of Regulations.

The Board has promulgated these *emergency* regulations in order to ensure *timely and* appropriate implementation and application of the ~~EMS/DNR Durable DNR Order Statute, effective July 1, 1999.~~

12 VAC 5-65-40. Administration of Regulations.

These regulations shall be administered by the following:

A. *The State Board of Health* – The Board shall have the responsibility to promulgate and amend, as appropriate, regulations governing ~~EMS/DNR Durable DNR Orders;~~

B. *The State Health Commissioner* – The Commissioner, pursuant to his authority under Section 32.1-20, shall administer these regulations.

12 VAC 5-65-50. Application of Regulations.

These regulations shall have general application throughout the Commonwealth.

12 VAC 5-65-60. Effective Date of Regulations.

These regulations shall become effective ~~November 17, 1994~~ January 3, 2000.

PART III. REQUIREMENTS AND PROVISIONS.

Article 1. General Provisions.

12 VAC 5-65-70. ~~The Emergency Medical Services Durable Do Not Resuscitate Order Form.~~

~~The EMS/DNR Durable DNR Order Form shall be a unique document printed on distinctive security paper and sequentially numbered, as approved by the Board, and consistent with these regulations. The following requirements and provisions shall apply to the approved EMS/DNR Durable DNR Order Form.~~

A. *Content of the Form* – A valid ~~EMS/DNR Durable DNR Order Form shall include (i) the attending physician’s signed statement regarding the patient’s medical condition and his Do Not Resuscitate determination as set forth in the Order Form. (ii) the patient’s signed directives, or (iii) a designated agent’s or authorized decision maker’s signature, if applicable contain, from a physician with whom the patient has a bona fide physician/patient relationship, a do not resuscitate determination, signature and the date of issue, the signature of the patient or if applicable the person authorized to consent on the patient’s behalf.~~

B. *Effective Period for a Signed EMS/DNR Durable DNR Order Form* – A signed ~~EMS/DNR Durabel DNR Order shall be effective for no more than one year from the date the order is written. If the patient is still living at the end of that time, a new EMS/DNR Order Form may be executed and issued by the attending physician. remain valid until revoked.~~

C. *Original EMS/DNR Durable DNR Order Form* – ~~Only An original EMS/DNR Durable DNR Order Form, or an unaltered EMS/DNR Order Bracelet, as provided for in Section 3.2 of these regulations, or another Do Not Resuscitate Order, as provided for in Section 3.3, shall be valid for purposes of withholding or withdrawing cardiopulmonary resuscitation by qualified EMS personnel in the event of cardiac or respiratory arrest qualified health care personnel in the event of cardiac or respiratory arrest in any facility, program or organization operated or licensed by the State Board of Health, or by the Department of Mental Health, Mental Retardation and Substance Abuse Services or operated, licensed or owned by another state agency. The original Durable DNR Order Form shall be maintained and displayed at the patient’s current location or residence in one of the places designated on the form, or if traveling; should accompany the patient. The original form shall be maintained and displayed at the patient’s home in one of the places designated on the form or shall accompany the patient, if traveling. Copies of the EMS/DNR Durable DNR Order Form may be given to other providers or persons for information, with the express consent of the patient or the patient’s designated agent or authorized decision maker. the person authorized to consent on the patient’s behalf. However, such copies of the Durable DNR~~

Order Form are not valid for withholding cardiopulmonary resuscitation.

~~D. Revocation of an a EMS/DNR Durable DNR Order – An EMS/DNR Durable DNR Order may be revoked at any time by the patient (i) by physical cancellation or destruction of the EMS/DNR Durable DNR Order Form and /and or bracelet any alternate form of identification by the patient or another in his presence and at his direction; or (ii) by oral expression of intent to revoke. The EMS/DNR Durable DNR Order may also be revoked by the patient’s attending physician, or the designated agent or authorized decision maker for the patient the person authorized to consent on the patient’s behalf.~~

~~E. Distribution of EMS/DNR Durable DNR Order Forms - Approved, sequentially numbered Authorized EMS/DNR Durable DNR Forms, with instructions, shall be available only to physicians and to any facility, program or organization operated or licensed by the Board of Health, or by the Department of Mental Health, Mental Retardation and Substance Abuse Services or operated, licensed or owned by another state agency, through local Health Department offices and local hospitals, and to private physicians, on request. Other distribution points may be approved by the Commissioner to meet identified needs.~~

~~4.1 The EMS/DNR Order Bracelet~~

~~An EMS/DNR Order Bracelet, as approved by the Board, shall be issued with the EMS/DNR Order. Such EMS/DNR Order Bracelet shall be a uniquely designed, easily identifiable plastic identification bracelet containing the patient’s name, Social Security Number, attending physician’s name and telephone number, number of the EMS/DNR Order, and date of issuance and expiration of the Order. An intact, unaltered, current EMS/DNR Bracelet may be honored by qualified EMS personnel in lieu of an original EMS/DNR Order form.~~

12 VAC 5-65-80. Authorized Alternate Forms of Durable DNR Order Identification.

The Board may authorize the issuance of alternate forms of Durable DNR Order identification in conjunction with the issuance of Durable DNR Orders. Any such alternate forms of identification which are issued in conjunction with a Durable DNR Order may be utilized either to validate the Durable DNR Order or in place of an original Durable DNR Order Form issued in compliance with these regulations. Such alternate forms of Durable DNR Order identification shall be uniquely designed and easily identifiable. In order to be honored by qualified health care personnel in place of the original Durable DNR Order Form, such alternate forms of identification must contain the minimum information approved by the State Board of Health.

12 VAC 5-65-90. Other Do Not Resuscitate Orders.

~~As provided for in Section 54.1-2987.1 of the Code, nothing in that section or the definition of Emergency Medical Services Do Not Resuscitate orders provided in Section 54.1-2982 shall be construed to limit the issuance of or the authorization of physicians and those persons designated in Section 54.1-2901 to follow Do Not Resuscitate Orders other than Emergency Medical Services Do Not Resuscitate~~

~~Orders. In accordance with this provision, qualified Emergency Medical Services personnel or hospital emergency department health care providers may honor other Do Not Resuscitate Orders in a patient’s chart, provided such order includes the patient’s full legal name, the physician’s signature, and the date issued.~~

~~A. Nothing in these regulations or in the definition of Durable DNR Orders provided in Section 54.1-2982 shall be construed to limit the issuance of, or the authorization of physicians and those persons designated in Section 54.1-2901 to follow Do Not Resuscitate Orders other than Durable DNR Orders for patients who are currently admitted to a hospital or other health care facility in accordance with accepted medical practice.~~

~~B. Additionally, nothing in these regulations or in the definition of Durable DNR Orders provided in Section 54.1-2982 shall be construed to limit the authorization of qualified health care personnel to follow Do Not Resuscitate Orders other than Durable DNR Orders which are written by a physician, with whom the patient has a bona fide physician/patient relationship, for the duration of the patient’s transfer to another facility. Such other DNR Orders issued in this manner shall be valid until a Durable DNR Order or other valid DNR Order is issued by the physician assuming responsibility for the treatment and care of the patient, but not to exceed twenty-four (24) hours. Such other DNR Orders issued in this manner shall contain the information listed in 12 VAC 5-65-70 A. and the time of issuance by the physician.~~

~~C. Nothing in these regulations shall prohibit qualified health care personnel from following any direct verbal order issued by a licensed physician not to resuscitate a patient in cardiac or respiratory arrest when such physician is physically present in attendance of such patient.~~

~~D. The provisions of these regulations shall not authorize any qualified emergency medical services personnel or licensed health care provider or practitioner who is attending the patient at the time of cardiac or respiratory arrest to provide, continue, withhold or withdraw treatment if such provider or practitioner knows that taking such action is protested by the patient incapable of making an informed decision. No person shall authorize providing, continuing, withholding or withdrawing treatment pursuant to this section that such person knows, or upon reasonable inquiry ought to know, is contrary to the religious beliefs or basic values of a patient incapable of making an informed decision or the wishes of such patient fairly expressed when the patient was capable of making an informed decision. Further, this section shall not authorize the withholding of other medical interventions, such as intravenous fluids, oxygen or other therapies deemed necessary to provide comfort care or to alleviate pain.~~

PART IV. IMPLEMENTATION PROCEDURES.

12 VAC 5-65-100. Issuance of an EMS/DNR Order.

~~An EMS Do Not Resuscitate A Durable DNR Order may only be issued by an a attending physician with whom the patient has established a bona fide physician/patient relationship, as defined by the Board of Medicine in their~~

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~~current guidelines for a patient who has been diagnosed as having a terminal condition or other advanced chronic illness or condition which, in the physician's judgement, warrants the issuance of such order and when such patient or the patient's agent or authorized decision maker so directs. If the patient is not an adult, the physician shall carefully review with the parents or legal guardian all of the implications of this decision, only with the consent of the patient or, if the patient is a minor or is otherwise incapable of making an informed decision regarding consent for such an order, upon the request of and with the consent of the person authorized to consent on the patient's behalf.~~

The physician shall explain to the patient or ~~if pertinent, his agent or his family~~ the person authorized to consent on the patient's behalf, the alternatives available, including issuance of an ~~a~~ EMS/DNR Durable DNR Order. If the option of ~~an~~ a EMS/DNR Durable DNR Order is agreed upon, the ~~attending~~ physician shall have the following responsibilities.

- A. Obtain the signature of the patient or ~~designated agent or authorized decision maker or the spokesman for a majority of the highest class of decision makers. the person authorized to consent on the patient's behalf.~~
- B. Execute and date the Physician Order on the EMS/DNR Durable DNR Order Form.
- C. Issue the original EMS/DNR Durable DNR Order Form and ~~Bracelet and place Bracelet on patient.~~
- D. Explain how to, and ~~by whom~~ who may revoke the EMS/DNR Durable DNR Order ~~may be revoked.~~

12 VAC 5-65-110. EMS-Do-Not-Resuscitate Durable DNR Order Implementation Procedures.

Qualified ~~Emergency Medical Services~~ health care personnel shall ~~conform~~ comply with the following general procedures and published ~~State~~ Virginia EMS/DNR Durable DNR Order Implementation Protocols when ~~responding to a caring for a patient who is in cardiac or respiratory arrest and who is known or suspected to have an~~ a EMS/DNR Durable DNR Order in effect.

A. Initial Assessment and Intervention.

Perform routine patient assessment and resuscitation or intervention until the EMS/DNR Durable DNR Order or other DNR Order validity status is confirmed, as follows.

1. Determine ~~that the presence of a EMS/DNR Durable DNR Order Form Bracelet is intact and not defaced or that the original EMS/DNR Order Form [or other DNR Order] is present and current or an approved alternate form of Durable DNR identification.~~
2. Determine that the Durable DNR item is not altered.
3. Verify, through Driver's License or other identification with photograph and signature or by positive identification by a family member or other person that knows patient, that the patient in question is the one for whom the EMS/DNR Durable DNR Order or other DNR Order was issued.

4. If no EMS/DNR Durable DNR Order Bracelet or other approved form of identification is found, ask a family member or other person to look for the original EMS/DNR Durable DNR Order Form or other written DNR order.

5. If the EMS/DNR Durable DNR Order Bracelet or alternate form of identification is not intact or has been altered on the patient's arm or has been defaced, and if ~~no valid EMS/DNR ORDER Form or other DNR Order is produced,~~ the qualified health care personnel shall consider the EMS/DNR Durable DNR Order to be invalid.

B. Resuscitative Measures to be Withheld or Withdrawn.

In the event of cardiac or respiratory arrest of a patient with a valid EMS/DNR Durable DNR Order under the criteria set forth above, the following procedures should be withheld or withdrawn by qualified EMS ~~personnel or hospital emergency department health care providers~~ health care personnel unless otherwise directed by ~~the attending~~ a physician physically present at the patient location:

1. Cardiopulmonary Resuscitation (CPR)
2. Endotracheal Intubation or other advanced airway management
3. Artificial Ventilation
4. Defibrillation
5. Cardiac resuscitation medications
6. Continuation of related procedures, as defined prescribed by ~~attending physician~~ the patient's physician or medical protocols.

C. Procedures to Provide Comfort Care or to Alleviate Pain.

In order to provide comfort care or to alleviate pain for a patient with a valid EMS/DNR Durable DNR Order or other DNR Order, the following interventions may be provided, depending on the needs of the particular patient.

1. Airway (excluding intubation or advanced airway management)
2. Suction
3. Supplemental oxygen delivery devices
4. Pain medications (~~Advanced Life Support personnel only~~) or intravenous fluids
5. Control Bleeding control
6. Make patient comfortable Patient positioning or
7. Be supportive to patient and family ~~Other therapies deemed necessary to provide comfort care or to alleviate pain.~~

D. Revocation.

~~The patient, the attending physician, or the patient's designated agent or authorized decision maker may revoke the EMS/DNR Order at any time, as provided in Section 3.1 D. of these Regulations. If an EMS/DNR Order is revoked by~~

~~one of these authorized persons, EMS personnel shall resume full resuscitation and treatment of the patient.~~

These regulations shall not authorize any qualified health care personnel to follow a Durable DNR Order for any patient who is able to, and does, express to such qualified health care personnel the desire to be resuscitated in the event of cardiac or respiratory arrest.

If the patient is a minor or is otherwise incapable of making an informed decision, the expression of the desire that the patient be resuscitated by the person authorized to consent on the patient's behalf shall so revoke the qualified health care personnel's authority to follow a Durable DNR Order or other DNR Order.

The expression of such desire to be resuscitated prior to cardiac or respiratory arrest shall constitute revocation of the Order; however, a new Order may be issued upon consent of the patient or the person authorized to consent on the patient's behalf.

E. Documentation.

When following ~~an EMS/DNR~~ a Durable DNR Order or other DNR Order for a particular patient, ~~EMS~~ qualified health care personnel shall document ~~the response in the following way in the patient's medical record the care rendered or withheld in the following manner:~~

1. Use a standard ~~prehospital patient care report form~~ reporting documents (i.e. patient's chart, pre-hospital patient care report).
2. Describe assessment of patient's status.
3. Document which identification (~~EMS/DNR Durable DNR Order Form or Bracelet~~ other DNR Order or alternate form of identification) was used to confirm ~~EMS/DNR Durable DNR~~ status and that it was intact, not ~~defaced~~ altered, not canceled, or not officially revoked.
4. Record actual ~~EMS/DNR Durable DNR Order Number as well as~~ and name of patient's attending physician.
5. If ~~transporting the patient~~ the patient is being transported, keep original the ~~EMS/DNR Durable DNR Order Form~~ with the patient.

F. General Considerations.

The following general principles shall apply to implementation of ~~EMS Do Not Resuscitate Orders~~ Durable DNR Orders.

1. If there is misunderstanding with family members or others present at the ~~scene~~ patient's location or if there are other concerns about following the ~~EMS/DNR Durable DNR~~ Orders, contact the ~~attending~~ patient's physician or EMS medical control for guidance.
2. If there is any question about the validity of ~~an~~ a ~~EMS/DNR Durable DNR Order, resuscitate~~ resuscitative measures should be administered until the validity of the Durable DNR is established.

~~3. An EMS/DNR Order does not mean do not treat otherwise or do not provide appropriate care. Provide all possible comfort care and treat patient and family with care and concern.~~

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DURABLE DO NOT RESUSCITATE ORDER FORM

VIRGINIA DEPARTMENT OF HEALTH

Order Number: _____

Date Order Written: _____

Patient's Full Legal Name _____

Physician's Order

I, the undersigned, state that I have a bona fide physician/patient relationship with the patient named above. I have certified in the patient's medical record that he/she has directed that life-prolonging procedures be withheld or withdrawn in the event of cardiac or respiratory arrest.

I further certify: [must check 1 or 2]

1. The patient is CAPABLE of making an informed decision about providing, withholding or withdrawing a specific medical treatment or course of medical treatment. (Signature of patient is required; see reverse).
2. The patient is incapable of making an informed decision about providing, withholding or withdrawing a specific medical treatment or course of medical treatment because he/she is unable to understand the nature, extent or probable consequences of the proposed medical decision, or to make a rational evaluation of the risks and benefits of alternatives to that decision.

If you checked 2 above, (the patient is incapable of making an informed decision), check 1, 2 or 3 below:

1. The patient has executed a written advance directive which directs that life-prolonging procedures be withheld or withdrawn.
2. The patient has executed a written advanced directive which appoints a Person Authorized to Consent on the Patient's Behalf with authority to direct that life-prolonging procedures be withheld or withdrawn. (Signature of Person Authorized to Consent on the Patient's Behalf is required, see reverse).
3. The patient has not executed a written advance directive (living will or durable power of attorney for health care). (Signature of Person Authorized to Consent on the Patient's Behalf is required, see reverse).

I hereby direct any and all qualified health care personnel, commencing on the effective date noted above, to withhold cardiopulmonary resuscitation (cardiac compression, endotracheal intubation and other advanced airway management, artificial ventilation, defibrillation and related procedures) from the patient in the event of the patient's cardiac or respiratory arrest. I further direct such personnel to provide the patient other medical interventions, such as intravenous fluids, oxygen or other therapies deemed necessary to provide comfort care or alleviate pain.

Printed Name

Signature of Physician

Emergency Telephone Number: _____

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PATIENT'S SIGNATURE

I, the undersigned, hereby direct that in case of my cardiac or respiratory arrest, efforts at cardiopulmonary resuscitation not be initiated. I understand that I may revoke these directions at any time by physical cancellation or destruction of this form or by orally expressing a desire to be resuscitated to qualified health care personnel. I also understand that if qualified health care personnel have any doubts about the applicability or validity of this order, they will begin cardiopulmonary resuscitation.

Signature of Patient

Signature of Person Authorized to Consent on the Patient's Behalf

I, the undersigned, hereby certify that I am authorized to provide consent of the patient's behalf by virtue of my relationship to the patient as _____ (in order of priority: designated agent, guardian or committee, spouse, adult child, parent, adult brother or sister, other relative in descending order of blood relationship). In that capacity, I hereby direct that in case of the patient's cardiac or respiratory arrest, efforts at cardiopulmonary resuscitation not be initiated. I understand that I may revoke these directions at any time by physical cancellation or destruction of this form or by orally expressing a desire to be resuscitated to qualified health care personnel. I also understand that if qualified health care personnel have any doubts about the applicability or validity of this order, they will begin cardiopulmonary resuscitation of the patient.

Signature of Person Authorized to Consent on the Patient's Behalf

EMS PERSONNEL WILL LOOK FOR THIS ORDER IN THE FOLLOWING PLACES:

- ①** On the back of the door leading to the patient's bedroom,
- ②** On the bedside table, beside the patient's bed,
- ③** On the refrigerator, or
- ④** In the patient's wallet

/s/ James S. Gilmore, III
Governor
Date: December 30, 1999

VA.R. Doc. No. R00-80; Filed December 30, 1999, 5:10 p.m.

Emergency Regulations

Title of Regulation: 12 VAC 5-220-10 et seq. Virginia Medical Care Facilities Certificate of Public Need Rules and Regulations (amending 12 VAC 5-220-10, 12 VAC 5-220-90, 12 VAC 5-220-105, 12 VAC 5-220-160, 12 VAC 5-220-180, 12 VAC 5-220-200, 12 VAC 5-220-230, 12 VAC 5-220-270, 12 VAC 5-220-280, 12 VAC 5-220-355, 12 VAC 5-220-385, 12 VAC 5-220-420, and 12 VAC 5-220-470; repealing 12 VAC 5-220-150).

12 VAC 5-230-10 et seq. State Medical Facilities Plan (amending 12 VAC 5-230-10 and 12 VAC 5-230-20).

12 VAC 5-240-10 et seq. State Medical Facilities Plan: General Acute Care Services (amending 12 VAC 5-240-10, 12 VAC 5-240-20, and 12 VAC 5-240-30).

12 VAC 5-250-10 et seq. State Medical Facilities Plan: Perinatal Services (amending 12 VAC 5-250-30).

12 VAC 5-260-10 et seq. State Medical Facilities Plan: Cardiac Services (amending 12 VAC 5-260-30, 12 VAC 5-260-40, 12 VAC 5-260-80, and 12 VAC 5-260-100).

12 VAC 5-270-10 et seq. State Medical Facilities Plan: General Surgical Services (amending 12 VAC 5-270-30 and 12 VAC 5-270-40).

12 VAC 5-280-10 et seq. State Medical Facilities Plan: Organ Transplantation Services (amending 12 VAC 5-280-10 and 12 VAC 5-280-30).

12 VAC 5-290-10 et seq. State Medical Facilities Plan: Psychiatric and Substance Abuse Treatment Services (amending 12 VAC 5-290-10 and 12 VAC 5-290-30).

12 VAC 5-300-10 et seq. State Medical Facilities Plan: Mental Retardation Services (amending 12 VAC 5-300-30).

12 VAC 5-310-10 et seq. State Medical Facilities Plan: Medical Rehabilitation Services (amending 12 VAC 5-310-30).

12 VAC 5-320-10 et seq. State Medical Facilities Plan: Diagnostic Imaging Services (amending 12 VAC 5-320-50, 12 VAC 5-320-150, and 12 VAC 5-320-430).

12 VAC 5-340-10 et seq. State Medical Facilities Plan: Radiation Therapy Services (amending 12 VAC 5-340-30).

12 VAC 5-360-10 et seq. State Medical Facilities Plan: Nursing Home Services (amending 12 VAC 5-360-30 and 12 VAC 5-360-40).

Statutory Authority: §§ 32.1-12 and 32.1-102.2 of the Code of Virginia.

Effective Dates: January 3, 2000, through January 2, 2001.

Preamble:

This emergency action is necessary because Virginia law requires that the Board of Health promulgate regulations implementing the provision of the law within 280 days of the law's enactment. The General Assembly believes that an emergency exists with respect to the timing of review of requests for certificates of public need (COPN) and the consideration given to review of COPN requests for projects in rural areas. Amendments to the Code of Virginia as a result of the 1999 session of the General Assembly reduce the scope of the COPN program and reduce the time taken to issue decisions on regulated projects. The amendments also support the State Health Commissioner's consideration of the special needs of rural localities when making decisions on COPN projects

by emphasizing the need to consider barriers to health care access for populations in rural areas when weighing the relative cost and benefits of proposed projects. because the amendments to the law affect the COPN program and the State Medical Facilities Plan (SMFP), amendment to the COPN regulation and the SMFP are necessary.

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12 VAC 5-220-10. Definitions.

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

"Acquisition" means an expenditure of \$600,000 or more that changes the ownership of a medical care facility. It shall also include the donation or lease of a medical care facility. An acquisition of a medical care facility shall not include a capital expenditure involving the purchase of stock. See 12 VAC 5-220-120.

"Amendment" means any modification to an application which is made following the public hearing and prior to the issuance of a certificate and includes those factors that constitute a significant change as defined in this chapter. An amendment shall not include a modification to an application which serves to reduce the scope of a project.

"Applicant" means the owner of an existing medical care facility or the sponsor of a proposed medical care facility project submitting an application for a certificate of public need.

"Application" means a prescribed format for the presentation of data and information deemed necessary by the board to determine a public need for a medical care facility project.

"Application fees" means fees required for a project application and application for a significant change. Fees shall not exceed the lesser of 1.0% of the proposed capital expenditure or cost increase for the project or \$20,000.

"Board" means the State Board of Health.

"Capital expenditure" means any expenditure by or in behalf of a medical care facility which, under generally accepted accounting principles, is not properly chargeable as an expense of operation and maintenance. Such expenditure shall also include a series of related expenditures during a 12-month period or a financial obligation or a series of related financial obligations made during a 12-month period by or in behalf of a medical care facility. Capital expenditures need not be made by a medical care facility so long as they are made in behalf of a medical care facility by any person. See definition of "person."

"Certificate of public need" means a document which legally authorizes a medical care facility project as defined

herein and which is issued by the commissioner to the owner of such project.

"Clinical health service" means a single diagnostic, therapeutic, rehabilitative, preventive or palliative procedure or a series of such procedures that may be separately identified for billing and accounting purposes.

"Commissioner" means the State Health Commissioner who has authority to make a determination respecting the issuance or revocation of a certificate.

"Competing applications" means applications for the same or similar services and facilities which are proposed for the same planning district or medical service area and which are in the same review cycle. See 12 VAC 5-220-220.

"Completion" means conclusion of construction activities necessary for substantial performance of the contract.

"Construction" means the building of a new medical facility or the expansion, remodeling, or alteration of an existing medical care facility.

"Construction, initiation of" means that a project shall be considered under construction for the purpose of certificate extension determinations upon the presentation of evidence by the owner of: (i) a signed construction contract; (ii) the completion of short term financing and a commitment for long term (permanent) financing when applicable; (iii) the completion of predevelopment site work; and (iv) the completion of building foundations.

"Date of issuance" means the date of the commissioner's decision awarding a certificate of public need.

"Department" means the State Department of Health.

"Designated medically underserved areas" means (i) areas designated as medically underserved areas pursuant to § 32.1-122.5 of the Code of Virginia; (ii) federally designated Medically Underserved Areas (MUA); or (iii) federally designated Health Professional Shortage Areas (HPSA).

"Ex parte" means any meeting which takes place between (i) any person acting in behalf of the applicant or holder of a certificate of public need or any person opposed to the issuance or in favor of the revocation of a certificate of public need and (ii) any person who has authority in the department to make a decision respecting the issuance or revocation of a certificate of public need for which the department has not provided 10 days' written notification to opposing parties of the time and place of such meeting. An ex parte contact shall not include a meeting between the persons identified in (i) and staff of the department.

"Gamma knife surgery" means stereotactic radiosurgery, where stereotactic radiosurgery is the noninvasive therapeutic procedure performed by directing radiant energy beams from any source at a treatment target in the head to produce tissue destruction. See definition of "project."

"Health planning region" means a contiguous geographical area of the Commonwealth with a population base of at least 500,000 persons which is characterized by the availability of multiple levels of medical care services, reasonable travel time for tertiary care, and congruence with planning districts.

"Informal fact-finding conference" means a conference held pursuant to § 9-6.14:11 of the Code of Virginia.

"Inpatient beds" means accommodations within a medical care facility with continuous support services (such as food, laundry, housekeeping) and staff to provide health or health-related services to patients who generally remain in the medical care facility in excess of 24 hours. Such accommodations are known by varying nomenclatures including but not limited to: nursing beds, intensive care beds, minimal or self care beds, isolation beds, hospice beds, observation beds equipped and staffed for overnight use, and obstetric, medical, surgical, psychiatric, substance abuse, medical rehabilitation and pediatric beds, including pediatric bassinets and incubators. Bassinets and incubators in a maternity department and beds located in labor or birthing rooms, recovery rooms, emergency rooms, preparation or anesthesia inductor rooms, diagnostic or treatment procedures rooms, or on-call staff rooms are excluded from this definition.

"Medical care facility" means any institution, place, building, or agency, at a single site, whether or not licensed or required to be licensed by the board or the State Mental Health, Mental Retardation and Substance Abuse Services Board, whether operated for profit or nonprofit and whether privately owned or operated or owned or operated by a local governmental unit, (i) by or in which facilities are maintained, furnished, conducted, operated, or offered for the prevention, diagnosis or treatment of human disease, pain, injury, deformity or physical condition, whether medical or surgical, of two or more nonrelated mentally or physically sick or injured persons, or for the care of two or more nonrelated persons requiring or receiving medical, surgical, or nursing attention or services as acute, chronic, convalescent, aged, physically disabled, or crippled or (ii) which is the recipient of reimbursements from third party health insurance programs or prepaid medical service plans. For purposes of this chapter, only the following medical care facility classifications shall be subject to review:

1. General hospitals.
2. Sanitariums.
3. Nursing homes.
4. Intermediate care facilities.
5. Extended care facilities.
6. Mental hospitals.
7. Mental retardation facilities.
8. Psychiatric hospitals and intermediate care facilities established primarily for the medical, psychiatric or psychological treatment and rehabilitation of alcoholics or drug addicts.
9. Specialized centers or clinics or that portion of a physician's office developed for the provision of outpatient or ambulatory surgery, cardiac catheterization, computed tomographic (CT) scanning, gamma knife surgery, lithotripsy, magnetic resonance imaging (MRI), magnetic source imaging (MSI), positron emission

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tomographic (PET) scanning, radiation therapy, nuclear medicine imaging, or such other specialty services as may be designated by the board by regulation.

10. Rehabilitation hospitals.

11. Any facility licensed as a hospital.

For purposes of this chapter, the following medical care facility classifications shall not be subject to review:

1. Any facility of the Department of Mental Health, Mental Retardation and Substance Abuse Services.

2. Any nonhospital substance abuse residential treatment program operated by or contracted primarily for the use of a community services board under the Department of Mental Health, Mental Retardation and Substance Abuse Services Comprehensive Plan.

3. Any physician's office, except that portion of the physician's office which is described in subdivision 9 of the definition of "medical care facility."

4. The Woodrow Wilson Rehabilitation Center of the Virginia Department of Rehabilitative Services.

"Medical service area" means the geographic territory from which at least 75% of patients come or are expected to come to existing or proposed medical care facilities, the delineation of which is based on such factors as population characteristics, natural geographic boundaries, and transportation and trade patterns, and all parts of which are reasonably accessible to existing or proposed medical care facilities.

"Modernization" means the alteration, repair, remodeling, replacement or renovation of an existing medical care facility or any part thereto, including that which is incident to the initial and subsequent installation of equipment in a medical care facility. See definition of "construction."

"Operating expenditure" means any expenditure by or in behalf of a medical care facility which, under generally accepted accounting principles, is properly chargeable as an expense of operation and maintenance and is not a capital expenditure.

"Operator" means any person having designated responsibility and legal authority from the owner to administer and manage a medical care facility. See definition of "owner."

"Other plans" means any plan(s) which is formally adopted by an official state agency or regional health planning agency and which provides for the orderly planning and development of medical care facilities and services and which is not otherwise defined in this chapter.

"Owner" means any person who has legal responsibility and authority to construct, renovate or equip or otherwise control a medical care facility as defined herein.

"Person" means an individual, corporation, partnership, association or any other legal entity, whether governmental or private. Such person may also include the following:

1. The applicant for a certificate of public need;

2. The regional health planning agency for the health planning region in which the proposed project is to be located;

3. Any resident of the geographic area served or to be served by the applicant;

4. Any person who regularly uses health care facilities within the geographic area served or to be served by the applicant;

5. Any facility or health maintenance organization (HMO) established under § 38.2-4300 et seq. of the Code of Virginia which is located in the health planning region in which the project is proposed and which provides services similar to the services of the medical care facility project under review;

6. Third party payors who provide health care insurance or prepaid coverage to 5.0% or more patients in the health planning region in which the project is proposed to be located; and

7. Any agency which reviews or establishes rates for health care facilities.

"Physician's office" means a place, owned or operated by a licensed physician or group of physicians practicing in any legal form whatsoever, which is designed and equipped solely for the provision of fundamental medical care whether diagnostic, therapeutic, rehabilitative, preventive or palliative to ambulatory patients and which does not participate in cost-based or facility reimbursement from third party health insurance programs or prepaid medical service plans excluding pharmaceuticals and other supplies administered in the office. See definition of "medical care facility."

"Planning district" means a contiguous area within the boundaries established by the Department of Housing and Community Development as set forth in § 15.2-4202 of the Code of Virginia, *except that for purposes of this chapter, Planning District 23 shall be divided into two planning districts; Planning District 20 consisting of the counties of Isle of Wight and Southampton and cities of Chesapeake, Franklin, Norfolk, Portsmouth, Suffolk and Virginia Beach; and Planning District 21 consisting of the counties of James City and York and the cities of Hampton, Newport News, Poquoson and Williamsburg.*

"Predevelopment site work" means any preliminary activity directed towards preparation of the site prior to the completion of the building foundations. This includes, but is not limited to, soil testing, clearing, grading, extension of utilities and power lines to the site.

"Primary medical care services" means first-contact, whole-person medical and health services delivered by broadly trained, generalist physicians, nurses and other professionals, intended to include, without limitation, obstetrics/gynecology, family practice, internal medicine and pediatrics.

"Progress" means actions which are required in a given period of time to complete a project for which a certificate of public need has been issued. See 12 VAC 5-220-450, Demonstration of progress.

"Project" means:

1. The establishment of a medical care facility. See definition of "medical care facility."
2. An increase in the total number of beds or operating rooms in an existing or authorized medical care facility.
3. Relocation at the same site of 10 beds or 10% of the beds, whichever is less, from one existing physical facility to another in any two-year period; however, a hospital shall not be required to obtain a certificate for the use of 10% of its beds as nursing home beds as provided in § 32.1-132 of the Code of Virginia.
4. The introduction into any existing medical care facility of any new nursing home service such as intermediate care facility services, extended care facility services or skilled nursing facility services except when such medical care facility is an existing nursing home as defined in § 32.1-123 of the Code of Virginia.
5. The introduction into an existing medical care facility of any new cardiac catheterization, computed tomography (CT), gamma knife surgery, lithotripsy, magnetic resonance imaging (MRI), magnetic source imaging (MSI), medical rehabilitation, neonatal special care services, obstetrical services, open heart surgery, positron emission tomographic (PET) scanning, organ or tissue transplant service, radiation therapy, nuclear medicine imaging, psychiatric or substance abuse treatment, or such other specialty clinical services as may be designated by the board by regulation, which the facility has never provided or has not provided in the previous 12 months.
6. The conversion of beds in an existing medical care facility to medical rehabilitation beds or psychiatric beds.
7. The addition or replacement by an existing medical care facility of any medical equipment for the provision of cardiac catheterization, computed tomography (CT), gamma knife surgery, lithotripsy, magnetic resonance imaging (MRI), magnetic source imaging (MSI), open heart surgery, positron emission tomographic (PET) scanning, radiation therapy, or other specialized service designated by the board by regulation, ~~except for the replacement of any medical equipment identified in this part which the commissioner has determined to be an emergency in accordance with 12 VAC 5-220-150 or for which it has been determined that a certificate of public need has been previously issued for replacement of the specific equipment according to 12 VAC 5-220-105.~~
8. Any capital expenditure of \$5 million or more, not defined as reviewable in subdivisions 1 through 7 of this definition, by or in behalf of a medical care facility. However, capital expenditures between \$1 million and \$5 million shall be registered with the commissioner.

"Public hearing" means a proceeding conducted by a regional health planning agency at which an applicant for a certificate of public need and members of the public may present oral or written testimony in support or opposition to the application which is the subject of the proceeding and for

which a verbatim record is made. See subsection A of 12 VAC 5-220-230.

"Regional health plan" means the regional plan adopted by the regional health planning agency board.

"Regional health planning agency" means the regional agency, including the regional health planning board, its staff and any component thereof, designated by the Virginia Health Planning Board to perform health planning activities within a health planning region.

"Rural" means territory, population, and housing units that are classified as "rural" by the Bureau of the Census of the United States Department of Commerce, Economics and Statistics Administration.

"Schedule for completion" means a timetable which identifies the major activities required to complete a project as identified by the applicant and which is set forth on the certificate of public need. The timetable is used by the commissioner to evaluate the applicant's progress in completing an approved project.

"Significant change" means any alteration, modification or adjustment to a reviewable project for which a certificate of public need has been issued or requested following the public hearing which:

1. Changes the site;
2. Increases the capital expenditure amount authorized by the commissioner on the certificate of public need issued for the project by 10% or more;
3. Changes the service(s) proposed to be offered;
4. Extends the schedule for completion of the project beyond three years (36 months) from the date of certificate issuance or beyond the time period approved by the commissioner at the date of certificate issuance, whichever is greater. See 12 VAC 5-220-440 and 12 VAC 5-220-450.

"Standard review process" means the process utilized in the review of all certificate of public need requests with the exception of:

1. Certain bed relocation, equipment replacement, and new service introduction projects relocations as specified in 12 VAC 5-220-280;
2. Certain projects which involve an increase in the number of beds in which nursing facility or extended care services are provided as specified in 12 VAC 5-220-325.

"State Medical Facilities Plan" means the planning document adopted by the Board of Health which shall include, but not be limited to (i) methodologies for projecting need for medical care facility beds and services; (ii) statistical information on the availability of medical care facilities and services; and (iii) procedures, criteria and standards for review of applications for projects for medical care facilities and services. The most recent applicable State Medical Facilities Plan shall remain in force until any such chapter is amended, modified or repealed by the Board of Health.

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"Virginia Health Planning Board" means the statewide health planning body established pursuant to § 32.1-122.02 of the Code of Virginia which serves as the analytical and technical resource to the Secretary of Health and Human Resources in matters requiring health analysis and planning.

12 VAC 5-220-90. Annual report.

~~The department shall prepare and shall distribute upon request an annual report on all certificate of public need applications considered by the State Health Commissioner. Such report shall include a general statement of the findings made in the course of each review, the status of applications for which there is a pending determination, an analysis of the consistency of the decisions with the recommendation made by the regional health planning agency and an analysis of the costs of authorized projects.~~

The commissioner shall annually report to the Governor and the General Assembly on the status of Virginia's certificate of public need program. The report shall be issued by October 1 of each year and shall include, but need not be limited to:

A summary of the commissioner's actions during the previous fiscal year pursuant to Virginia's certificate of public need law;

A five-year schedule for analysis of all project categories which provides for the analysis of at least three project categories per year;

An analysis of the appropriateness of continuing the certificate of public need program for at least three project categories in accordance with the five-year schedule for analysis of all project categories;

An analysis of the effectiveness of the application review procedures used by the regional health planning agencies and the department required by § 32.1-102.6 which details the review time required during the past year for various project categories, the number of contested or opposed applications and the project categories of these contested or opposed projects, the number of applications upon which the regional health planning agencies have failed to act in accordance with the timelines of § 32.1-102.6 B, and the number of deemed approvals from the department because of their failure to comply with the timelines required by § 32.1-102.6 E, and any other data determined by the commissioner to be relevant to the efficient operation of the program;

An analysis of health care market reform in the Commonwealth and the extent, if any, to which such reform obviates the need for the certificate of public need program;

An analysis of the accessibility by the indigent to care provided by medical care facilities regulated pursuant to Virginia's certificate of public need law;

An analysis of the relevance of Virginia's certificate of public need law to the quality of care provided by medical care facilities regulated pursuant to this law; and

An analysis of equipment registrations required pursuant to § 32.1-102.1:1 including type of equipment, whether an addition or replacement, and the equipment costs.

12 VAC 5-220-105. Requirements for registration of the replacement of existing medical equipment which has been previously authorized as replacement equipment.

~~At least Within 30 days before of any person contracts contracting to make, or is otherwise legally obligated obligating to make, a capital expenditure for the replacement of medical equipment or otherwise acquiring replacement medical equipment for the provision of services listed in subdivision 7 of the definition of "project" in 12 VAC 5-220-10, which has been previously authorized for replacement through the issuance of a certificate of public need, the person shall notify register in writing such equipment replacement with the commissioner and the appropriate regional health planning agency. Such registration shall be made on forms provided by the department. The notification registration shall identify the specific unit of equipment to be replaced and the estimated capital cost of the replacement and shall include documentation that the equipment to be replaced has previously been authorized as replacement equipment through issuance of a certificate of public need, registered pursuant to former § 32.1-102.3:4 of the Code of Virginia or exempted pursuant to § 32.1-102.11 of the Code of Virginia.~~

12 VAC 5-220-150. Requirements for emergency replacement of equipment; notification of decision. (Repealed.)

~~The commissioner shall consider requests for emergency replacement of medical equipment as identified in Part 1 (12 VAC 5-220-10 et seq.) of this chapter. Such an emergency replacement is not a "project" of a medical care facility requiring a certificate of public need. To request authorization for such replacement, the owner of such equipment shall submit information to the commissioner to demonstrate that (i) the equipment is inoperable as a result of a mechanical failure, Act of God, or other reason which may not be attributed to the owner and the repair of such equipment is not practical or feasible; or (ii) the immediate replacement of the medical equipment is necessary to maintain an essential clinical health service or to assure the safety of patients or staff.~~

~~In determining that an application for emergency replacement of medical equipment is not a "project," the commissioner may condition an application on the provision of a level of care at a reduced rate to indigents or acceptance of patients receiving specialized care.~~

~~For purposes of this section, "inoperable" means that the equipment cannot be put into use, operation, or practice to perform the diagnostic or therapeutic clinical health service for which it was intended.~~

~~Within 15 days of the receipt of such requests the commissioner will notify the owner in the form of a letter of the decision to deny or authorize the emergency replacement of equipment.~~

12 VAC 5-220-160. Required considerations.

In determining whether a public need exists for a proposed project, the following factors shall be taken into account when applicable:

1. The recommendation and the reasons thereof of the appropriate regional health planning agency.
2. The relationship of the project to the applicable health plans of the regional health planning agency, and the Virginia Health Planning Board and the Board of Health.
3. The relationship of the project to the long-range development plan, if any, of the person applying for a certificate.
4. The need that the population served or to be served by the project has for the project, *including, but not limited to, the needs of rural populations in areas having distinct and unique geographic, socioeconomic, cultural, transportation, and other barriers to access to care.*
5. The extent to which the project will be accessible to all residents of the area proposed to be served.
6. The area, population, topography, highway facilities and availability of the services to be provided by the project in the particular part of the health planning region in which the project is proposed, *in particular, the distinct and unique geographic, socioeconomic, cultural, transportation, and other barriers to access to care.*
7. Less costly or more effective alternate methods of reasonably meeting identified health service needs.
8. The immediate and long-term financial feasibility of the project.
9. The relationship of the project to the existing health care system of the area in which the project is proposed; *however, for projects proposed in rural areas, the relationship of the project to the existing health care services in the specific rural locality shall be considered.*
10. The availability of resources for the project.
11. The organizational relationship of the project to necessary ancillary and support services.
12. The relationship of the project to the clinical needs of health professional training programs in the area in which the project is proposed.
13. The special needs and circumstances of an applicant for a certificate, such as a medical school, hospital, multidisciplinary clinic, specialty center or regional health service provider, if a substantial portion of the applicant's services or resources or both is provided to individuals not residing in the health planning region in which the project is to be located.
14. The need and the availability in the health planning region for osteopathic and allopathic services and facilities and the impact on existing and proposed institutional training programs for doctors of osteopathy and medicine at the student, internship, and residency training levels.

15. The special needs and circumstances of health maintenance organizations. When considering the special needs and circumstances of health maintenance organizations, the commissioner may grant a certificate for a project if the commissioner finds that the project is needed by the enrolled or reasonably anticipated new members of the health maintenance organizations or the beds or services to be provided are not available from providers which are not health maintenance organizations or from other health maintenance organizations in a reasonable and cost effective manner.

16. The special needs and circumstances for biomedical and behavioral research projects which are designed to meet a national need and for which local conditions offer special advantages.

17. The costs and benefits of the construction associated with the proposed project.

18. The probable impact of the project on the costs of and charges for providing health services by the applicant for a certificate and on the costs and charges to the public for providing health services by other persons in the area.

19. Improvements or innovations in the financing and delivery of health services which foster competition and serve to promote quality assurance and cost effectiveness.

20. In the case of health services or facilities proposed to be provided, the efficiency and appropriateness of the use of existing services and facilities in the area similar to those proposed, *including, in the case of rural localities, any distinct and unique geographic, socioeconomic, cultural, transportation, and other barriers to access to care.*

12 VAC 5-220-180. Application forms.

A. Letter of intent. An applicant shall file a letter of intent with the commissioner to request appropriate application forms, and submit a copy of that letter to the appropriate regional health planning agency, by the later of (i) 30 days prior to the submission of an application for a project included within a particular batch group or (ii) 10 days after the first letter of intent is filed for a project within a particular batch group for the same or similar services and facilities which are proposed for the same planning district or medical service area. The letter shall identify the owner, the type of project for which an application is requested, and the proposed scope (size) and location of the proposed project. The department shall transmit application forms to the applicant within seven days of the receipt of the letter of intent. A letter of intent filed with the department shall be considered void one year after the date of receipt of such letter. (See 12 VAC 5-220-310 C.)

B. Application fees. The department shall collect application fees for applications that request a certificate of public need. The fee required for an application shall be ~~computed as follows:~~ *one percent of the proposed expenditure for the project, but not less than \$1,000 and no more than \$20,000.*

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1. For projects with a capital expenditure of \$0 up to and including \$1,000,000, the application fee is the greater of 4.0% of the total capital expenditure or \$1,000;

2. For projects with a capital expenditure of \$1,000,001 up to and including \$2,000,000, the application fee is \$10,000 plus .25% of the capital expenditure above \$1,000,000;

3. For projects with a capital expenditure of \$2,000,001 up to and including \$3,000,000, the application fee is \$12,500 plus .25% of the capital expenditure above \$2,000,000;

4. For projects with a capital expenditure of \$3,000,001 up to and including \$4,000,000, the application fee is \$15,000 plus .25% of the capital expenditure above \$3,000,000;

5. For projects with a capital expenditure of \$4,000,001 up to and including \$5,000,000, the application fee is \$17,500 plus .25% of the capital expenditure above \$4,000,000; and

6. For projects with a capital expenditure of \$5,000,001 or more, the application fee is \$20,000.

No application will be deemed to be complete for review until the required application fee is paid. (See 12 VAC 5-220-310 C.)

C. Filing application forms. Applications must be submitted at least 40 days prior to the first day of a scheduled review cycle to be considered for review in the same cycle. All applications including the required data and information shall be prepared in triplicate; two copies to be submitted to the department; one copy to be submitted to the appropriate regional health planning agency. *In order to verify the date of the department's and the appropriate regional health planning agency's receipt of the application, the applicant shall transmit the document by certified mail or a delivery service, return receipt requested, or shall deliver the document by hand, with a signed receipt to be provided.* No application shall be deemed to have been submitted until required copies have been received by the department and the appropriate regional health planning agency. (See 12 VAC 5-220-200.)

12 VAC 5-220-200. One hundred twenty-day review cycle.

The department shall review the following groups of completed applications in accordance with the following 120-day scheduled review cycles and the following descriptions of projects within each group, except as provided for in 12 VAC 5-220-220.

B	Open Heart Surgery/Cardiac Catheterization Catheterization/Ambulatory Surgery Centers/Operating Room Additions/Transplant Services	Mar. 10 Sep. 10	Jul. 8 Jan. 8
C	Psychiatric Facilities/Substance Abuse Treatment/Mental Retardation Facilities	Apr. 10 Oct. 10	Aug. 8 Feb. 7
D	Diagnostic Imaging Facilities/Services	May 10 Nov. 10	Sep. 7 Mar. 10
E	Medical Rehabilitation Beds/Services	June 10 Dec. 10	Oct. 8 Apr. 9
F	Selected Therapeutic Facilities/Services	July 10 Jan. 10	Nov. 7 May 10
G	Nursing Home Beds at Retirement Communities/ Bed Relocations/ Miscellaneous Expenditures by Nursing Homes	Jan. 10 Mar. 10 May 10 July 10 Sep. 10 Nov. 10	May 10 July 8 Sep. 7 Nov. 7 Jan. 8 Mar. 10

Batch Group A includes:

1. The establishment of a general hospital.
2. An increase in the total number of general acute care beds in an existing or authorized general hospital.
3. The relocation at the same site of 10 general hospital beds or 10% of the general hospital beds of a medical care facility, whichever is less, from one existing physical facility to any other in any two-year period if such relocation involves a capital expenditure of \$5 million or more (see 12 VAC 5-220-280).
4. The introduction into an existing medical care facility of any new neonatal special care or obstetrical services which the facility has not provided in the previous 12 months.
5. Any capital expenditure of \$5 million or more, not defined as a project category included in Batch Groups B through G, by or in behalf of a general hospital.

Batch Group B includes:

1. The establishment of a specialized center, clinic, or portion of a physician's office developed for the provision of outpatient or ambulatory surgery or cardiac catheterization services.
2. An increase in the total number of operating rooms in an existing medical care facility or establishment of operating rooms in a new facility.
3. The introduction into an existing medical care facility of any new cardiac catheterization, open heart surgery, or organ or tissue transplant services which the facility has not provided in the previous 12 months.

BATCH GROUP	GENERAL DESCRIPTION	REVIEW CYCLE	
		Begins	Ends
A	General Hospitals/Obstetrical Services/Neonatal Special Care Services	Feb. 10 Aug. 10	June 10 Dec. 8

4. The addition or replacement by an existing medical care facility of any medical equipment for the provision of cardiac catheterization services ~~unless a certificate of public need authorizing replacement of equipment was previously issued for the specific unit of equipment to be replaced.~~

5. Any capital expenditure of \$5 million or more, not defined as a project category in Batch Group A or Batch Groups C through G, by or in behalf of a specialized center, clinic, or portion of a physician's office developed for the provision of outpatient or ambulatory surgery or cardiac catheterization services.

6. Any capital expenditure of \$5 million or more, not defined as a project category in Batch Group A or Batch Groups C through G, by or in behalf of a medical care facility, which is primarily related to the provision of surgery, cardiac catheterization, open heart surgery, or organ or tissue transplant services.

Batch Group C includes:

1. The establishment of a mental hospital, psychiatric hospital, intermediate care facility established primarily for the medical, psychiatric or psychological treatment and rehabilitation of alcoholics or drug addicts, or mental retardation facility.

2. An increase in the total number of beds in an existing or authorized mental hospital, psychiatric hospital, intermediate care facility established primarily for the medical, psychiatric or psychological treatment and rehabilitation of alcoholics or drug addicts, or mental retardation facility.

3. An increase in the total number of mental hospital, psychiatric hospital, substance abuse treatment and rehabilitation, or mental retardation beds in an existing or authorized medical care facility which is not a dedicated mental hospital, psychiatric hospital, intermediate care facility established primarily for the medical, psychiatric or psychological treatment and rehabilitation of alcoholics or drug addicts, or mental retardation facility.

4. The relocation at the same site of 10 mental hospital, psychiatric hospital, substance abuse treatment and rehabilitation, or mental retardation beds or 10% of the mental hospital, psychiatric hospital, substance abuse treatment and rehabilitation, or mental retardation beds of a medical care facility, whichever is less, from one existing physical facility to another in any two-year period *if such relocation involves a capital expenditure of \$5 million or more (see 12 VAC 5-220-280).*

5. The introduction into an existing medical care facility of any new psychiatric or substance abuse treatment service which the facility has not provided in the previous 12 months.

6. Any capital expenditure of \$5 million or more, not defined as a project category in Batch Groups A and B or Batch Groups D through G, by or in behalf of a mental hospital, psychiatric hospital, intermediate care facility established primarily for the medical, psychiatric or

psychological treatment and rehabilitation of alcoholics or drug addicts, or mental retardation facility.

7. Any capital expenditure of \$5 million or more, not defined as a project category in Batch Groups A and B or Batch Groups D through G, by or in behalf of a medical care facility, which is primarily related to the provision of mental health, psychiatric, substance abuse treatment or rehabilitation, or mental retardation services.

Batch Group D includes:

1. The establishment of a specialized center, clinic, or that portion of a physician's office developed for the provision of computed tomographic (CT) scanning, magnetic resonance imaging (MRI), magnetic source imaging (MSI), positron emission tomographic (PET) scanning, or nuclear medicine imaging.

2. The introduction into an existing medical care facility of any new computed tomography (CT), magnetic resonance imaging (MRI), magnetic source imaging (MSI), positron emission tomographic (PET) scanning, or nuclear medicine imaging services which the facility has not provided in the previous 12 months.

3. The addition or replacement by an existing medical care facility of any equipment for the provision of computed tomography (CT), magnetic resonance imaging (MRI), magnetic source imaging (MSI), or positron emission tomographic (PET) scanning ~~unless a certificate of public need authorizing replacement of equipment was previously issued for the specific unit of equipment to be replaced.~~

4. Any capital expenditure of \$5 million or more, not defined as a project category in Batch Groups A through C or Batch Groups E through G, by or in behalf of a specialized center, clinic, or that portion of a physician's office developed for the provision of computed tomographic (CT) scanning, magnetic resonance imaging (MRI), magnetic source imaging (MSI), positron emission tomographic (PET) scanning, or nuclear medicine imaging.

5. Any capital expenditure of \$5 million or more, not defined as a project category in Batch Groups A through C or Batch Groups E through G, by or in behalf of a medical care facility, which is primarily related to the provision of computed tomographic (CT) scanning, magnetic resonance imaging (MRI), magnetic source imaging (MSI), positron emission tomographic (PET) scanning, or nuclear medicine imaging.

Batch Group E includes:

1. The establishment of a medical rehabilitation hospital.

2. An increase in the total number of beds in an existing or authorized medical rehabilitation hospital.

3. An increase in the total number of medical rehabilitation beds in an existing or authorized medical care facility which is not a dedicated medical rehabilitation hospital.

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4. The relocation at the same site of 10 medical rehabilitation beds or 10% of the medical rehabilitation beds of a medical care facility, whichever is less, from one existing physical facility to another in any two-year period, *if such relocation involves a capital expenditure of \$5 million or more (see 12 VAC 220-280).*

5. The introduction into an existing medical care facility of any new medical rehabilitation service which the facility has not provided in the previous 12 months.

6. Any capital expenditure of \$5 million or more, not defined as a project category in Batch Groups A through D or Batch Groups F and G, by or in behalf of a medical rehabilitation hospital.

7. Any capital expenditure of \$5 million or more, not defined as a project category in Batch Groups A through D or Batch Groups F and G, by or in behalf of a medical care facility, which is primarily related to the provision of medical rehabilitation services.

Batch Group F includes:

1. The establishment of a specialized center, clinic, or that portion of a physician's office developed for the provision of gamma knife surgery, lithotripsy, or radiation therapy.

2. Introduction into an existing medical care facility of any new gamma knife surgery, lithotripsy, or radiation therapy services which the facility has never provided or has not provided in the previous 12 months.

3. The addition or replacement by an existing medical care facility of any medical equipment for the provision of gamma knife surgery, lithotripsy, or radiation therapy ~~unless a certificate of public need authorizing replacement of equipment was previously issued for the specific unit of equipment to be replaced.~~

4. Any capital expenditure of \$5 million or more, not defined as a project in Batch Groups A through E or Batch Group G, by or in behalf of a specialized center, clinic, or that portion of a physician's office developed for the provision of gamma knife surgery, lithotripsy, or radiation therapy.

5. Any capital expenditure of \$5 million or more, not defined as a project in Batch Groups A through E or Batch Group G, by or in behalf of a medical care facility, which is primarily related to the provision of gamma knife surgery, lithotripsy, or radiation therapy.

Batch Group G includes:

1. The establishment of a nursing home, intermediate care facility, or extended care facility of a continuing care retirement community by a continuing care provider registered with the State Corporation Commission pursuant to Chapter 49 (§ 38.2-4900 et seq.) of Title 38.2 of the Code of Virginia.

2. The establishment of a nursing home, intermediate care facility, or extended care facility that does not involve an increase in the number of nursing home facility beds ~~in Virginia within a planning district.~~

3. An increase in the total number of beds in an existing or authorized nursing home, intermediate care facility, or extended care facility of a continuing care retirement community by a continuing care provider registered with the State Corporation Commission pursuant to Chapter 49 (§ 38.2-4900 et seq.) of Title 38.2 of the Code of Virginia.

4. An increase in the total number of beds in an existing or authorized nursing home, intermediate care facility, or extended care facility that does not involve an increase in the number of nursing home facility beds ~~in Virginia within a planning district.~~

5. The relocation at the same site of 10 nursing home, intermediate care facility, or extended care facility beds or 10% of the nursing home, intermediate care facility, or extended care facility beds of a medical care facility, whichever is less, from one physical facility to another in any two-year period, *if such relocation involves a capital expenditure of \$5 million or more (see 12 VAC 5-220-280).*

6. Any capital expenditure of \$5 million or more, not defined as a project category in Batch Groups A through F, by or in behalf of a nursing home, intermediate care facility, or extended care facility, which does not increase the total number of beds of the facility.

7. Any capital expenditure of \$5 million or more, not defined as a project category in Batch Groups A through F, by or in behalf of a medical care facility, which is primarily related to the provision of nursing home, intermediate care, or extended care services, and does not increase the number of beds of the facility.

12 VAC 5-220-230. Review of complete application.

A. Review cycle. At the close of the work day on the ~~40th~~ *tenth* day of the month, the department shall provide written notification to applicants specifying the acceptance date and review schedule of completed applications, including a ~~proposed~~ *the* date for any informal fact-finding conference that may be held *between the eightieth and ninetieth day of the review cycle.* The regional health planning agency shall conduct no more than two meetings, one of which must be a public hearing conducted by the regional health planning agency board or a subcommittee of the board and provide applicants with an opportunity, prior to the vote, to respond to any comments made about the project by the regional health planning agency staff, any information in a staff report, or comments by those voting in completing its review and recommendation by the ~~60th~~ *sixtieth* day of the cycle. By the ~~70th~~ *seventieth* day of the review cycle, the department shall complete its review and recommendation of an application and transmit the same to the applicant(s) and other appropriate persons. ~~Such notification shall also include the proposed date, time and place of any informal fact-finding conference.~~ *By the seventy-fifth day of the review cycle, the department shall transmit to the applicant and the appropriate other persons its determination whether an informal fact-finding conference is necessary.*

An informal fact-finding conference shall be held when (i) determined necessary by the department or (ii) requested by

any person ~~showing seeking to demonstrate~~ good cause. Any person seeking to demonstrate good cause shall file, no later than ~~40~~ four days after the department has completed its review and recommendation of an application and has transmitted the same to the applicants and to persons who have prior to the issuance of the report requested a copy in writing, written notification with the commissioner, applicant(s) and other competing applicants, and regional health planning agency stating the grounds for good cause and providing the factual basis therefor under oath.

For purposes of this section, "good cause" means that (i) there is significant, relevant information not previously presented at and not available at the time of the public hearing, (ii) there have been significant changes in factors or circumstances relating to the application subsequent to the public hearing, or (iii) there is a substantial material mistake of fact or law in the department staff's report on the application or in the report submitted by the regional health planning agency. See § 9-6.14:11 of the Code of Virginia. ~~The commissioner shall within five days of receipt review any filing that claims good cause and determine whether the facts presented in writing demonstrate a likelihood that good cause will be shown. If there is such a likelihood, an informal fact-finding conference shall be held on the project and on the issue of whether good cause was shown. If such a likelihood is not demonstrated, the person asserting good cause may seek further to demonstrate good cause at any informal fact-finding conference otherwise scheduled on the project. If no conference has otherwise been scheduled, an informal conference shall be scheduled promptly to ascertain whether facts exist that demonstrate good cause. Within five days of any such conference, the commissioner shall issue his final decision on whether good cause has been shown. No informal fact-finding conference shall be required on any project solely upon the request of a person claiming good cause unless the commissioner finds that good cause has been shown. Where good cause is not found by the commissioner to have been shown, the person claiming it may not participate as a party to the case in any administrative proceeding.~~

~~The commissioner shall render a final determination by the 120th day of the review cycle. Unless agreed to by the applicant and, when applicable, the parties to any informal fact-finding conference held, the review schedule shall not be extended.~~

B. Time period for review. The review period shall begin on the first day of the applicable review cycle within which an application is determined to be complete, in accordance with scheduled batch review cycles described in 12 VAC 5-220-200. If the application is not determined to be complete for the applicable batch cycle within forty calendar days from the date of submission, the application may be refiled in the next applicable batch cycle.

If the regional health planning agency has not completed its review by the sixtieth day of the review cycle, or such other period in accordance with the applicant's request for extension, and submitted its recommendation within ten calendar days after the completion of its review, the Department shall, on the eleventh day after expiration of the

regional health planning agency's review period, proceed as if the regional health planning agency has recommended approval of the proposed project.

In any case in which an informal fact-finding conference is not held, the project record shall be closed on the earlier of (i) the date established for holding the informal fact-finding conference or (ii) the date that the Department determines that an informal fact-finding conference is not necessary (See 12 VAC 5 220-230 A).

In any case in which an informal fact-finding conference is held, a date shall be established for closing of the record which shall not be more than forty-five calendar days after the date for holding the informal fact-finding conference. Any informal fact-finding conference shall be to consider the information and issues in the record and shall not be a de novo review.

C. Determination by the Commissioner. If a determination whether a public need exists for a project is not made by the commissioner within fifteen calendar days of the closing of the record, the commissioner shall notify the attorney general, in writing, that the application shall be deemed approved unless the determination shall be made within forty calendar days of the closing of the record. The commissioner shall transmit copies of such notice to the attorney general and to other parties to the case and any person petitioning for good cause standing.

In any case when a determination whether a public need exists for a project is not made by the commissioner within forty calendar days after closing of the record, the Department shall immediately refund fifty-percent of the application fee paid in accordance with 12 VAC 5-220-180 B, and the application shall be deemed approved and a certificate shall be granted.

If a determination whether a public need for a project exists is not made by the commissioner within fifteen calendar days of the closing of the record, any person who has filed an application competing in the relevant batch review cycle or who has filed an application in response to the relevant Request for Applications issued pursuant to 12 VAC 5-220-355 may, prior to the application being deemed approved, institute a proceeding for mandamus against the commissioner in any circuit court of competent jurisdiction.

If the court issues a writ of mandamus against the commissioner, the Department shall be liable for the costs of the action together with reasonable attorney's fee as determined by the court.

Upon the filing of a petition for a writ of mandamus, the relevant application shall not be deemed approved, regardless of the lapse of time between the closing of the record and the final decision.

Deemed approvals shall be construed as the commissioner's case decision on the application pursuant to the Administrative Process Act (§ 9-6.14:1 et seq.) and shall be subject to judicial review on appeal as the commissioner's case decision in accordance with such act.

Any person who has sought to participate in the Department's review of such deemed-to-be-approved

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application as a person showing good cause who has not received a final determination from the commissioner concerning the good cause petition prior to the date on which the application was approved, shall be deemed to be a person showing good cause for purposes of appeal of a deemed-to-be-approved certificate.

The applicant, and only the applicant, shall have the authority to extend any of the time periods for review of the application, which are specified in 12 VAC 5-220-230.

For purposes of project review, any scheduled deadlines that fall on a weekend or state holiday shall be advanced to the next work day.

~~B.~~ *D.* Regional health planning agency required notifications. Upon notification of the acceptance date of a complete application as set forth in subsection A of this section, the regional health planning agency shall provide written notification of its review schedule to the applicant. The regional health planning agency shall notify health care providers and specifically identifiable consumer groups who may be affected by the proposed project directly by mail and shall also give notice of the public hearing in a newspaper of general circulation in such county or city wherein a project is proposed or a contiguous county or city at least nine days prior to such public hearing. Such notification by the regional health planning agency shall include: (i) the date and location of the public hearing which shall be conducted on the application except as otherwise provided in this chapter, in the county or city wherein a project is proposed or a contiguous county or city and (ii) the date, time and place the final recommendation of the regional health planning agency shall be made. The regional health planning agency shall maintain a verbatim record which may be a tape recording of the public hearing. Such public hearing record shall be maintained for at least a one-year time period following the final decision on a certificate of public need application. See definition of "public hearing."

~~G.~~ *E.* Ex parte contact. After commencement of a public hearing and before a final decision is made, there shall be no ex parte contacts between the State Health Commissioner and any person acting on behalf of the applicant or holder of a certificate or any person opposed to the issuance or in favor of revocation of a certificate of public need, unless written notification has been provided. See definition of "ex parte."

12 VAC 5-220-270. Action on an application.

A. Commissioner's responsibility. Decisions as to approval or disapproval of applications or a portion thereof for certificates of public need shall be rendered by the commissioner. Any decision to issue or approve the issuance of a certificate shall be consistent with the most recent applicable provisions of the State Medical Facilities Plan. However, if the commissioner finds, upon presentation of appropriate evidence, that the provisions of either such plan are *not relevant to a rural locality's needs*, inaccurate, outdated, inadequate or otherwise inapplicable, the commissioner, consistent with such finding, may issue or approve the issuance of a certificate and shall initiate procedures to make appropriate amendments to such plan.

Conditions of approval. The commissioner may condition the approval of an application for a project (i) on the agreement by the applicant to provide an acceptable level of care at a reduced rate to indigents, or (ii) on the agreement of the applicant to provide care to persons with special needs, or (iii) upon the agreement of the applicant to facilitate the development and operation of primary medical care services in designated medically underserved areas of the applicant's service area. The terms of such agreements shall be specified in writing prior to the commissioner's decision to approve a project. Any person willfully refusing, failing or neglecting to honor such agreement shall be subject to a civil penalty of \$100 per violation per day from the date of receipt from the department of written notice of noncompliance until the date of compliance. Upon information and belief that a person has failed to honor such agreement in accordance with this provision, the department shall notify the person in writing and 15 days shall be provided for response in writing including a plan for immediate correction. In the absence of an adequate response or necessary compliance or both, a judicial action shall be initiated in accordance with the provisions of § 32.1-27 of the Code of Virginia.

~~B.~~ Notification process-extension of review time. The commissioner shall make a final determination on an application for a certificate of public need and provide written notification detailing the reasons for such determination to the applicant with a copy to the regional health planning agency *within the time frames specified in subsection B of 12 VAC 5-220-230 unless authorization is given by the applicant(s) to extend the time period. by the 120th day of the review cycle unless an extension is agreed to by the applicant and an informal fact-finding conference described in 12 VAC 5-220-230 is held. When an informal fact-finding conference is held, the 120-day review cycle shall not be extended unless agreed to by the parties to the conference.* Such written notification shall also reference the factors and bases considered in making a decision on the application and, if applicable, the remedies available for appeal of such decision and the progress reporting requirements. The commissioner may approve a portion of a project provided the portion to be approved is agreed to by the applicant following consultation, which may be subject to the ex parte provision of this chapter, between the commissioner and the applicant.

12 VAC 5-220-280. Applicability.

~~Projects of medical care facilities that satisfy the criteria set forth below as determined by the State Health Commissioner shall be subject to an expedited review process: involve relocation at the same site of 10 beds or 10% of the beds, whichever is less from one existing physical facility to another, when the cost of such relocation is less than \$5 million, shall be subject to an expedited review process.~~

- ~~1. Relocation at the same site of 10 beds or 10% of the beds, whichever is less, from one existing physical facility to another when the cost of such relocation is less than \$5 million.~~
- ~~2. The replacement at the same site by an existing medical care facility of any medical equipment for the provision of cardiac catheterization, computed tomography (CT), lithotripsy, magnetic resonance~~

~~imaging (MRI), open heart surgery, positron emission tomographic scanning (PET), or radiation therapy when the medical care facility meets applicable standards for replacement of such medical equipment which are set forth in the State Medical Facilities Plan.~~

12 VAC 5-220-355. Application forms.

A. Letter of intent. A nursing home bed applicant shall file a letter of intent with the commissioner to request appropriate application forms, and submit a copy of that letter to the appropriate regional health planning agency by the letter of intent deadline specified in the RFA. The letter shall identify the owner, the type of project for which an application is requested, and the proposed scope (size) and location of the proposed project. The department shall transmit application forms to the applicant within seven days of the receipt of the letter of intent. A letter of intent filed with the department shall be considered void if an application is not filed for the project by the application deadline specified in the RFA.

B. Application fees. The department shall collect application fees for applications that request a nursing home bed certificate of public need. The fee required for an application is ~~the lesser of 1.0% of the proposed capital expenditure for the project or \$10,000~~ but no less than \$1,000 and no more than \$20,000. No application will be deemed to be complete for review until the required application fee is paid.

C. Filing application forms. Applications must be submitted to the department and the appropriate regional health planning agency by the application filing deadline specified in the RFA. All applications including the required data and information shall be prepared in triplicate; two copies to be submitted to the department; and one copy to be submitted to the appropriate regional health planning agency. *In order to verify the department and the appropriate regional health planning agency's receipt of the application, the applicant shall transmit the document by certified mail or a delivery service, return receipt requested, or shall deliver the document by hand, with the signed receipt to be provided.* No application shall be deemed to have been submitted until required copies have been received by the department and the appropriate regional health planning agency.

12 VAC 5-220-385. Review of complete application.

A. Review cycle. The department shall provide written notification to applicants specifying the acceptance date and review schedule of completed applications, including a ~~proposed~~ the date for any informal fact-finding conference that may be held *between the eightieth and ninetieth day of the review cycle.* The regional health planning agency shall conduct no more than two meetings, one of which must be a public hearing conducted by the regional health planning agency board or a subcommittee of the board and provide applicants with an opportunity, prior to the vote, to respond to any comments made about the project by the regional health planning agency staff, any information in a staff report, or comments by those voting in completing its review and recommendation by the ~~60th~~ *sixtieth* day of the cycle. By the ~~70th~~ *seventieth* day of the review cycle, the department shall complete its review and recommendation of an application and transmit the same to the applicant or applicants and other

~~appropriate persons. Such notification shall also include the proposed date, time and place of any informal fact-finding conference. By the seventy-fifth day of the review cycle, the department shall transmit to the applicant(s) and other appropriate persons, its determination whether an informal fact-finding conference is necessary.~~

An informal fact-finding conference shall be held when (i) determined necessary by the department or (ii) requested by any person ~~showing~~ *seeking to demonstrate* good cause. Any person seeking to demonstrate good cause shall file, no later than ~~40~~ *four* days after the department has completed its review and recommendation of an application and has transmitted the same to the applicants and to persons who have prior to the issuance of the report requested a copy in writing, written notification with the commissioner, applicant or applicants and other competing applicants, and regional health planning agency stating the grounds for good cause and providing the factual basis therefor under oath.

For purposes of this section, "good cause" means that (i) there is significant, relevant information not previously presented at and not available at the time of the public hearing, (ii) there have been significant changes in factors or circumstances relating to the application subsequent to the public hearing, or (iii) there is a substantial material mistake of fact or law in the department staff's report on the application or in the report submitted by the regional health planning agency. (See § 9-6.14:11 of the Code of Virginia.) ~~The commissioner shall within five days of receipt review any filing that claims good cause and determine whether the facts presented in writing demonstrate a likelihood that good cause will be shown. If there is such a likelihood, an informal fact-finding conference shall be held on the project and on the issue of whether good cause was shown. If such a likelihood is not demonstrated, the person asserting good cause may seek further to demonstrate good cause at any informal fact-finding conference otherwise scheduled on the project. If no conference has otherwise been scheduled, an informal conference shall be scheduled promptly to ascertain whether facts exist that demonstrate good cause. Within five days of any such conference, the commissioner shall issue his final decision on whether good cause has been shown. No informal fact-finding conference shall be required on any project solely upon the request of a person claiming good cause unless the commissioner finds that good cause has been shown. Where good cause is not found by the commissioner to have been shown, the person claiming it may not participate as a party to the case in any administrative proceeding.~~

~~The commissioner shall render a final determination by the 120th day of the review cycle. Unless agreed to by the applicant or applicants and, when applicable, the parties to any informal fact-finding conference held, the review schedule shall not be extended.~~

B. Time period for review. The review period shall begin on the first day of the applicable review cycle within which an application is determined to be complete, in accordance with scheduled batch review cycles described in 12 VAC 5-220-200. If the application is not determined to be complete for the applicable batch cycle within forty calendar days from the

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date of submission, the application may be refiled in the next applicable batch cycle.

If the regional health planning agency has not completed its review by the sixtieth day of the review cycle, or such other period in accordance with the applicant's request for extension, and submitted its recommendation within ten calendar days after the completion of its review, the Department shall, on the eleventh day after expiration of the regional health planning agency's review period, proceed as if the regional health planning agency has recommended approval of the proposed project.

In any case in which an informal fact-finding conference is not held, the project record shall be closed on the earlier of (i) the date established for holding the informal fact-finding conference or (ii) the date that the Department determines that an informal fact-finding conference is not necessary (See 12 VAC 5 220-230 A).

In any case in which an informal fact-finding conference is held, a date shall be established for closing of the record which shall not be more than forty-five calendar days after the date for holding the informal fact-finding conference. Any informal fact-finding conference shall be to consider the information and issues in the record and shall not be a de novo review.

C. Determination by the Commissioner. If a determination whether a public need exists for a project is not made by the commissioner within fifteen calendar days of the closing of the record, the commissioner shall notify the attorney general, in writing, that the application shall be deemed approved unless the determination shall be made within forty calendar days of the closing of the record. The commissioner shall transmit copies of such notice to the attorney general and to other parties to the case and any person petitioning for good cause standing.

In any case when a determination whether a public need exists for a project is not made by the commissioner within forty calendar days after closing of the record, the Department shall immediately refund fifty-percent of the application fee paid in accordance with 12 VAC 5-220-180 B, and the application shall be deemed approved and a certificate shall be granted.

If a determination whether a public need for a project exists is not made by the commissioner within fifteen calendar days of the closing of the record, any application who is competing in the relevant batch review cycle or who has filed an application in response to the relevant Request for Applications issued pursuant to 12 VAC 5-220-355 may, prior to the application being deemed approved, institute a proceeding for mandamus against the commissioner in any circuit court of competent jurisdiction.

If the court issues a writ of mandamus against the commissioner, the Department shall be liable for the costs of the action together with reasonable attorney's fee as determined by the court.

Upon the filing of a petition for a writ of mandamus, the relevant application shall not be deemed approved,

regardless of the lapse of time between the closing of the record and the final decision.

Deemed approvals shall be construed as the commissioner's case decision on the application pursuant to the Administrative Process Act (§ 9-6.14:1 et seq.) and shall be subject to judicial review on appeal as the commissioner's case decision in accordance with such act.

Any person who has sought to participate in the Department's review of such deemed-to-be-approved application as a person showing good cause who has not received a final determination from the commissioner concerning the good cause petition prior to the date on which the application was approved, shall be deemed to be a person showing good cause for purposes of appeal of a deemed-to-be-approved certificate.

The applicant, and only the applicant, shall have the authority to extend any of the time periods for review of the application, which are specified in 12 VAC 5-220-230.

~~B.~~ *D.* Regional health planning agency required notifications. Upon notification of the acceptance date of a complete application as set forth in subsection A of this section, the regional health planning agency shall provide written notification of its review schedule to the applicant. The regional health planning agency shall notify health care providers and specifically identifiable consumer groups who may be affected by the proposed project directly by mail and shall also give notice of the public hearing in a newspaper of general circulation in such county or city wherein a project is proposed or a contiguous county or city at least nine days prior to such public hearing. Such notification by the regional health planning agency shall include: (i) the date and location of the public hearing which shall be conducted on the application except as otherwise provided in this chapter, in the county or city wherein a project is proposed or a contiguous county or city; and (ii) the date, time and place the final recommendation of the regional health planning agency shall be made. The regional health planning agency shall maintain a verbatim record which may be a tape recording of the public hearing. Such public hearing record shall be maintained for at least a one-year time period following the final decision on a certificate of public need application. See definition of "public hearing."

~~C.~~ *E.* Ex parte contact. After commencement of a public hearing and before a final decision is made, there shall be no ex parte contacts between the State Health Commissioner and any person acting on behalf of the applicant or holder of a certificate or any person opposed to the issuance or in favor of revocation of a certificate of public need, unless written notification has been provided. See definition of "ex parte."

12 VAC 5-220-420. Action on an application.

A. Commission's responsibility. Decisions as to approval or disapproval of applications or a portion thereof for certificates of public need shall be rendered by the commissioner. Any decision to issue or approve the issuance of a certificate shall be consistent with the most recent applicable provisions of the State Medical Facilities Plan. However, if the commissioner finds, upon presentation of appropriate evidence, that the provisions of such plan are *not relevant to a rural locality's*

needs, inaccurate, outdated, inadequate or otherwise inapplicable, the commissioner, consistent with such finding, may issue or approve the issuance of a certificate and shall initiate procedures to make appropriate amendments to such plan.

The commissioner may condition the approval of an application for a project (i) on the agreement by the applicant to provide an acceptable level of care at a reduced rate to indigents or, (ii) on the agreement of the applicant to provide care to persons with special needs, or (iii) upon the agreement of the applicant to facilitate the development and operation of primary medical care services in designated medically underserved areas of the applicant's service area. The terms of such agreements shall be specified in writing prior to the commissioner's decision to approve a project. Any person willfully refusing, failing or neglecting to honor such agreements shall be subject to a civil penalty of \$100 per violation per day from the date of receipt from the department of written notice of noncompliance until the date of compliance. Upon information and belief that a person has failed to honor such agreement in accordance with this provision, the department shall notify the person in writing and 15 days shall be provided for a response in writing including a plan for immediate correction. In the absence of an adequate response or necessary compliance or both, a judicial action shall be initiated in accordance with the provisions of § 32.1-27 of the Code of Virginia.

B. Notification process - extension of review time. The commissioner shall make a final determination on an application for a certificate of public need and provide written notification detailing the reasons for such determination to the applicant with a copy to the regional health planning agency ~~by the 120th day of the review cycle unless an extension is agreed to by the applicant and an informal fact finding conference described in 12 VAC 5-220-380 is held. When an informal fact finding conference is held, the 120-day review cycle shall not be extended unless agreed to by the parties to the conference within the time frames specified in subsection B of 12 VAC 5-220-385 unless an authorization is given by the applicant(s) to extend the time period.~~ Such written notification shall also reference the factors and bases considered in making a decision on the application and, if applicable, the remedies available for appeal of such decision and the progress reporting requirements. The commissioner may approve a portion of a project provided the portion to be approved is agreed to by the applicant following consultation, which may be subject to the ex parte provision of this chapter, between the commissioner and the applicant.

12 VAC 5-220-470. Court review.

A. Appeal to circuit court. Appeals to a circuit court shall be governed by applicable provisions of Virginia's Administrative Process Act, § 9-6.14:15 et seq. of the Code of Virginia.

Any applicant aggrieved by a final administrative decision on its application for a certificate, any third party payor providing health care insurance or prepaid coverage to 5.0% or more of the patients in the applicant's service area, a regional health planning agency operating in the applicant's service area or, any person showing good cause, any person who has sought to participate in the Department's review of a

deemed-to-be-approved project as a person showing good cause who has not received a final determination from the commissioner concerning the good cause petition, or any person issued a certificate aggrieved by a final administrative decision to revoke said certificate, within 30 days after the decision, may obtain a review, as provided in § 9-6.14:17 of the Code of Virginia by the circuit court of the county or city where the project is intended to be or was constructed, located or undertaken. Notwithstanding the provisions of § 9-6.14:16 of the Administrative Process Act, no other person may obtain such review.

B. Designation of judge. The judge of the court referred to in subsection A of this section shall be designated by the Chief Justice of the Supreme Court from a circuit other than the circuit where the project is or will be under construction, located or undertaken.

C. Court review procedures. Within five days after the receipt of notice of appeal, the department shall transmit to the appropriate court all of the original papers pertaining to the matter to be reviewed. The matter shall thereupon be reviewed by the court as promptly as circumstances will reasonably permit. The court review shall be upon the record so transmitted. The court may request and receive such additional evidence as it deems necessary in order to make a proper disposition of the appeal. The court shall take due account of the presumption of official regularity and the experience and specialized competence of the commissioner. The court may enter such orders pending the completion of the proceedings as are deemed necessary or proper. Upon conclusion of review, the court may affirm, vacate or modify the final administrative decision.

D. Further appeal. Any party to the proceeding may appeal the decision of the circuit court in the same manner as appeals are taken and as provided by law.

12 VAC 5-230-10. Definitions.

The following words and terms, when used in Chapters 230 (12 VAC 5-230-10 et seq.) through 360 (12 VAC 5-360-10 et seq.) shall have the following meanings, unless the context clearly indicated otherwise:

"Accessibility" means the ability of a population or segment of the population to obtain appropriate, available services. This ability is determined by economic, temporal, locational, architectural, cultural, psychological, organizational and informational factors which may be barriers or facilitators to obtaining services.

"Acceptability" means to the level of satisfaction expressed by consumers with the availability, accessibility, cost, quality, continuity and degree of courtesy and consideration afforded them by the health care system.

"Availability" means the quantity and types of health services that can be produced in a certain area, given the supply of resources to produce those services.

"Continuity of care" means the extent of effective coordination of services provided to individuals and the community over time, within and among health care settings.

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"Cost" means all expenses incurred in the production and delivery of health services.

"Quality of care" means to the degree to which services provided are properly matched to the needs of the population, are technically correct, and achieve beneficial impact. Quality of care can include consideration of the appropriateness of physical resources, the process of producing and delivering services, and the outcomes of services on health status, the environment, and/or behavior.

"Rural" means territory, population, and housing units that are classified as "rural" by the Bureau of the Census of the United States Department of Commerce, Economic and Statistics Administration.

12 VAC 5-230-20. Preface.

Virginia's Certificate of Public Need law defines the State Medical Facilities Plan as the "planning document adopted by the Board of Health which shall include, but not be limited to, (i) methodologies for projecting need for medical facility beds and services; (ii) statistical information on the availability of medical facility beds and services; and (iii) procedures, criteria and standards for the review of applications for projects for medical care facilities and services." (§ 32.1-102.1 of the Code of Virginia.)

Section 32.1-102.3 of the Code of Virginia states that, "Any decision to issue or approve the issuance of a certificate (of public need) shall be consistent with the most recent applicable provisions of ~~the State Health Plan~~ and the State Medical Facilities Plan; provided, however, if the commissioner finds, upon presentation of appropriate evidence, *that* the provisions of ~~either~~ such plan are *not relevant to a rural locality's needs*, inaccurate, outdated, inadequate or otherwise inapplicable, the commissioner, consistent with such finding, may issue or approve the issuance of a certificate and shall initiate procedures to make appropriate amendments to such plan."

Subsection B of § 32.1-102.3 of the Code of Virginia requires the commissioner to consider "the relationship" of a project "to the applicable health plans of the board" in "determining whether a public need for a project has been demonstrated."

This State Medical Facilities Plan is a comprehensive revision of the criteria and standards for COPN reviewable medical care facilities and services contained in the Virginia State Health Plan established from 1982 through 1987, and the Virginia State Medical Facilities Plan, last updated in July, 1988. This Plan supersedes the State Health Plan 1980 - 1984 and all subsequent amendments thereto save those governing facilities or services not presently addressed in this Plan.

12 VAC 5-240-10. Definitions.

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

"Acute inpatient facility beds" means any beds included in the definitions of "general medical/surgical beds" and "intensive care beds."

"Acute care inpatient facility" means any hospital, ambulatory surgical center providing overnight accommodations, or other medical care facility which provides medical care and distinct housing of patients whose length of stay averages at most 30 days.

"Department" means the Virginia Department of Health.

"General medical/surgical beds" means acute care inpatient beds located in the following units or categories:

1. General medical/surgical units that are organized facilities and services (excluding those for newborns) available for the care and treatment of patients, not requiring specialized services; and
2. Pediatric units that are organized facilities and services maintained and operated as a distinct unit for regular use by inpatients below the age of 15. Newborn cribs and bassinets are excluded from this definition.

"Inpatient beds" means accommodations within a medical care facility with continuous support services (such as food, laundry, housekeeping) and staff to provide health or health-related services to patients who generally remain in the medical care facility in excess of 24 hours. Such accommodations are known by various nomenclatures including but not limited to; nursing facility beds, intensive care beds, minimal or self care beds, insolation beds, hospice beds, observation beds equipped and staffed for overnight use, and obstetric, medical surgical, psychiatric, substance abuse, medical rehabilitation and pediatric beds including pediatric bassinets and incubators. Bassinets and incubators in the maternity department and beds located in labor and birthing rooms, emergency rooms, preparation or anesthesia inductor rooms, diagnostic or treatment procedure rooms, or on-call staff rooms are excluded from this definition.

"Intensive care beds" means acute inpatient beds that are located in the following units or categories:

1. General intensive care units (ICU) means those units in which patients are concentrated, by reason of serious illness or injury, without regard to diagnosis. Special lifesaving techniques and equipment are immediately available, and patients are under continuous observation by nursing staff specially trained and selected for the care of this class of patient;
2. Cardiac care units (CCU) means special units staffed and equipped solely for the intensive care of cardiac patients;
3. Specialized intensive care units (SICU) means any units with specialized staff and equipment for the purpose of providing care to seriously ill or injured patients for selected categories of diagnoses. Examples include units established for burn care, trauma care, neurological care, pediatric care, and cardiac surgery recovery. This category of beds does not include neonatal intensive care units; and
4. Progressive care units (PCU) means any units which have been established to care for seriously ill or injured patients who do not require the continuous level of care available in an intensive care unit but whose conditions

require monitoring at a level which is generally not available in a general medical/surgical bed.

"Licensed bed" means those inpatient care beds licensed by the department's Office of Health Facilities Regulation.

~~"Metropolitan statistical area (MSA)" means a general concept of a metropolitan area that consists of a large population nucleus together with adjacent communities which have a high degree of economic and social integration with the nucleus. Each MSA has one or more central counties containing the area's main population concentration: an urbanized area with at least 50,000 inhabitants. An MSA may also include outlying counties which have close economic and social relationships with the central counties. The outlying counties must have a specified level of commuting to the central counties and must also meet standards regarding metropolitan character, such as population density, urban population, and population growth.~~

"Nursing facility beds" means inpatient beds which are located in distinct units of acute inpatient facilities which are licensed as long-term care units by the department. Beds in these long-term units are not included in the calculations of acute inpatient bed need.

"Off-site replacement" means the movement of existing beds off of the existing site of an acute care inpatient facility.

"Planning horizon year" means the particular year for which beds are projected to be needed.

"Relevant reporting period" means the most recent 12 month period, prior to the beginning of the Certificate of Public Need application's review cycle, for which data is available and acceptable to the department.

"Skilled nursing units (SNF)" means those units which provide patient care at a level of care below that normally required in an acute care setting and greater than that of an intermediate care nursing facility. Although such units often have lengths of stays of less than 30 days, they are considered nursing facility beds and are excluded in calculations of acute care inpatient bed need.

"Staffed beds" means that portion of the licensed or approved beds that are immediately available to be occupied. Beds which are not available due to lack of staffing or renovation are excluded from this category.

12 VAC 5-240-20. Accessibility.

Acute care inpatient facility beds should be within ~~45~~ 30 minutes average driving time, under normal conditions, of 90% of the population of a planning district.

Providers of acute care inpatient facility services serving rural areas should facilitate the transport of patients residing in rural areas to needed medical care facilities and services, directly or through coordinated efforts with other organizations. Preference will be given in the review of competing applications to applicants who can document a history and commitment to development of transportation resources for rural populations.

12 VAC 5-240-30. Availability.

A. Need for new service.

1. No new acute inpatient care beds should be approved in any planning district unless the resulting number of licensed and approved beds in a planning district does not exceed the number of beds projected to be needed, for each acute inpatient bed category, for that planning district for the fifth planning horizon year.

2. Notwithstanding the need for new acute inpatient care beds above, no proposals to increase the general medical/surgical and pediatric bed capacity in a planning district should be approved unless the average annual occupancy, based on the number of licensed beds in the planning district where the project is proposed, is at least 85% for the relevant reporting period.

3. Notwithstanding the need for new acute inpatient beds above, no proposals to increase the intensive care bed capacity in ~~a metropolitan statistical area~~ a non-rural area should be approved unless: (i) the average annual occupancy rate, based on the number of licensed beds in the ~~MSA non-rural area~~ where the project is proposed, is at least 65% for the relevant reporting period; or (ii) for hospitals ~~outside of an MSA in rural areas~~, the number of beds projected to be needed to provide 99% probability that adequate bed capacity will exist for all unscheduled admissions, exceeds the number of licensed beds projected for the fifth planning horizon year.

B. Off-site replacement of existing services.

1. No proposal to replace acute care inpatient beds off-site, to a location not contiguous to the existing site, should be approved unless: (i) off-site replacement is necessary to correct life safety or building code deficiencies; (ii) the population served by the beds to be moved will have reasonable access to the acute care beds at the new site, or the population served by the facility to be moved will generally have comparable access to neighboring acute care facilities; and (iii) the beds to be replaced experienced an average annual utilization of 85% for general medical/surgical beds and 65% for intensive care beds in the relevant reporting period.

2. The number of beds to be moved off-site must be taken out of service at the existing facility.

3. The off-site replacement of beds should result in a decrease in the licensed bed capacity of the applicant facility(ies) or substantial cost savings, cost avoidance, consolidation of underutilized facilities, or in other ways improve operation efficiency, or improvements in the quality of care delivered over that experienced by the applicant facility(ies).

C. Alternative need for the conversion of underutilized licensed bed capacity. For proposals involving a capital expenditure of \$1 million or more, and involving the conversion of underutilized licensed bed capacity to either medical/surgical, pediatric or intensive care, consideration will be given to the approval of the project if: (i) there is a projected need for the category of acute inpatient care beds

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that would result from the conversion; and (ii) it can be reasonably demonstrated that the average annual occupancy of the beds to be converted would reach the standard in subdivision B 1 of this section for the bed category that would result from the conversion, by the first year of operation.

D. Computation of the need for general medical/surgical and pediatric beds.

1. A need for additional acute care inpatient beds may be demonstrated if the total number of licensed and approved beds in a given category in the planning district where the proposed project will be located is less than the number of such beds that are projected as potentially necessary to meet demand in the fifth planning horizon year from the year in which the application is submitted.

2. The number of licensed and approved general medical/surgical beds will be based on the inventory presented in the most recent edition of the State Medical Facilities Plan or amendment thereof, and may also include subsequent reductions in or additions to such beds for which documentation is available and acceptable to the department. The number of general medical/surgical beds projected to be needed in the planning district shall be computed using the following method:

a. Determine the projected total number of general medical/surgical and pediatric inpatient days for the fifth planning horizon year as follows:

(1) Sum the medical/surgical and pediatric unit inpatient days for the past three years for all acute care inpatient facilities in the planning district as reported in the Annual Survey of Hospitals;

(2) Sum the planning district projected population for the same three year period as reported by the Virginia Employment Commission;

(3) Divide the sum of the general medical/surgical and pediatric unit inpatient days by the sum of the population and express the resulting rate in days per 1,000 population;

(4) Multiply the days per 1,000 population rate by the projected population for the planning district (expressed in 1,000s) for the fifth planning horizon year.

b. Determine the projected number of general medical/surgical and pediatric unit beds which may be needed in the planning district for the planning horizon year as follows:

(1) Divide the result in subdivisions D 2 a (4) (number of days projected to be needed) by 365;

(2) Divide the quotient obtained by *.85 in planning districts in which fifty percent or more of the population resides in non-rural areas and .75 in planning districts in which less than fifty percent of the population resides in non-rural areas.*

c. Determine the projected number of general medical/surgical and pediatric beds which may be

established or relocated within the planning district for the fifth planning horizon year as follows:

(1) Determine the number of licensed and approved medical/surgical and pediatric beds as reported in the inventory of the most recent edition of the State Medical Facilities Plan, available data acceptable to the department;

(2) Subtract the number of beds identified in 2 a above from the number of beds needed as determined in 2 b (2). If the difference indicated is positive, then a need may be determined to exist for additional general medical/surgical or pediatric beds. If the difference is negative, then no need shall be determined to exist for additional beds.

E. Computation of need for distinct pediatric units.

1. Beds used to form pediatric units must be taken from the inventory of general medical/surgical beds of a facility if need for additional such beds cannot be demonstrated.

2. Should a hospital desire to establish or expand a distinct pediatric unit within its licensed bed capacity, the following methodology shall be used to determine the appropriate size:

a. Determine the utilization of the individual hospital's inpatient days by persons under 15 years of age:

(1) Sum the general medical/surgical (including pediatric unit) inpatient days for the past three years for all patients under 15 years of age from hospital discharge abstracts;

(2) Sum the planning district projected population for the 0 to 14 age group for the same three year period as reported by the Virginia Employment Commission;

(3) Divide the sum of the general medical/surgical days by the sum of the population and express the resulting rate in days per 1,000 population;

(4) Multiply the days per 1,000 population rate by the projected population age 0 to 14 for the planning district (expressed in 1,000s) for the fifth planning horizon year to yield the projected pediatric patient days;

(5) Divide the patient days by 365 to yield the projected average daily census (PADC);

(6) Calculate the number of beds needed to assure that adequate bed capacity will exist with a 99% probability for an unscheduled pediatric admission using the following formula:

$$\text{Number of pediatric beds allowable} = \text{PADC} + 2.33\sqrt{\text{PADC}}$$

F. Computation of need for intensive care beds.

1. The number of licensed and approved intensive care beds will be based on the inventory presented in the most recent edition of the State Medical Facilities Plan or amendment thereof, and may also include subsequent

reductions in or additions to such beds for which documentation is available and acceptable to the department.

2. The number of intensive care beds projected to be needed in the planning district shall be computed using the following method:

1. Determine the projected total number of intensive care inpatient days for the fifth planning horizon year as follows:

a. Sum the intensive care inpatient days for the past three years for all acute care inpatient facilities in the planning district as reported in the annual survey of hospitals;

b. Sum the planning district projected population for the same three year period as reported by the Virginia Employment Commission;

c. Divide the sum of the intensive care days by the sum of the population and express the resulting rate in days per 1,000 population;

d. Multiply the days per 1,000 population rate by the projected population for the planning district (expressed in 1,000s) for the fifth planning horizon year to yield the expected intensive care patient days.

2. Determine the projected number of intensive care beds which may be needed in the planning district for the planning horizon year as follows:

a. Divide the number of days projected in 1 d by 365 to yield the projected average daily census (PADC);

b. Calculate the beds needed to assure with 99% probability that an intensive care bed will be available for the unscheduled admission:

$$\text{Number of pediatric beds allowable} = \text{PADC} + 2.33\sqrt{\text{PADC}}$$

3. Determine the projected number of intensive care beds which may be established or relocated within the planning district for the fifth planning horizon year as follows:

a. Determine the number of licensed and approved intensive care beds as reported in the inventory of the most recent edition of the State Medical Facilities Plan, an amendment thereof, or the inventory after subsequent documented reductions or additions have been determined by the department.

b. Subtract the number of licensed and approved beds identified in 3 a above from the number of beds needed as determined in 2 b. If the difference indicated is positive, then a need may be determined to exist for additional intensive care beds. If the difference is negative, then no need shall be determined to exist for additional beds.

12 VAC 5-250-30. Accessibility; travel time; financial considerations.

A. Consistent with minimum size and use standards delineated below, basic obstetrical services should be available within one hour average travel time of 95% of the population in rural areas and within 30 minutes average travel time in urban and suburban areas.

B. Obstetrical and related services should be open to all without regard to ability to pay or payment source.

C. Providers of obstetrical facility services serving rural areas should facilitate transport of patients residing in rural areas to needed obstetrical facility services, directly or through coordinated efforts with other organizations. Preference will be given in the review of competing applications to applicants who can demonstrate a commitment to the development of transportation resources for rural populations.

12 VAC 5-260-30. Accessibility; financial considerations.

A. Adult cardiac catheterization services should be accessible within a one hour driving time, under normal conditions, for 90% of Virginia's population.

B. Cardiac catheterization services should be accessible to all patients in need of services without regard to their ability to pay or the payment source.

C. Providers of cardiac catheterization services serving rural areas should facilitate the transport of patients residing in rural areas to needed cardiac catheterization services, directly or through coordinated efforts with other organizations. Preference will be given in the review of competing applications to applicants who can demonstrate a history of commitment to the development of transportation resources for rural populations.

12 VAC 5-260-40. Availability; need for new services; alternatives.

A. Need for new service. No new cardiac catheterization service should be approved unless (i) all existing cardiac catheterization laboratories located in the planning district in which the proposed new service will be located where used for at least 960 diagnostic-equivalent cardiac catheterization procedures for the relevant reporting period; and (ii) it can be reasonably projected that the proposed new service will perform at least 200 diagnostic equivalent procedures in the first year of operation, 500 diagnostic equivalent procedures in the second year of operation, and 800 diagnostic equivalent procedures in the third year of operation without reducing the utilization of existing laboratories in the planning district such that less than 960 diagnostic equivalent procedures are performed at any of those existing laboratories.

B. Mobile cardiac catheterization service. Proposals for the use of freestanding or mobile cardiac catheterization services should only be approved if such services will be provided at a site located on the campus of a general/community hospital and complies with all applicable sections of the state medical facilities plan as determined by the department.

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C. Alternative need for new services in ~~remote~~ *rural* areas. Notwithstanding the standards for approval of new cardiac catheterization services outlined above, consideration will be given to the approval of new cardiac catheterization services which will be located at a general hospital located 60 minutes or more driving time, under normal conditions, from any site at which cardiac catheterization services are available if it can be reasonably projected that the proposed new services will perform at least 200 diagnostic-equivalent procedures in the first year of operation, 400 diagnostic-equivalent procedures in the second year of operation, and 600 diagnostic-equivalent procedures in the third year of operation without reducing the utilization of existing laboratories located within 60 to 70 minutes driving time, under normal conditions, from the proposed new service location.

D. Need for expanded service. Proposals for the expansion of cardiac catheterization services should not be approved unless all existing cardiac catheterization laboratories operated by the applicant have performed at least 1,200 diagnostic-equivalent cardiac catheterization procedures for the relevant reporting period, and it can be reasonably demonstrated that the expanded cardiac catheterization service will achieve a minimum of 200 diagnostic equivalent procedures per laboratory to be added in the first 12 months of operation, 400 diagnostic equivalent procedures in the second 12 months of operation, and 600 procedures per laboratory in the third year of operation, without reducing the utilization of existing cardiac catheterization laboratories in the planning district below 960 diagnostic equivalent procedures.

E. Replacement.

1. Proposals for the replacement of existing cardiac catheterization services should not be approved unless the equipment to be replaced has been in service for at least five years and; (i) in the case of providers located within 60 minutes driving time, under normal conditions, of alternative cardiac catheterization services, the equipment to be replaced has been used in the performance of at least 960 diagnostic-equivalent cardiac catheterization procedures in the relevant reporting period; or (ii) in the case of providers located beyond 60 minutes driving time, under normal conditions, of alternative cardiac catheterization services, the equipment to be replaced has been used in the performance of at least 600 diagnostic-equivalent cardiac catheterization procedures in the relevant reporting period.

2. Additionally, all proposals for replacement of cardiac catheterization services should comply with all applicable sections of this state medical facilities plan component, as determined by the department.

F. Emergency availability. Cardiac catheterization services should be available for emergency cardiac catheterization within 30 minutes or less at all times.

G. Pediatric services. No new or expanded pediatric cardiac catheterization services should be approved unless the proposed new or expanded service will be provided at: (i) a hospital that also provides open heart surgery services, provides pediatric tertiary care services, has a pediatric

intensive care unit and provides neonatal special care; or (ii) a hospital that is a regional perinatal center, has a cardiac intensive care unit and provides open heart surgery services; and it can be reasonably demonstrated that each proposed laboratory will perform at least 100 pediatric cardiac catheterization procedures in the first year of operation, 200 pediatric cardiac catheterization procedures in the second year of operation and 400 pediatric cardiac catheterization procedures in the third year of operation.

H. Emergency availability of open heart surgery. No application for new, expanded, or replacement cardiac catheterization services which includes the provision or potential provision of PTCA, transeptal puncture, transthoracic left ventricular puncture, or myocardial biopsy services should be approved unless emergency open heart surgery services are, or will be available on-site at all times at the same hospital at which the proposed new, expanded, or replacement cardiac catheterization service will be located.

12 VAC 5-260-80. Acceptability; consumer participation.

A. The waiting time for elective open heart surgery procedures should be less than one month.

B. Providers of open heart surgery should provide a program of patient and family education regarding the nature of the patient's heart disease, and which attempts to assure the family and the patient's joint compliance in the post-operative management of the patient.

The patient and his family should be fully informed and involved in the decision-making regarding the open heart surgery.

C. Providers of open heart surgery services should have in place a mechanism for identifying travel and housing problems for patients and their families, *particularly in rural areas*, and provide assistance in making arrangements for these services for those patients and their families who may need them during the period of surgery and post-operative management.

12 VAC 5-260-100. Availability; need for the new service; alternatives.

A. Need for the new service. No new open heart services should be approved unless: (i) the service is to be made available in a general hospital which has established cardiac catheterization services that have been used for the performance of at least 960 diagnostic-equivalent procedures for the relevant reporting period and has been in operation for at least 30 months; (ii) all existing open heart surgery rooms located in the planning district in which the proposed new service will be located have been used for at least 400 adult-equivalent open heart surgical procedures for the relevant reporting period; and (iii) it can be reasonably projected that the proposed new service will perform at least 150 adult-equivalent procedures in the first year of operation, 250 adult-equivalent procedures in the second year of operation, and 400 adult-equivalent procedures in the third year of operation without reducing the utilization of existing open heart surgery programs in the planning district such that less than 400 adult-equivalent open heart procedures are performed at those existing laboratories.

B. Alternative need for new services in remote rural areas. Notwithstanding the standards for approval of new open heart services outlined above, consideration will be given to the approval of new open heart surgery services which will be located at a general hospital located more than two hours driving time, under normal conditions, from any site at which open heart surgery services are available if it can be reasonably projected that the proposed new service will perform at least 150 adult-equivalent open heart procedures in the first year of operation, 225 adult-equivalent procedures in the second year of operation, and 300 adult-equivalent procedures in the third year of operation without reducing the utilization of existing open heart surgery rooms within a 120-150 minute driving time, under normal conditions, from the proposed new service location below 400 adult-equivalent open heart surgical procedures per room. Such hospitals should also have provided at least 760 diagnostic-equivalent cardiac catheterization procedures during the relevant reporting period on equipment which has been in operation at least 30 months.

C. Need for expanded service. Proposals for the expansion of open heart surgery services should not be approved unless all existing open heart surgery rooms operated by the applicant have performed at least 400 adult-equivalent open heart surgery procedures in the relevant reporting period if the facility is within two hours driving time, under normal conditions, of an existing open heart surgery service, or at least 300 adult-equivalent open heart surgery procedures in the relevant reporting period if the facility that proposes expanded services is in excess of two hours driving time, under normal conditions, of an existing open heart surgery service.

Additionally, all proposals for the expansion of open heart surgery services should comply with all applicable sections of this State Medical Facilities Plan component, as determined by the department.

D. Replacement. Proposals for the replacement of existing open heart surgery services should not be approved unless the equipment to be replaced has been in operation for at least 30 months; and (i) in case of providers located within two hour's driving time, under normal conditions, of alternative open heart surgery services, the open heart surgery equipment to be replaced has been used in the performance of at least 400 adult-equivalent procedures in the relevant reporting period; or (ii) in the case of providers located beyond two hour's driving time, under normal conditions, of alternative open heart surgery services, the open heart surgery room to be replaced has been used in the performance of at least 300 adult-equivalent procedures in the relevant reporting period.

Additionally, all proposals for the replacement of open heart surgery services should comply with all the applicable sections of the State Medical Facilities Plan component, as determined by the department.

E. Pediatric services. No new, expanded or replacement pediatric open heart surgery service should be approved unless the proposed new, expanded or replacement service is provided at a hospital that: (i) has cardiac catheterization services which have been in operation for 30 months and that

have been used in the performance of at least 200 pediatric cardiac catheterization procedures for the relevant reporting period, provides pediatric tertiary care services, has pediatric intensive care services and provides neonatal special care; or (ii) is a regional perinatal center and has a cardiac intensive care unit.

12 VAC 5-270-30. Accessibility; travel time; financial.

Surgical services should be available within a maximum driving time, under normal conditions, of 45 30 minutes for 90% of the population of a planning district.

Surgical services should be accessible to all patients in need of services without regard to their ability to pay or the payment source.

Providers of surgical services serving rural areas should facilitate the transport of patients residing in rural areas to needed surgical services, directly or through coordinated efforts with other organizations. Preference will be given in the review of competing applications to applicants who can demonstrate a history of commitment to the development of transportation resources for rural populations.

12 VAC 5-270-40. Availability; need.

A. Need.

The combined number of inpatient and ambulatory surgical operating rooms needed in a planning district will be determined as follows:

1. CSUR = ORV/POP

Where CSUR is the current surgical use rate in a planning district as calculated in the above formula;

ORV is the sum of total operating room visits (inpatient and outpatient) in the planning district in the most recent three consecutive years for which operating room utilization data has been reported by the Virginia Center for Health Statistics; and

POP is the sum of total population in the planning district in the most recent three consecutive years for which operating room utilization data has been reported by the Virginia Center for Health Statistics, as found in the most recent published projections of the Virginia Employment Commission.

2. PORV = CSUR * PROPOP

Where PORV is the projected number of operating room visits in the planning district three years from the current year; and

PROPOP is the projected population of the planning district three years from the current year as reported in the most recent published projections of the Virginia ~~Economic~~ Employment Commission.

3. FORH = PORV * AHORV

Where FORH is future operating room hours needed in the planning district three years from the current year; and

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AHORV is the average hours per operating room visit in the planning district for the most recent year for which average hours per operating room visit as been calculated from information collected by the Virginia Department of Health.

4. FOR = FORH/1600

Where FOR is future operating rooms needed in the planning district three years from the current year.

No additional operating rooms should be authorized for a planning district if the number of existing or authorized operating rooms in the planning district is greater than the need for operating rooms identified using the above methodology. New operating rooms may be authorized for a planning district up to the net need identified by subtracting the number of existing or authorized operating rooms in the planning district from the future operating rooms needed in the planning district, as identified using the above methodology.

Consideration will be given to the addition of operating rooms by existing medical care facilities in planning districts with an excess supply of operating rooms, based on the methodology outlined above, when such addition can be justified on the basis of facility-specific utilization and/or geographic remoteness (driving time of 45 minutes or more, under normal conditions, to alternative surgical facilities).

B. Relocation. Projects involving the relocation of existing operating rooms within a planning district may be authorized when it can be reasonably documented that such relocation will: (i) improve the distribution of surgical services within a planning district; or (ii) result in the provision of the same surgical services at a lower cost to surgical patients in the planning district; or (iii) optimize the number of operations in the planning district which are performed on an ambulatory basis.

C. Ambulatory surgical facilities. Preference will be given to the development of needed operating rooms in dedicated ambulatory surgical facilities developed within general hospitals or as freestanding centers owned and operated by general hospitals.

12 VAC 5-280-10. Definitions.

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

"Department" means Virginia Department of Health.

"Donor organ/organ system" means an organ/organ system retrieved from a cadaver or living donor, and processed under appropriate rules and protocols, for the purpose of surgical transplantation into a recipient selected in accordance with established guidelines and protocols.

"Health care financing administration (HCFA) Medicare requirements" means those clinical, certification and administrative requirements and standards set by the HCFA of the United State Department of Health and Human Services to establish eligibility for Medicare program reimbursement.

"Minimum survival rates" means the lowest percentage of those receiving transplants who survive at least one year or for such other periods of times as specified by the department. Minimum survival rates not specified in these standards shall be established by the department as experience permits.

"Minimum utilization" means the number of transplants expected to be performed annually. Minimum utilization requirements not specified in these standards shall be established by the department as experience permits.

"Organ/organ system" means any of the number of clinically distinct components of the human body containing tissues performing a function for which it is especially adapted. Distinct organ/organ systems include, but are not limited to, kidney, heart, heart/lung, liver, and pancreas.

"Organ transplantation" means a set of medical procedures performed to remove surgically a defined diseased or nonfunctioning organ/organ system from a patient and replace it with a healthier functioning donor organ/organ system.

"Satellite clinic" means a scheduled program of outpatient services for pre- and/or post-transplant patients conducted at a site remote from the facility in which the organ transplant surgical services are provided which allows patients to obtain outpatient services associated with organ transplantation closer to their city or county of residence.

12 VAC 5-280-30. Accessibility; travel time; access to available organs.

A. Organ transplantation services, of any type, should be accessible within two hours driving time, under normal conditions, of 95% of Virginia's population.

B. Providers of organ transplantation services should demonstrate to the satisfaction of the department that they have clearly defined patient/organ recipient policies based solely on medical criteria.

C. Providers of organ transplantation services should facilitate access to pre- and post-transplantation services needed by patients residing in distant locations by establishing part-time satellite clinics.

12 VAC 5-290-10. Definitions.

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

"Acute psychiatric services" are inpatient psychiatric services provided at the hospital level of care which have a reported inpatient average length of stay of 90 days or less.

"Acute substance abuse treatment services" are inpatient substance abuse treatment services provided at the hospital level of care, exemplified by medical detoxification, treatment of the medical and psychiatric complications of chemical dependency, and continuous nursing services.

"Inpatient psychiatric services" are acute psychiatric services provided through distinct inpatient units of medical care facilities or through free-standing psychiatric hospitals.

Inpatient psychiatric beds are licensed by the Department of Mental Health, Mental Retardation, and Substance Abuse Services (DMHMRSAS). "Psychiatric services" are services provided to individuals for the prevention, diagnosis, treatment, and/or palliation of psychiatric disorders.

"Inpatient substance abuse treatment services" are substance abuse treatment services provided through distinct inpatient units of medical care facilities or through free-standing inpatient substance abuse treatment facilities. Inpatient substance abuse treatment beds are licensed by the Department of Mental Health, Mental Retardation, and Substance Abuse Services (DMHMRSAS).

"Intermediate care substance abuse treatment services" are inpatient substance abuse treatment services provided at the residential level of care, exemplified by sub-acute (nonhospital) detoxification services and structured programs of assessment, counseling, vocational rehabilitation, and social rehabilitation.

"Long term psychiatric services" are inpatient psychiatric services provided at the hospital level of care which have a reported inpatient average length of stay in excess of 90 days. These services have traditionally been provided in facilities operated by the DMHMRSAS and, in that case, have not been subject to certificate of public need requirements.

"Satellite clinic" means a scheduled program of outpatient services for patients requiring psychiatric or substance abuse treatment following discharge from an inpatient program conducted at a site remote from the facility in which the inpatient services are provided which allows patients to obtain needed outpatient services for their psychiatric illness and/or substance abuse closer to their city or county of residence.

"Substance abuse treatment services" are services provided to individuals for the prevention, diagnosis, treatment, and/or palliation of chemical dependency, which may include attendant medical and psychiatric complications of chemical dependency.

12 VAC 5-290-30. Accessibility; travel time; financial considerations.

A. Acute psychiatric, acute substance abuse treatment, and intermediate care substance abuse treatment services should be available within a maximum driving time, under normal conditions, of 60 minutes one-way for 95% of the population.

B. 1. Acute psychiatric, acute substance abuse treatment, and intermediate care substance abuse treatment services should be accessible to all patients in need of services without regard to their ability to pay or the payment source.

2. Existing and proposed acute psychiatric, acute substance abuse treatment, and intermediate care substance abuse treatment service providers should have established plans for the provision of services to indigent patients which include, at a minimum: (i) the number of unreimbursed patient days to be provided to indigent patients who are not Medicaid recipients; (ii) the number of Medicaid-reimbursed patient days to be provided (unless the existing or proposed facility is ineligible for Medicaid participation); (iii) the number of

unreimbursed patient days to be provided to local community services boards; and (iv) a description of the methods to be utilized in implementing the indigent patient service plan and assuring the provision of the projected levels of unreimbursed and Medicaid-reimbursed patient days. The definition of indigent person used in the indigent patient service plan should be consistent with the definition of charity care used by Virginia's Indigent Care Trust Fund.

3. Proposed acute psychiatric, acute substance abuse treatment, and intermediate care substance abuse treatment service providers should have formal agreements with community services boards in their identified service area which: (i) specify the number of charity care patient days which will be provided to the community service board; (ii) provide adequate mechanisms for the community services board to monitor compliance with charity care provisions; and (iii) provide for effective discharge planning for all patients (to include the return of patients to their place of origin/home state if other than Virginia).

C. Providers of acute psychiatric, acute substance abuse treatment, and intermediate care substance abuse treatment services serving large geographic areas should establish satellite outpatient facilities to improve patient access, where appropriate and feasible.

12 VAC 5-300-30. Availability; need.

The establishment of new ICF/MR facilities should not be authorized unless the following conditions are met:

1. Alternatives to the service proposed to be provided by the new ICF/MR are not available in the area to be served by the new facility;
2. There is a documented source of resident referrals for the proposed new facility;
3. The applicant can identify the manner in which the proposed new facility fits into the continuum of care for the mentally retarded;
4. There are ~~specific local conditions~~ *distinct and unique geographic, socioeconomic, cultural, transportation, or other factors affecting access to care* which require development of a new ICF/MR;
5. Alternatives to the development of a new ICF/MR consistent with the Medicaid waiver program have been considered and can be reasonably discounted in evaluating the need for the new facility.
6. The proposed new facility is consistent with the current DMHMRSAS Comprehensive Plan and the mental retardation service priorities for the catchment area identified in the plan;
7. Ancillary and supportive services needed for the new facility are available; and
8. Service alternatives for residents of the proposed new facility who are ready for discharge from the ICF/MR setting are available.

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12 VAC 5-310-30. Accessibility; travel time; financial considerations.

A. Comprehensive inpatient rehabilitation services should be available within a maximum driving time, under normal conditions, of 60 minutes for 95% of the population.

B. Medical rehabilitation services should be accessible to all patients in need of services without regard to their ability to pay.

C. *Providers of comprehensive medical rehabilitation services should facilitate access to outpatient medical rehabilitation services for discharged patients residing in remote and/or rural areas, directly or through the establishment of referral linkages with general hospitals or other appropriate organizations.*

12 VAC 5-320-50. Need for new service.

A. Preference will be given to proposals involving the provision of full-body CT scanning rather than units which can perform only CT head scans.

B. No CT service should be approved at a site which is within 30 minutes driving time of: (i) a COPN approved or exempted CT service that is not yet operational; or (ii) an existing CT unit that has performed fewer than 3,500 HECTs or 3,000 combined CT head and body scans during the relevant reporting period.

C. A proposed new CT service may be approved if: (i) in the case of a proposed stationary, hospital-based service, the applicant provides diagnostic-specific hospital discharge data for the relevant reporting period that is acceptable to the department which demonstrates that the HECTs attributable to the patient mix of the hospital where the proposed CT is to be located equates to at least 3,500 HECTs; or (ii) in the case of a proposed non-hospital based service, the applicant demonstrates that the number of outpatient studies performed by other CT services on the applicant's patients during the relevant reporting period is at least 3,500 HECTs or 3,000 combined CT head and body scans.

Consideration will be given to approval of CT services that project fewer than 3,500 HECTs or 3,000 combined CT head and body scans when such services are proposed for sites located beyond 30 minutes driving time of any existing CT facilities.

D. No new, non-hospital-based CT service or network may be approved unless all existing CT services or networks in the planning district, whether hospital-based, non-hospital-based, mobile or fixed, performed an average of at least 5,000 HECTs or 4,500 combined CT head and body scans per machine during the relevant reporting period.

12 VAC 5-320-150. Need for new service.

A. Preference will be given to applications which intend to provide hospital-based MRI services.

B. No MRI service should be approved at a site which is within 45 minutes driving time of: (i) a COPN approved or exempted MRI service that is not yet operational; or (ii) an existing MRI service that has performed fewer than 3,500 MRI

scans or at least 3,000 MRI scans excluding those performed on behalf of the applicant during the relevant reporting period.

Consideration will be given to approval of proposed MRI services that project less than full utilization of MRI equipment when such services are proposed for sites located beyond 45 minutes driving time of any existing MRI facilities.

12 VAC 5-320-430. Introduction of SPECT as a new service.

Any applicant establishing a specialized center, clinic, or portion of a physician's office for the provision of SPECT or introducing SPECT as a new service at an existing medical care facility which has not previously provided nuclear medicine imaging services should provide documentation satisfactory to the department that it can achieve a minimum utilization level of 650 SPECT scans in the first 12 months of operation of the service, and 1,000 such procedures in the second 12 months of services if the imaging unit would be a single-head device; or that it can achieve a minimum utilization level of 1,000 SPECT scans in the first 12 months of operation of the service, 1,250 such procedures in the second 12 months of operation, and 1,500 such procedures in the third 12 months of operation if the imaging unit would be a multi-head device.

Consideration will be given to the approval of proposed nuclear medicine imaging services that project utilization below that outlined in the preceding paragraph when such services are proposed for sites located beyond 45 minutes driving time of any existing nuclear medicine imaging facilities.

12 VAC 5-340-30. Accessibility; time; financial considerations.

A. 1. Radiation therapy services should be available within the institution, on a regularly scheduled basis, for a minimum of 40 hours a week.

2. Convenient hours of operation should be provided for the benefit of outpatients (early morning hours, lunch hours, evening hours, weekends).

B. Radiation therapy services should be available within one hour normal driving time, under normal conditions, for 95% of the population.

C. Radiation therapy services should be accessible to all patients in need of services without regard to their ability to pay or the payment source.

D. Providers of radiation therapy services serving rural areas should facilitate the transport of patients residing in rural areas to needed radiation therapy services, directly or through coordinated efforts with other organizations. Preference will be given in the review of competing applications to applicants who can demonstrate a history of commitment to the development of transportation resources for rural populations.

12 VAC 5-360-30. Accessibility.

A. Travel time. Nursing home beds should be accessible within a 45 minute driving time, under normal conditions, to 90% of all Virginians. Preference will be given in the review of

competing applications to proposed nursing home facilities which substantively improve geographic access and reduce travel time to nursing home services within a planning district.

B. Access to highway system. Nursing home facilities should be linked by paved roads to a state or federal highway and should be accessible by public transportation, when such systems exist in an area. ~~In urban areas, preference will be given in the review of competing applications to proposed nursing facilities which are fully accessible by private and public modes of transportation.~~

C. Financial. Nursing home services should be accessible to all persons in need of such services without regard to their ability to pay or the payment source. Preference will be given in the review of competing applications to proposed nursing facilities which will be accessible to all persons in need of such services without regard to their ability to pay or the payment source and can demonstrate a record of such accessibility.

D. Distribution of beds. Preference will be given in the review of competing applications to proposals which correct any maldistribution of beds within a planning district.

12 VAC 5-360-40. Availability.

A. Need for additional nursing home beds. No planning district will be considered to have a need for additional nursing home facility beds unless: (i) the bed need forecast for nursing home beds in that planning district (see subsection C of this section) exceeds the current inventory of nonfederal licensed and authorized beds in that planning district; and (ii) the estimated average annual occupancy of all existing Medicaid-certified nursing facility beds in the planning district was at least 95% for the most recent three years for which bed utilization has been reported to the department. (The bed inventory and utilization of the Virginia Veterans Care Center will be excluded from consideration in the determination of nursing home facility bed need.)

No planning district will be considered to have a need for additional nursing home beds if there are uncompleted nursing facility beds authorized for the planning district that will be Medicaid-certified beds.

B. Expansion of existing nursing facilities. Proposals for the expansion of existing nursing facilities should not be approved unless the facility has operated for at least three years and average annual occupancy of the facility's existing beds was at least 95% in the most recent year for which bed utilization has been reported to the department.

Exceptions to this standard will be considered for facilities that have operated at less than 95% average annual occupancy in the most recent year for which bed utilization has been reported to the department when the facility can demonstrate that it has a rehabilitative or other specialized care focus which results in a relatively short average length of stay and, consequently, cannot achieve an average annual occupancy rate of 95%.

Preference will be given in the review of competing applications to proposals which involve the expansion of freestanding nursing home facilities of 60 or fewer beds when

such facilities can demonstrate substantial compliance with the standards of the State Medical Facilities Plan.

In a case where no competing applicant is a freestanding nursing home facility with 60 or fewer beds or where freestanding nursing homes of 60 or fewer and 61 to 90 beds are competing, preference will also be given in the review of competing applications to proposals which involve the expansion of freestanding nursing home facilities of 90 or fewer beds when such facilities can demonstrate substantial compliance with the standards of the State Medical Facilities Plan.

C. Bed need forecasting method. The number of nursing home facility beds forecast to be needed in a given planning district will be computed as follows:

$$\text{PDBN} = (\text{UR64} * \text{PP64}) + (\text{UR69} * \text{PP69}) + (\text{UR74} * \text{PP74}) + (\text{UR79} * \text{PP79}) + (\text{UR84} * \text{PP84}) + (\text{UR85+} * \text{PP85+})$$

where:

PDBN = Planning district bed need.

UR64 = The nursing home bed use rate of the population aged 0 to 64 in the planning district as determined in the most recent nursing home patient origin study authorized by the department.

PP64 = The population aged 0 to 64 projected for the planning district three years from the current year as most recently published by the Virginia Employment Commission.

UR69 = The nursing home bed use rate of the population aged 65 to 69 in the planning district as determined in the most recent nursing home patient origin study authorized by the department.

PP69 = The population aged 65 to 69 projected for the planning district three years from the current year as most recently published by the Virginia Employment Commission.

UR74 = The nursing home bed use rate of the population aged 70 to 74 in the planning district as determined in the most recent nursing home patient origin study authorized by the department.

PP74 = The population aged 70 to 74 projected for the planning district three years from the current year as most recently published by the Virginia Employment Commission.

UR79 = The nursing home bed use rate of the population aged 75 to 79 in the planning district as determined in the most recent nursing home patient origin study authorized by the department.

PP79 = The population aged 75 to 79 projected for the planning district three years from the current year as most recently published by the Virginia Employment Commission.

UR84 = The nursing home bed use rate of the population aged 80 to 84 in the planning district as determined in the

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most recent nursing home patient origin study authorized by the department.

PP84 = The population aged 80 to 84 projected for the planning district three years from the current year as most recently published by the Virginia Employment Commission.

UR85+ = The nursing home bed use rate of the population aged 85 and older in the planning district as determined in the most recent nursing home patient origin study authorized by the department.

PP85+ = The population aged 85 and older projected for the planning district three years from the current year as most recently published by the Virginia Employment Commission.

Planning district bed need forecasts will be rounded as follows:

Planning District Bed Need (from above method)	Rounded Bed Need
1 - 29	0
30 - 44	30
45 - 84	60
85 - 104	90
105 - 184	120
185+	240

except in the case of a planning district which has two or more nursing facilities, has had an average annual occupancy rate of nursing home facility beds in excess of 95% for the most recent three years for which bed utilization has been reported to the department, and has a forecasted bed need of 15 to 29 beds. In such a case, the bed need for this planning district will be rounded to 30.

D. Minimum size of new nursing home facilities. No new freestanding nursing home facilities of less than 120 beds should be authorized. Consideration will be given to the authorization of new freestanding facilities with fewer than 120 nursing home facility beds when ~~these beds such facilities are combined with adult care residence facilities proposed for development in a rural area and can be justified on the basis of a lack of local demand for a larger facility and a maldistribution of nursing home facility beds within the planning district.~~

E. Continuing Care Retirement Communities. Proposals for the development of new nursing home facilities or the expansion of existing facilities by Continuing Care Retirement Communities will be considered in accordance with the following standards:

1. The total number of new or additional beds plus any existing nursing home facility beds operated by the continuing care provider does not exceed 20% of the continuing care provider's total existing or planned independent living and adult care residence population;
2. The proposed beds are necessary to meet existing or reasonably anticipated obligations to provide care to present or prospective residents of the continuing care

facility pursuant to continuing care contracts meeting the requirements of § 38.2-4905 of the Code of Virginia;

3. The applicant agrees in writing not to seek certification for the use of such new or additional beds by persons eligible to receive medical assistance services pursuant to Title XIX of the United States Social Security Act;

4. The applicant agrees in writing to obtain, prior to admission of every resident of the Continuing Care Retirement Community, the resident's written acknowledgement that the provider does not serve recipients of medical assistance services and that, in the event such resident becomes a medical assistance services recipient who is eligible for nursing facility placement, such resident shall not be eligible for placement in the provider's nursing facility unit;

5. The applicant agrees in writing that only continuing care contract holders who have resided in the Continuing Care Retirement Community as independent living residents or adult care residents and are holders of standard continuing care contracts will be admitted to the nursing home facility beds after the first three years of operation.

/s/ L. Anne Peterson, MD, MPH
Acting State Health Commissioner
Date: September 24, 1999

/s/ Claude A. Allen
Secretary of Health and Human Resources
Date: November 10, 1999

/s/ James S. Gilmore, III
Governor
Date: December 30, 1999

VA.R. Doc. No. R00-82; Filed December 30, 1999, 5:08 p.m.

Title of Regulation: 12 VAC 5-615-10 et seq. **Emergency Regulations for Authorized Onsite Soil Evaluators.**

Statutory Authority: §§ 32.1-163.5 and 32.1-164 of the Code of Virginia.

Effective Dates: January 3, 2000, through January 2, 2001.

Preamble:

This emergency regulation is a necessary requirement of Virginia statutory law and it is not exempt under subsection C4 of § 9-6.14:4.1 of the Code of Virginia. The second enactment clause of HB 2337 (1999) requires the State Board of Health to adopt these regulations within 280 days of the bill's enactment.

The emergency AOSE regulations establish qualifications for becoming an AOSE (Authorized Onsite Soil Evaluator) and for submitting site evaluation reports. The regulations provide time limits for processing various applications submitted by AOsEs and create professional and ethical standards of conduct and provide penalties for failing to adhere to these standards.

Agency Contact: Donald J. Alexander, Director, Division of Onsite Sewage and Water Services, Department of Health, Office of Environmental Health Services, 1500 E. Main Street, P.O. Box 2448, Room 117, Main Street Station, Richmond, VA 23218, telephone (804) 225-4030, FAX (804) 225-4003 or e-mail dalexander@vdh.state.va.us.

Part 1

Article 1

General

12-VAC 5-615-10. Authority for regulations.

Title 32.1-164 of the Code of Virginia provides the State Board of Health has the duty to qualify individuals as authorized onsite soil evaluators (AOSEs) and establish procedures for utilizing the work of AOSEs and professional engineers (PEs) when issuing construction permits, certification letters, and subdivision approvals.

12 VAC 5-615-20. Purpose of regulations.

These regulations have been promulgated to:

A. Guide the state health commissioner in determining who should be listed as an authorized onsite soil evaluator.

B. Guide certified professional soil scientists and other soil consultants in the procedures necessary to become and maintain the status of authorized onsite soil evaluator.

C. Guide authorized onsite soil evaluators and professional engineers in the processes and site documentation procedures necessary to secure timely responses to applications submitted to the Department.

D. Establish standards of practice and conduct for AOSEs.

E. Establish time limits for processing applications for persons applying to the Department for an approval with supporting documentation prepared by an authorized onsite soil evaluator or a professional engineer in consultation with an AOSE.

12 VAC 5-615-30. Relationship to the Sewage Handling and Disposal Regulations.

This chapter is supplemental to the current Sewage Handling and Disposal Regulations (12 VAC 5-610-10 et sec.) adopted by the State Board of Health pursuant to Title 32.1 of the Code of Virginia. This chapter addresses the Department's program for qualifying authorized onsite soil evaluators, processing applications with AOSE/PE supporting documentation, quality control procedures, and enforcement.

12 VAC 5-615-40. Administration of regulations.

This chapter is administered by the following:

1. *State Board of Health.* The State Board of Health, hereinafter referred to as the board, has the responsibility to promulgate, amend, and repeal regulations necessary to recognize and use the work of AOSE/PEs to site and design onsite wastewater systems in a manner that protects public health and the environment.

2. *State Health Commissioner.* The State Health Commissioner, hereinafter referred to as the

commissioner, is the chief executive officer of the State Department of Health. The commissioner has the authority to act, within the scope of regulations promulgated by the board, for the board when it is not in session. The commissioner may delegate authority under this chapter with the exception of the authority to issue orders under § 32.1-26 of the Code of Virginia. The commissioner has final authority to adjudicate contested decisions of subordinates delegated powers under this section prior to appeal of such decisions to the circuit court.

3. *State Department of Health.* The State Department of Health, hereinafter referred to as the Department, is designated as the primary agent of the commissioner for the purpose of administering this chapter.

4. *District or local health departments.* The district or local health departments are responsible for implementing and enforcing the operational activities required by this chapter.

12 VAC 5-615-50. Scope of Regulations.

A. *Sewage Handling and Disposal Regulations.* This Chapter describes the content and form of site and soil evaluation reports submitted to the Department by an AOSE/PE pursuant to an application filed for an approval under the Sewage Handling and Disposal Regulations. The Department will accept applications from owners (or their agent) without any site evaluation work (bare applications), with complete supporting documentation from an AOSE/PE, and on an interim basis, with complete supporting documentation from non-AOSE/PE consultants. Nothing in this Chapter should be construed to restrict the applications that the Department will accept. However, this chapter only addresses the requirements of the Department for applications submitted with AOSE/PE supporting documentation. However, only applications for residential development submitted in proper form with certification by an AOSE/PE shall be subject to processing time limits and deemed approval.

B. *Local Ordinances.* The provisions of local ordinances regarding onsite wastewater systems which are more restrictive than the Sewage Handling and Disposal Regulations are not affected by this regulation unless a locality indicates in writing that it desires the provisions of this chapter be applied to its more restrictive ordinances. When such a request is made, the Department will require all reports submitted in the locality to be certified as complying with both the Sewage Handling and Disposal Regulations and the more restrictive local requirements.

12 VAC 5-615-60. Roles and responsibilities.

A. *AOSE Submissions.* An AOSE/PE may certify that a site meets the requirements of the Sewage Handling and Disposal Regulations and may design traditional systems in accordance with the same regulations. Responsibility for assuring that site evaluations and designs comply with the Sewage Handling and Disposal Regulations rests with the AOSE/PE submitting the work. When a permit or other approval is based on the combined work of an AOSE/PE and

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the Department, the AOSE/PE shall be responsible only for the work he or she submits.

B. Department of Health Review. The Department's role in evaluating an AOSE/PE submission will be to review the materials submitted with an application for compliance with this Chapter, the Sewage Handling and Disposal Regulations, and the Department's policies prior to approval or disapproval of an application. The Department will also conduct sufficient field review after an approval has been issued to protect public health and the environment and to assess the performance of AOSE/PEs.

C. Construction Permit Revisions. An AOSE/PE must make minor revisions that are discovered to be necessary at any time, including but not limited to during the installation of the system, to a permit, certification letter or subdivision approval issued in reliance on the evaluations and/or designs of an AOSE/PE.

1. Square footage of absorption area.
2. All revisions must fully comply with the Sewage Handling and Disposal Regulations and must be approved by the Department before the issuance of the operation permit.
3. Whenever major revisions, such as changes in system design or location, are required, a new application in accordance with Part 3 of this Chapter shall be required.

D. Final Inspections. Before an Operation Permit may be issued for any system where the Department relied upon the evaluation and design of an AOSE/PE for issuance of a permit, the owner must furnish to the local health department a statement signed by the AOSE/PE. Such completion statement shall certify that the system was installed in accordance with the permit and with the Sewage Handling and Disposal Regulations.

12 VAC 5-615-70. Processing Time Limits and Deemed Approval.

A. The provisions of this section apply only to applications for residential development.

B. Application Review. Applications submitted with AOSE/PE documentation in the form specified in this chapter shall be reviewed and a written approval or denial issued within the time frames specified in Table 1.1 of this subsection. In the event the application is denied, the Department shall set forth in writing the reasons for denial.

Type of Application	Time Limit
Individual Permit Application	15 days
Individual Certification Letter	20 days
Multiple Lot Certification Letter	60 days
Subdivision Review	60 days

Table 1.1

C. Deemed approval. If the Department fails to approve or disapprove an AOSE/PE application or a request for a subdivision review properly submitted in accordance with this chapter within the time limits specified in Table 1.1, the

applications shall be deemed approved and the appropriate letter, permit, or approval shall be issued.

12 VAC 5-615-80. The Practice of Engineering.

A. Chapter 1028, § 32.1-163.5 of the Code of Virginia provides that an AOSE may site and design traditional onsite systems; however, the same section provides that no one other than a licensed professional engineer may practice engineering. Chapter 4, § 54.1-400 of the Code of Virginia states "The practice of engineering" means any service wherein the principles and methods of engineering are applied to, but are not necessarily limited to, the following areas: consultation, investigation, evaluation, planning and design of public or private utilities, structures, machines, equipment, processes, transportation systems and work systems, including responsible administration of construction contracts. The term "practice of engineering" shall not include the service or maintenance of existing electrical or mechanical systems.

B. An AOSE may submit site and soil evaluations as described in this chapter for any traditional system regardless of whether the system design requires an engineer. An AOSE however, may only submit system designs and specifications for systems that do not require the practice of engineering. When a system is sufficiently complex to require the practice of engineering, formal plans and specifications, sealed by a Professional Engineer (PE) shall be required.

C. Some traditional systems (see definition) may require the practice of engineering. An AOSE may design traditional systems that do not require the practice of engineering.

D. When engineering plans and specifications are required for an application submitted pursuant to this Chapter, the site evaluation work shall be either conducted and certified by an AOSE or certified by a PE working in consultation with an AOSE. When the site and soil evaluation submitted in support of the application is submitted by a PE, the engineer shall submit a statement indicating that he or she consulted with a specific AOSE, giving both the name and certification number of the AOSE, on the proposal under review.

12 VAC 5-615-90. AOSE Certification Required.

No person shall sign a certification statement for submittal to the Department in support of an application for a sewage disposal system construction permit representing that he or she is an AOSE/PE or otherwise represent that he or she is an AOSE/PE unless that person possess a valid certification as an AOSE issued by the commissioner in accordance with 12 VAC 5-615- 22A or unless that person is a Virginia licensed Professional Engineer who has consulted with an AOSE in accordance with this Chapter.

12 VAC 5-615-100. Right of entry.

The commissioner or the commissioner's designee shall have the right to enter any property to assure compliance with this Chapter in accordance with the provisions of § 32.1-25 of the Code of Virginia.

Article 2
Definitions

12 VAC 5-615-110. Definitions.

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

AOSE/PE. Means an authorized onsite soil evaluator or a professional engineer working in consultation with an authorized onsite soil evaluator.

Authorized Onsite Soil Evaluator (AOSE). Means a person currently listed by the Board as possessing the qualifications to evaluate soils and soil properties in relationship to the effects of these properties on the use and management of these soils as the locations for traditional onsite sewage disposal systems.

Board. Means the State Board of Health.

Certification Letter. Means a letter issued by the department, in lieu of a construction permit, which identifies a specific site and recognizes the appropriateness of the site for an onsite wastewater disposal system.

Deemed Approved or Deemed Approval. Means that the Department has failed to take action to approve or disapprove an application for a permit, an individual lot certification letter, multiple lot certification letters, or subdivision approval for residential development within the time limits prescribed in §§ 32.1-163.5 and 164.H. Upon such failure, an application submitted in proper form pursuant to this Chapter is deemed approved and the appropriate letter or letters, permit, or approval shall be immediately issued by the Department. Deemed approval applies only to applications for single-lot construction permits, subdivision review, and single or multiple-lot certification letters submitted with evaluations and designs certified by an AOSE/PE in accordance with the provisions of the Code, the Sewage Handling and Disposal Regulations, and this Chapter. Further, sites that have been previously denied by the Department are not subject to the provisions of deemed approval. An application "deemed approved" means that it is approved only with respect to the Board of Health's Regulations. In accordance with 12 VAC 5-615-50 B a local government may authorize the Department in writing to implement the provisions of any local ordinance that are more restrictive than the Sewage Handling and Disposal Regulations through the provisions of this Chapter.

Multiple lot certification letters. Means two or more applications for certification letters filed by the same owner for existing or proposed lots to serve detached, individual dwellings.

Professional Engineer in consultation with an AOSE. Means that a Professional Engineer has communicated with an AOSE regarding the site and soil conditions present where the system is proposed, in a manner sufficient to assure compliance with the Sewage Handling and Disposal Regulations and this Chapter.

Residential Development. Means development using single family homes, which utilize individual onsite sewage systems for each structure. Mass drainfields and other

cluster systems which serve more than one dwelling are not considered residential development for the purposes of this Chapter.

Single lot construction permit/certification letter. Means one application filed by an owner for a sewage disposal system construction permit or certification letter to serve an individual dwelling on one lot or parcel of land.

Subdivision review. Means the review of a proposed subdivision plat by a local health department for a local government pursuant to a local ordinance or ordinances and pursuant to §§ 15.2-2242, 2259, and 2260 of the Code and § 360 of the Sewage Handling and Disposal Regulations for the purposes of determining and documenting whether or not an approved sewage disposal site(s) is present on each proposed lot.

Traditional Systems. Means onsite wastewater treatment and disposal systems for which design criteria are contained in the Sewage Handling and Disposal Regulations, except as noted below. At present traditional systems include gravity, pumped, and low-pressure distribution (lpd) septic effluent drainfields, and Wisconsin-type mound systems. Traditional systems as defined in this regulation do not include experimental permits, conditional permits issued for temporary, intermittent or seasonal use, repair permits, septage stabilization systems, or systems permitted under a soil drainage management plan. Conditional construction permits issued for limited occupancy or the use of permanent water saving fixtures are not excluded (see 12 VAC 5-610-250 J).

Part 2

Article 1

Compliance with Administrative Process Act

12 VAC 5-615-120. Compliance with Virginia Administrative Process Act.

The provisions of the Virginia Administrative Process Act of the Code of Virginia shall govern the promulgation and administration of this Chapter and shall be applicable to the appeal of any case decision based upon this Chapter.

12 VAC 5-615-130. Emergency order or rule.

If an emergency exists the commissioner may issue an emergency order or rule as is necessary for preservation of public health, safety, and welfare. The emergency order or rule shall state the reasons and precise factual basis upon which the emergency rule or order is issued. The emergency order or rule shall state the time period for which it is effective.

12 VAC 5-615-140. Enforcement of regulations.

All activities of an AOSE/PE pertaining to evaluations and designs of sewage treatment systems governed by the Sewage Handling and Disposal Regulations and applications for certification as an AOSE shall comply with the requirements set forth in this Chapter. The commissioner may enforce this Chapter through any means lawfully available.

A. Notice. Subject to the exceptions indicated below, whenever the commissioner, the commissioner's designee, or

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the district or local health department has reason to believe a violation of this Chapter, any law administered by the Board, commissioner, or Department, any regulations of the Board, any order of the Board or commissioner, or any conditions in a permit has occurred or is occurring, the alleged violator shall be notified. Such notice shall be made in writing, shall be delivered personally or sent by certified mail, shall cite the regulation or regulations that are allegedly being violated, shall state the facts which form the basis for believing the violation has occurred or is occurring, shall include a request for a specific action by the recipient by a specified time and shall state the penalties associated with such violations (See § 32.1-27 of the Code of Virginia). When the commissioner deems it necessary the commissioner may initiate criminal prosecution or seek civil relief through mandamus or injunctive relief prior to giving notice.

B. Orders. Pursuant to the authority granted in § 32.1-26 of the Code of Virginia the commissioner may issue orders to require any person to comply with the provisions of this Chapter. The order shall be signed by the commissioner and may require:

1. The immediate cessation or correction, or both, of the violation;
2. The submission of a plan to prevent future violations to the commissioner for review and approval;
3. The submission of an application for certification as an AOSE, an application for a permit, or an application for a variance; and
4. Any other corrective action deemed necessary for proper compliance with the regulations or to protect public health.

C. Hearing before the issuance of an order. Before the issuance of an order described in subsection B of this section, a hearing must be held with at least 30 days notice to the affected owner of the time, place and purpose thereof, for the purpose of adjudicating the alleged violation or violations of this Chapter. The procedure at the hearing shall be in accordance with 12 VAC 5-615-170 and with §§ 9-6.14:11 and 9-6.14:12 of the Code of Virginia.

D. Order; when effective. All orders shall become effective not less than 15 days after mailing a copy thereof by certified mail to the last known address of the person violating this Chapter. Violation of an order is a misdemeanor. (See § 32.1-27 of the Code of Virginia.)

E. Compliance with effective orders. The commissioner may enforce all orders. Should any person fail to comply with any order, the commissioner may:

1. Apply to an appropriate court for an injunction or other legal process to prevent or stop any practice in violation of the order;
2. Seek mandamus against any owner or person that is a municipal corporation;
3. Request the Attorney General to bring an action for civil penalty;

4. Request the Commonwealth's Attorney to bring a criminal action.

F. Not exclusive means of enforcement. Nothing contained in this section shall be interpreted to require the commissioner to issue an order prior to seeking enforcement of any regulations or statute through an injunction, mandamus or criminal prosecution.

12 VAC 5-615-150. Suspension of regulations during disasters.

If in the case of a man-made or natural disaster, the commissioner finds that certain regulations cannot be complied with and that the public health is better served by not fully complying with this Chapter, the commissioner may authorize the suspension of the application of the regulations for specifically affected localities and institute a provisional regulatory plan until the disaster is abated.

12 VAC 5-615-160. Variances.

The commissioner may grant a variance to this Chapter. The commissioner shall follow the appropriate procedures set forth in this section in granting a variance.

A. Definition of a variance. A variance is a conditional waiver of a specific regulation which is granted to a specific person and may be for a specified time period.

B. Requirements for a variance. The commissioner may grant a variance if a thorough investigation reveals that the hardship imposed (may be economic) by this Chapter outweighs the benefits that may be received by the public and that the granting of such variance does not subject the public to unreasonable health risks.

C. Application for a variance. Any person who seeks a variance shall apply in writing for a variance. The application shall be sent to the commissioner for review. The application shall include:

1. A citation to the regulation from which a variance is requested;
2. The nature and duration of the variance requested;
3. Any relevant information in support of the request including information relating to experience or education received, or evaluations and designs conducted pursuant to the requirements of this Chapter;
4. The hardship imposed by the specific requirement of this Chapter;
5. A statement of reasons why the public health and welfare would be better served if the variance were granted;
6. Suggested conditions that might be imposed on the granting of a variance that would limit the detrimental impact on the public health and welfare;
7. Other information, if any, believed pertinent by the applicant; and
8. Such other information as the commissioner may require.

D. Evaluation of a variance application.

1. The commissioner shall act on any variance request submitted pursuant to subsection C of this section within 60 calendar days of receipt of the request.
2. In the commissioner's evaluation of a variance application, the commissioner shall consider the following factors:
 - a. The effect that such a variance would have on the performance of the AOSE/PE or system;
 - b. The cost and other economic considerations imposed by this requirement;
 - c. The effect that such a variance would have on protection of the public health;
 - d. Any relevant information in support of the request including information relating to experience or education received, or evaluations and designs conducted pursuant to the requirements of this Chapter;
 - e. The hardship imposed by enforcing the specific requirement of this Chapter;
 - f. The applicant's statement of reasons why the public health and welfare would be better served if the variance were granted;
 - g. The suggested conditions that might be imposed on the granting of a variance that would limit the detrimental impact on the public health and welfare;
 - h. Other information, if any, believed pertinent by the applicant;
 - i. Such other information as the commissioner may require; and
 - j. Such other factors as the commissioner may deem appropriate.

E. Disposition of a variance request.

1. The commissioner may reject any application for a variance by sending notice to the applicant. The rejection notice shall be in writing and shall state the reasons for rejection. The applicant may petition for a hearing to challenge the rejection pursuant to 12 VAC 5-615-170 within 30 calendar days of receipt of notice of rejection.
2. If the commissioner proposes to grant a variance request submitted pursuant to subsection C of this section, the applicant shall be notified in writing of this decision. Such notice shall identify the variance, person, property, or sewage handling or disposal facility covered, and shall specify the period of time for which the variance will be effective and any conditions imposed pursuant to issuing the variance. The effective date of a variance shall be 15 calendar days following its issuance.
3. No person may challenge the terms set forth in the variance after 30 calendar days have elapsed from the date of issuance.

F. Posting of variances. All variances granted are nontransferable. A variance may be attached to a person's certification to act as an AOSE or to a permit or other approval document. A variance is revoked when the permit or other approval or AOSE certification to which it is attached is revoked.

12 VAC 5-615-170. Hearing types.

Hearings before the commissioner or the commissioner's designees shall include any of the following forms depending on the nature of the controversy and the interests of the parties involved.

A. Informal hearings. An informal hearing is a meeting with a Department employee designated by the commissioner and held in conformance with § 9-6.14:11 of the Code of Virginia. The commissioner's designee shall consider all evidence presented at the meeting which is relevant to the issue in controversy. Presentation of evidence, however, is entirely voluntary. The commissioner's designee shall have no subpoena power. No verbatim record need be taken at the informal hearing. The commissioner's designee shall review the facts presented and based on those facts render a decision. A written copy of the decision and the basis for the decision shall be sent to the appellant in a timely manner in accordance with § 9-6.14:11 unless the parties mutually agree to a later date in order to allow the department to evaluate additional evidence. If the decision is adverse to the interests of the appellant, an aggrieved appellant may request an adjudicatory hearing pursuant to 12 VAC 5-615-170 B by filing a written request for a hearing within 30 days of the date of the adverse decision.

B. Adjudicatory hearing. The adjudicatory hearing is a formal, public adjudicatory proceeding before a hearing officer designated in accordance with § 9-6.14:14.1 of the Code of Virginia and held in conformance with § 9-6.14:12 of the Code of Virginia. An adjudicatory hearing includes the following features:

1. Notice. The parties to a formal proceeding shall be given reasonable notice of the proceeding in accordance with § 9-6.14:12.B of the Code of Virginia.
2. Record. A verbatim record of the hearing shall be made by a court reporter. A copy of the transcript of the hearing, if transcribed, will be provided within a reasonable time to any person upon written request and payment of the cost.
3. Evidence. All interested parties may attend the hearing and submit oral and documentary evidence and rebuttal proofs, expert or otherwise, that is material and relevant to the issues in controversy. The admissibility of evidence shall be determined in accordance with § 9-6.14:12 of the Code of Virginia.
4. Counsel. All parties may be accompanied by and represented by counsel and are entitled to conduct such cross-examination as may elicit a full and fair disclosure of the facts.
5. Subpoena. Pursuant to § 9-6.14:13 of the Code of Virginia, the hearing officer may issue subpoenas for the attendance of witnesses and the production of books,

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papers, maps or other materials. Failure to appear or to testify or to produce materials without adequate excuse may be reported by the commissioner to the appropriate circuit court for enforcement.

6. *Judgement and final order. As provided in § 9-6.14:14.1 the hearing officer shall make recommendations or conclusions for review and final decision by the commissioner. The final decision of the commissioner shall be reduced to writing and will contain the explicit findings of fact upon which a decision is based. A certified copy of the decision shall be delivered to the affected person. Notice of a decision will be served upon the parties and become a part of the record. Service may be by personal service or certified mail, return receipt requested.*

12 VAC 5-615-180. Request for hearing.

The commissioner or any person or owner injured by alleged violation of this Chapter may request a hearing of one of the types listed by sending the request in writing to the district or local health department. The request for hearing shall cite the reason or reasons for the hearing request and shall cite the section or sections of this Chapter involved.

12 VAC 5-615-190. Hearing as a matter of right.

Any person whose rights, duties, or privileges have been, or may be affected by any decision of the board or its subordinates in the administration of this Chapter shall have a right to both informal and adjudicatory hearings. The commissioner may require participation in an informal hearing before granting the request for a full adjudicatory hearing.

Exception. No person other than an AOSE shall have the right to an adjudicatory hearing to challenge the issuance of a certification to act as an AOSE unless the person can demonstrate at an informal hearing that the minimum standards contained in these regulations have not been applied and that he will be injured in some manner by the issuance of the AOSE certification.

12 VAC 5-615-200. Appeal.

A. *Any appeal from a denial of an application for certification as an AOSE must be made in writing and received by the department within 30 days of the date of receipt of notice of the denial.*

B. *Any request for hearing on the denial of an application for a variance pursuant to 12 VAC 5-610-190 E.1 must be made in writing and received within 30 days of receipt of the denial notice.*

C. *Any request for a variance must be made in writing and received by the department prior to the denial of a certification for authorization as an AOSE, or within 30 days after such denial.*

D. *In the event a person applies for a variance within the 30-day period provided by subsection C of this section, the date for appealing the denial of the certification, pursuant to subsection B of this section, shall commence from the date on which the department acts on the request for a variance.*

E. *Pursuant to the Administrative Process Act (§ 9-6.14:1 et seq. of the Code of Virginia), an aggrieved owner may appeal a final decision of the commissioner to an appropriate circuit court.*

Part 3

Article 1

AOSE Certification Requirements

12 VAC 5-615-210. Persons holding a valid certificate on the effective date of these regulations.

On the effective date of these regulations, any person holding a valid certificate as an AOSE shall be deemed to be an AOSE until June 30, 2001.

12 VAC 5-615-220. Application Requirements.

Any person may apply to the Department for certification as an AOSE by filing a complete application in a form approved by the Division, by paying the application fee in accordance with 12 VAC 5-615-240, and by submitting 3 professional references. In addition, all applicants for certification as an AOSE shall meet at least one of the requirements below:

A. *Certified Professional Soil Scientist. A person holding a certificate as a Virginia certified professional soil scientist from the Board of Professional Soil Scientists shall be eligible to receive a certificate as an AOSE provided:*

- 1. The applicant demonstrates to the satisfaction of the Division that he or she possesses the knowledge, skills, and abilities necessary to conduct onsite soil evaluations and design those traditional systems that an AOSE is authorized to design, and*
- 2. The applicant demonstrates to the satisfaction of the Division that he or she has spent at least 2 of the last 5 years evaluating site and soil conditions for onsite sewage systems in Virginia in accordance with the Board of Health's regulations (12 VAC 5-610-10 et seq.)*

B. *Person with 5 years experience. A person who demonstrates to the satisfaction of the Division that he or she has at least 5 years of experience evaluating site and soil conditions for onsite sewage system in Virginia in accordance with the Board of Health's regulations (12 VAC 5-610-10 et seq.) shall be eligible to receive a certificate as an AOSE provided:*

- 1. The applicant successfully completes a written test approved by the Division, and*
- 2. The applicant successfully completes a field test approved by the Division.*

C. *Virginia Department of Health employee. A person who is currently employed by the Department as an Environmental Health Specialist and has been employed as such for at least 2 years and has successfully completed all training and testing required of Department employees in the onsite wastewater program shall be eligible to receive a certificate as an AOSE.*

D. *Person with 2 years experience. A person who demonstrates to the satisfaction of the Division that he or she has at least 2 years of experience evaluating site and soil*

conditions for onsite sewage system in Virginia in accordance with the Board of Health's regulations (12 VAC 5-610-10 et seq.) shall be eligible to receive a certificate as an AOSE provided:

1. The applicant successfully completes a training course or courses approved by the Division,
2. The applicant successfully completes a written test approved by the Division, and
3. The applicant successfully completes a field test approved by the Division.

12 VAC 5-615-230. Disposition of AOSE Applications.

A. Upon satisfactory completion of the requirements of 12 VAC 5-615-220 the commissioner shall issue to the applicant a certification as an AOSE.

B. Applicants who have been found ineligible for any reason may request further consideration by submitting in writing evidence of additional qualifications, training, or experience. No additional fee will be required provided the requirements for certification are met within one year from the date the original application is received by the Department. After such period, a new application shall be required.

C. If the commissioner finds that the applicant has not met the minimum requirements for certification as an AOSE, the applicant shall be notified in writing, sent by certified mail or hand delivered, and the reasons for denial of the certification shall be stated. The notice to the applicant of denial shall also state that the applicant has the right to hearings as specified in 12 VAC 5-615-170 to challenge the certification denial. Any request for a hearing must be received by the commissioner within 30 days of the affected party's receipt of written notice of the decision.

D. The commissioner may make further inquiries and investigations with respect to the qualifications of the applicant and all references, etc. to confirm or amplify the information supplied. The commissioner may also require a personal interview with the applicant.

12 VAC 5-615-240. Fees for applications, training, and testing.

The following fees will be assessed. All fees due the Department shall be paid by check or money order.

A. Any person making application for certification as an AOSE or applying for renewal of an AOSE certification shall pay an application fee of \$100. Those persons currently employed by the Department shall not be required to pay the application fee.

B. Those persons taking a Department-sponsored training course or courses as specified in 12 VAC 5-615-120 shall pay the fee for such course as determined by the Department. Fees for such course or courses will be based on the Department's actual expenses in preparing course materials and conducting the training. This section is not intended to prevent or discourage training courses approved by the Department and offered by entities other than the Department. In the case of training that is not directly

sponsored by the Department, applicants will pay appropriate fees to the sponsoring entity.

C. Those persons taking written and field tests specified in 12 VAC 5-615-220 shall pay a fee for such testing as determined by the Department based on the actual costs of preparing and administering the tests.

12 VAC 5-615-250. Expiration of AOSE certifications.

Except as noted in 12 VAC 5-615-110, all AOSE certifications shall expire on June 30th of the second calendar year following the year in which the certificate was issued unless revoked or suspended.

12 VAC 5-615-260. Renewal of expired AOSE Certifications.

Any person whose AOSE certification has expired in accordance with 12 VAC 5-615-250 may apply to the Department for renewal of that certification. If more than 5 years have lapsed from the expiration of the most recent certification the Department may require an applicant to comply with the provisions of 12 VAC 5-615-220 and paragraph B of this subsection. An AOSE may apply for renewal not more than 60 days prior to the expiration of his or her AOSE certification.

A. Application and fee. Any person making application for renewal of an AOSE certification shall file a complete application in a form approved by the Division and pay the application fee in accordance with 12 VAC 5-615-240.

B. Continuing Education. Any person making application for renewal of an AOSE certification shall provide documentation that he or she has earned 2 Continuing Education Units (CEUs) in topics related to the evaluation of site and soil conditions for onsite sewage treatment and disposal and/or the design of onsite sewage treatment and disposal systems during the previous two years. For the purposes of this Chapter, a CEU shall be equivalent to 10 contact hours of instruction in subject matter and from sources approved by the Division.

12 VAC 5-615-270. Site evaluations and design certifications to comply with regulations.

No AOSE/PE shall certify a site evaluation and/or design unless such evaluation and/or design complies with the minimum requirements of the Sewage Handling and Disposal Regulations and such certification and/or design is produced in accordance with this Chapter.

12 VAC 5-615-280. Revocation or suspension of AOSE certification.

The commissioner may revoke or suspend an AOSE certification for failure to comply with any law administered by the Board, commissioner, or Department, any regulations of the Board, any order of the Board or commissioner, or any conditions in a permit.

A. Actions resulting in suspension or revocation. Actions that may result in revocation or suspension include, but are not limited to, certifying as suitable a site that does not comply with the minimum requirements of the Sewage Handling and Disposal Regulations, certifying as suitable a site that has

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been rejected by the Department unless certified pursuant to 12 VAC 5-615-310, and falsifying any document.

B. Revoking or suspending an AOSE certification. Whenever the commissioner or the commissioner's designee takes action to revoke or suspend an AOSE certification, there must be an informal fact-finding conference and proper notice must be given to the affected party.

1. Notice. The AOSE shall be notified in writing. The notice must be hand delivered or sent by certified mail. The notice must provide the factual and legal basis for the contemplated action and must give the date, time, place, and location of the informal fact-finding conference.

2. Informal fact-finding conference. The informal fact-finding conference is to be conducted by an employee of the Department appointed by the commissioner. The conference shall be conducted in accordance with § 9-6.14:11 of the Code of Virginia.

3. Decision. The commissioner or the commissioner's designee shall render a decision from the informal fact-finding conference in a timely manner in accordance with § 9-6.14:11 of the Code of Virginia.

4. Time period of suspension or revocation. When action is taken to suspend or revoke an AOSE certification, that suspension or revocation shall be for a specified period of time. Remedial actions including, but not limited to, additional training courses, additional testing, and re-evaluation of a site and/or re-design of an onsite sewage system may be specified as conditions for reinstatement of an AOSE certification.

12 VAC 5-615-290. Application for re-instatement of AOSE certification.

Any person whose AOSE certification has been suspended or revoked pursuant to 12 VAC 5-615-280 must apply to the Department for reinstatement as an AOSE. This application must include:

A. Application and fee. Any person making application for re-instatement of an AOSE certification pursuant to this section shall file a complete application in a form approved by the Division and pay the application fee in accordance with 12 VAC 5-615-240.

B. Documentation of satisfactory completion of remedial actions. Any person making application for re-instatement of an AOSE certification pursuant to this section shall provide documentation that he or she has satisfactorily completed any remedial actions required as a result of the suspension or revocation.

12 VAC 5-615-300. Appeal of suspension or revocation.

In accordance with 12 VAC 5-615-170. Any person whose AOSE certification has been suspended or revoked shall have the right to an adjudicatory hearing to challenge the suspension or revocation. Requests for adjudicatory hearings must be received by the commissioner within 30 days of receipt of the Department's notice of suspension or revocation.

12 VAC 5-615-310. AOSE/PE cannot certify a site that has been previously denied by the Department.

No AOSE/PE shall certify a site as meeting the minimum requirements of the Sewage Handling and Disposal Regulations if the Department has previously denied that site. Exception: An AOSE/PE may certify a previously denied site as meeting the requirements of the Sewage Handling and Disposal Regulations if the Board's regulations or policies have changed in such a way that the site is suitable for a system that was not allowed by the Board's regulations or policies at the time of the original denial. An AOSE/PE may certify as meeting the requirements of the Sewage Handling and Disposal Regulations a site located on the same property as a site previously denied by the Department if the site being certified is not the same one that was denied by the Department.

Part 4 Procedures and Reports

Article 1 Applications

12 VAC 5-615-320. Applications Processing.

A. All applications that are submitted with evaluation and design documentation by an AOSE/PE shall contain the minimum required information necessary to complete the application and shall be accompanied by the required fees. Such applications will be processed within specified time limits in § 70 of this Chapter.

B. When such an application is found to be complete an approval will be issued without field review.

C. Applications that are found to be incomplete or defective in any manner shall be denied and the owner and AOSE/PE will be notified of deficiencies. If an application has been denied, the owner or their agent may submit a new application to correct the deficiency(s) contained in their first application. If the application is received within 90 days, the Department will waive all state fees associated with the new application. This waiver may be granted not more than once per site.

12 VAC 5-615-330. Documentation Requirements for AOSE/PE Reports.

Applications for residential development may be submitted for a single lot construction permit, a single lot certification letter, multiple lot certification letters, and subdivision reviews. The minimum requirements for each type of application are listed below. Additional information may be submitted when an AOSE/PE believes it may be in the client's interest to provide additional information.

A. Applications for a single construction permit. A complete application for a construction permit shall consist of the following information:

1. A completed application for a Sewage Disposal System Construction Permit (CHS 200), signed, dated, and with all pertinent information supplied,
2. The appropriate fee for the application as per the Code of Virginia,

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3. A site evaluation report,
4. A proposed well site (when a private water supply is proposed),
5. Construction drawings and specifications for the recommended system, and
6. A statement certifying that the site and soil conditions and design conform with the Sewage Handling and Disposal Regulations.

B. Application for a single certification letter. A complete application for certification letter differs from an equivalent application for a construction permit in that a complete design is not required. It is, however, necessary to assure a system meeting the requirements specified on the application can be supported by the proposed site. Therefore, the requirements for a single certification letter are:

1. A completed application for a Sewage Disposal System Construction Permit (CHS 200), signed, dated, and with all pertinent information supplied,
2. The appropriate fee for the application,
3. A site evaluation report,
4. A proposed well site (when a private water supply is proposed),
5. An abbreviated system design for the type of system proposed,
6. A statement certifying that the site and soil conditions and design conform with the Regulations.

C. Application for multiple certification letters. Applications for multiple certification letters may be used as the method for reviewing proposed subdivisions in localities that do not require the local health department to review proposed subdivisions. Each application submitted must contain the following:

1. Completed applications for Sewage Disposal System Construction Permits (CHS 200), signed, dated, and with all pertinent information supplied,
2. The appropriate fee for each site to be reviewed,
3. Site evaluation reports,
4. Proposed well sites (when a private water supply is proposed),
5. Abbreviated system designs for the type of system proposed,
6. A statement for each proposed site certifying that the site and soil conditions and design conform with the Sewage Handling and Disposal Regulations, and
7. If the multiple certification letters are intended to establish the suitability of soils for a proposed subdivision, the information required for a subdivision review in regard to the preliminary subdivision plat is to be submitted by the applicant.

D. Application for subdivision approval. Section 32.1-163.5 of the Code provides that VDH shall accept private site

evaluations and designs, for subdivision review for residential development, designed and certified by a licensed professional engineer in consultation with an AOSE or by an AOSE. The following shall apply to all requests for subdivision review and approval:

1. All requests for subdivision reviews must be submitted to the local health department with a request from the local government entity specifically asking for review of the proposed lots for onsite wastewater system approvals pursuant to the local ordinance governing such proposals (cite reference to local ordinance).

2. In localities where there is no subdivision ordinance, subdivisions should be handled using applications for multiple certification letters (see procedure above).

3. All requests submitted by local governments for review and approval must contain the following minimum information:

- a. Letter requesting subdivision review,*
- b. Individual site and soil evaluation reports for each proposed lot in the subdivision. These individual reports must be identified as to the subdivision and the proposed lot number.*
- c. Preliminary subdivision plat that provides the information specified in 12 VAC 5-610-360.B. This includes all information required by the local ordinance, and includes the following if not required by local ordinance: proposed streets, utilities, storm drainage, water supplies, easements, lot lines, neighboring property lines (within 200'), existing and proposed water supplies for each proposed lot and within 200' of the outermost property line, and original topographic contour lines by detail survey. The plat shall be prepared according to suggested scales and contour intervals contained in Appendix L of the Sewage Handling and Disposal Regulations.*

4. Abbreviated system designs for the type of system proposed, and

5. A statement for each proposed site certifying that the site and soil conditions and design conform to the Sewage Handling and Disposal Regulations.

	Type of Applications			
	Single Lot Construction Permit	Single Lot Certification Letter	Multiple Lot Certification Letters	Subdivision
Application	X	X	X	
Fee	X	X	X	
Site Evaluation	X	X	X	X
Proposed Well Site	X	X	X	X
Construction Drawings	X			
Construction Specifications	X			

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Design Calculations	X			
Abbreviated Design calculations		X	X	X
Certification of Compliance	X	X	X	X
Local Government Request				X
Preliminary Subdivision Plat			X (as necessary)	X
Max. Time to Process	15	20	60	60
Rec. Time to Process	5	10	45	45

Table 3.1

12 VAC 5-615-340. Site Evaluation Reports.

All site evaluation work submitted to the Department shall be in the form specified below and shall be certified as fully complying with the Sewage Handling and Disposal Regulations. A statement approved by the Department shall be used to certify that a site evaluation and/or design complies with the Board's regulations for onsite sewage systems. No approval shall be granted without field review for any site that has not been certified by an AOSE/PE.

A. Soil profile holes. A minimum of three soil-profile descriptions, representative of the proposed sewage disposal system are required. The area shall be described in sufficient detail to be representative of both the original system area and any required repair area. The maximum acceptable separation distance between observation holes is 100 feet. When soil variability or marginally satisfactory conditions exist, sufficient additional soil-profile descriptions shall be made to assure the site complies with the Sewage Handling and Disposal Regulations. When a required reserve area is not adjacent to a proposed sewage disposal system area, the minimum soil-profile documentation shall apply to both the primary area and the reserve area. The use of common holes between adjacent proposed sewage disposal system sites to describe both sites is not an acceptable practice.

B. Soil profile descriptions. Soil profile descriptions shall be made to a depth sufficient to determine if a restrictive zone, such as a water table, rock, fragipan, impermeable horizons or other limiting factors exist within the stand-off distance beneath an absorption trench.

1. Scope of descriptions. Each soil profile hole drilled or dug during a soil investigation must be accurately described and located on the site sketch. All holes used for drainfield documentation shall be completely described to meet the requirements of the Sewage Handling and Disposal Regulations. All holes or pits in the proposed drainfield area must be described with horizon depths, soil textures and depth to soil restriction or redoxmorphic features.

2. Content of descriptions. The major horizons of all soil profiles are to be documented using U. S. Department of Agriculture soil textural classes and Standard Munsell Linguistic color equivalents. The following soil characteristics must be documented (See 12 VAC 5-610-490):

- a. Soil Color (matrix and mottle patterns)
- b. Soil Texture (including the percent and size of coarse fragments)
- c. Soil Horizons and Horizon Depths
- d. Shrink-Swell potential (if moderate or greater)
- e. When backhoe pits are used, the complete range of soil characteristics exposed is to be described (depth to mottles, rock percentage and depth to rock or other restrictive layers & variability in rock depth).
- f. Depth to rock or restrictive layers (when applicable).
- g. Soil permeability. If tests are conducted (including percolation tests, hydraulic conductivity tests, and other measures of soil permeability), a copy of all test results must be included with the application. Permeability tests conducted by an AOSE/PE do not require VDH supervision.

3. Additional information. The following soil characteristics should be documented when they provide additional information regarding soil suitability;

- a. Soil consistence
- b. Soil structure (type, class and grade)
- c. Soil mottling patterns (abundance, contrast and size)
- d. Soil parent material and geologic province
- e. Clay mineralogy and the existence of various soil minerals (feldspar, mica, quartz, etc.)

C. Site Sketch. A site sketch shall be provided which accurately represents the location of all soil observation holes and/or pits at each site. Sketches shall be neatly lined and when possible, scale drawings should be used. When scale drawings are not practical, the sketch shall provide accurate documentation (distances) between holes and suitable reference points. As a minimum, the following on and off site features within 200 feet of any portion of a proposed drainfield and reserve area should be shown:

1. Existing and proposed wells, springs and cisterns. If a private water supply is required as part of the proposed residential development under an application, the proposed water supply or supplies must be located in compliance with the Private Well Regulations 12 VAC 5-630-10, et. sec.
2. Drainfields and proposed drainfields
3. Percent slope and slope direction, or an acceptable topography map
4. Structures (buildings, etc.)

5. Easements, rights of way, roads, property lines, lakes, streams, buried utilities and tile drainage

6. Shellfish waters, surface impoundments used for drinking water and drainage ditches

7. Sinkholes, drainage ways, and flood plains

8. Compliance with Chesapeake Bay Local Assistance Department requirements and local regulations should be documented when applicable.

9. Any other information which may have bearing on the issuance of any approval by the Department.

D. Other. Additional information required by local ordinances (i.e. Chesapeake Bay requirements) shall be included with an AOSE submission in order to facilitate processing the application. However, for the purposes of an AOSE/PE certifying that an evaluation and/or design complies with the Sewage Handling and Disposal Regulations and for "deemed approval" only those requirements contained in the Board of Health's regulations will be considered to apply unless a local government has requested its health department to implement a more restrictive local ordinance in accordance with §50.B of this Chapter.

E. Report Format.

1. Application. The Department shall establish an approved form for making application for a site approval (permit or certification letter).

2. The Department may establish a format for submitting information required by this Chapter or by the Sewage Handling and Disposal Regulations. Where the Department has not recommended a form, an AOSE/PE may submit the required information in a format of their choosing. Substitute forms containing the same minimum data set found on the Department's form and in a format that is legible and consistent with the Department's data entry needs may be allowed at the discretion of the Department. The Division of Onsite Sewage and Water Services shall have discretion to determine what constitutes an acceptable form.

3. Abbreviations are appropriate when making field observations and describing soil profiles. These same abbreviations are not considered appropriate in a formal report to Department and shall not be used in soil reports submitted pursuant to the requirements of this Chapter.

4. Recommendations regarding estimated percolation rates and drainfield size requirements shall be included. Measured percolation rates may be used if available.

5. A blank 8.5 by 11 page is recommended for use when preparing the site sketch required in paragraph C of this subsection.

6. All work submitted in support of a construction permit, certification letter, or subdivision shall be signed and dated. To accomplish this, each page of a submission must be numbered using the format "Page ___ of ___" in the top right hand corner of each page. The last page of the submission shall be the certification statement and shall be signed. This will assure the health department

has in its possession, at the time of the review, a complete package of the information submitted.

F. Site Identification. Wastewater system sites proposed for use must be defined in a manner that allows them to be identified with an accuracy and precision of 3 feet or less.

12 VAC 5-615-350. System Design Requirements.

A. General. All applications for construction permits accompanied by an AOSE/PE certification shall contain construction drawings, plans, and specifications sufficient to assure the system is installed in accordance with the Sewage Handling and Disposal Regulations and the proposed permit. When a system is sufficiently complex to require the practice of engineering, a professional engineer shall seal the plans and specifications. The design information necessary to issue a sewage disposal system construction permit includes:

1. All the information required on form CHS 202 A and B (See Appendix B, Sewage Handling and Disposal Regulations).

2. System construction drawings. Drawings shall show lot lines of the building lot and building site, slope, and any topographic features which may impact on the design of the system, all existing and/or proposed structures including sewage disposal systems and wells within 200 feet of the proposed dwelling, sewage disposal system and reserve area and any easements or utilities. The scale drawing of the sewage disposal system shall show sewer lines, pretreatment unit (if applicable), pump station (if applicable), conveyance system, and subsurface soil absorption system, reserve area, and other relevant features which may affect the proper operation and functioning of the system or be affected by the same. When a nonpublic drinking water supply is to be located on the same lot all sources of pollution within 200 feet shall be shown.

3. Plans and specifications. Plans and specifications sufficient to allow the successful installation of a system shall be included when the application is for a construction permit.

4. Design calculations. Design calculations used to establish the design parameters of the recommended system shall be submitted. Design calculations must include the following as deemed appropriate by the Department:

a. Calculations indicating that the minimum separation distance to seasonal ground water or rock is provided;

b. Minimum depth of trenches and separation of trenches when slopes are greater than 10%;

c. Design flow calculations used for septic tank and drainfield sizing based on bedrooms or per person;

d. When a pump is used, the calculations will show the static head, friction head and total dynamic head at the operating condition of the pump. The pump curve shall also be provided;

e. Pump tank volumes and emergency storage requirements;

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f. Trench bottom area, number of trenches, and center-to-center spacing;

g. Low pressure distribution design calculations;

h. Wisconsin mound design calculations;

5. Three copies of the construction drawing and specifications shall be submitted at the time of application.

6. Items 1 through 5 above establish the minimum information necessary to issue a construction permit. Additional information may be necessary depending on the specific site. Applications that do not contain this minimum data set shall be denied.

B. Certification Letter and Subdivision Design requirements. Certification letters do not normally require a complete design with specifications. Prior to applying for a certification letter an AOSE/PE, or other consultant, shall conduct evaluations and provide documentation sufficient to verify that sufficient area is available for the proposed system, including setback distances, and that the soils are capable of supporting the proposed design flow.

C. Certification Statement. All site evaluation work submitted in support of a construction permit, certification letter, or subdivision review shall be in the form specified above and shall be certified as fully complying with the Sewage Handling and Disposal Regulations. A certification statement approved by the Department shall be used to make such certification.

D. Site Denials. In some cases an owner may desire to submit an application with a certification by an AOSE/PE stating that a site does not comply with the minimum requirements of the Sewage Handling and Disposal Regulations. In such cases an AOSE/PE may submit the appropriate reports and information as required by this Chapter and the Department shall process the application in accordance with the procedures for processing applications for permits and letters. Instead of issuing a permit or letter, the Department will issue a denial letter.

Part 5

Article 1

Conflict of Interest and Disclosure

12 VAC 5-615-360. Responsibility to the public.

The primary obligation of the AOSE is to the public. If the AOSE judgment of the AOSE is overruled under circumstances when the safety, health, property and welfare of the public are endangered, the AOSE shall inform the employer or client of the possible consequences and notify appropriate authorities.

12 VAC 5-615-370. Public statements.

A. The AOSE shall be truthful in all AOSE matters.

B. When serving as an expert or technical witness, the AOSE shall express an opinion only when it is based on an adequate knowledge of the facts in the issue and on a background of competence in the subject matter. Except when appearing as an expert witness in court or an

administrative proceeding when the parties are represented by counsel, the AOSE shall issue no statements, reports, criticisms, or arguments on matters relating to AOSE practice which are inspired or paid for by an interested party or parties, unless the AOSE has prefaced the comment by disclosing the identities of the party or parties on whose behalf the AOSE is speaking, and by revealing any self-interest.

C. An AOSE shall not knowingly make a materially false statement or fail deliberately to disclose a material fact requested in connection with his application for licensure, certification, registration, renewal or reinstatement.

D. An AOSE shall not knowingly make a materially false statement or fail to deliberately disclose a material fact requested in connection with an application submitted to the Department by any individual or business entity for licensure, certification, registration, renewal or reinstatement.

12 VAC 5-615-380. Conflicts of interest.

A. The AOSE shall promptly and fully inform an employer or client of any business association, interest, or circumstance or circumstances which may influence the AOSE's judgment or the quality of service.

B. The AOSE shall not accept compensation, financial or otherwise, from more than one party for services on or pertaining to the same project, unless the circumstances are fully disclosed in writing to all parties of current interest.

C. The AOSE shall neither solicit nor accept financial or other valuable consideration from suppliers for specifying their products or services.

D. The AOSE shall not solicit or accept gratuities, directly or indirectly, from contractors, their agents, or other parties dealing with a client or employer in connection with work for which the AOSE is responsible.

12 VAC 5-615-390. Solicitation of work.

In the course of soliciting work:

A. The AOSE shall not bribe.

B. The AOSE shall not falsify or permit misrepresentation of the AOSE's work or an associate's academic or AOSE qualifications, nor shall the AOSE misrepresent the degree of responsibility for prior assignments. Materials used in the solicitation of employment shall not misrepresent facts concerning employers, employees, associates, joint ventures or past accomplishments of any kind.

12 VAC 5-615-400. Competency for assignments.

An AOSE shall not misrepresent to a prospective or existing client or employer his qualifications and the scope of his responsibility in connection with work for which he is claiming credit.

12 VAC 5-615-410. AOSE responsibility.

A. The AOSE shall not knowingly associate in a business venture with, or permit the use of the AOSE's name or firm name by any person or firm where there is reason to believe that person or firm is engaging in activity of a fraudulent or

dishonest nature or is violating statutes or any of these regulations.

B. An AOSE who has direct knowledge that another individual or firm may be violating any of these provisions, or the provisions of Article 1 of Chapter 6 of Title 32.1 of the Code of Virginia, shall immediately inform the commissioner in writing and shall cooperate in furnishing any further information or assistance that may be required.

C. The AOSE shall, upon request or demand, produce to the commissioner, or any of his or her agents, any plan, document, book, record or copy thereof in his possession concerning a transaction covered by this Chapter, and shall cooperate in the investigation of a complaint filed with the commissioner against a certificate holder.

D. Except as provided in item E below, an AOSE shall not utilize the evaluations, design, drawings or work of another AOSE without the knowledge and written consent of the AOSE or organization of ownership that originated the design, drawings or work. In the event that the AOSE who generated the original document is no longer employed by the design firm retaining ownership of the original documents or is deceased, another AOSE who is a partner or officer in the design firm retaining ownership of the original documents may authorize utilization of the original documents by another AOSE or firm.

E. The information contained in Department of Health records, on which a decision to approve or deny a site has been made, shall be considered to be in the public domain and may be utilized by an AOSE without permission.

F. An AOSE who relies on information in Department of Health files or has received permission to modify or otherwise utilize the evaluation, design, drawings or work of another AOSE pursuant to subsection D or E of this section may certify that work only after a thorough review of the evaluation, design, drawings or work to the extent that full responsibility shall be assumed for all design, drawings or work.

G. The information contained in recorded plats or surveys may be utilized by an AOSE without permission. If modifications are to be made to the plats or surveys, such modifications shall only be made by a person or persons authorized pursuant to Title 54.1, Chapter 4 and Title 13.1 of the Code of Virginia to make such changes or modifications to the plats or surveys.

12 VAC 5-615-420. Good standing in other jurisdictions.

An AOSE licensed or certified to practice site and soil evaluations or the design of onsite wastewater systems in other jurisdictions shall be in good standing in every jurisdiction where licensed or certified, and shall not have had a license or certificate suspended, revoked or surrendered in connection with a disciplinary action or who have been the subject of discipline in another jurisdiction.

The above referenced emergency regulation is hereby approved in accordance with § 9-6.14:4.1.C.5 of the Code of Virginia.

/s/ James S. Gilmore, III
Governor
Date: December 30, 1999

VA.R. Doc. No. R00-83; Filed December 30, 1999, 5:09 p.m.

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Title of Regulation: **Early and Periodic Screening, Diagnosis, and Treatment Services.**

12 VAC 30-10-10 et seq. State Plan under Title XIX of the Social Security Act Medical Assistance Program; General Provisions (amending 12 VAC 30-10-150).

12 VAC 30-50-10 et seq. Amount, Duration, and Scope of Medical and Remedial Care Services (amending 12 VAC 30-50-30, 12 VAC 30-50-70, 12 VAC 30-50-130, and 12 VAC 30-50-250).

12 VAC 30-80-10 et seq. Methods and Standards for Establishing Payment Rates; Other Types of Care (adding 12 VAC 30-80-21).

12 VAC 30-130-10 et seq. Amount, Duration and Scope of Selected Services (adding 12 VAC 30-130-850 through 12 VAC 30-130-890).

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

Effective Dates: January 1, 2000, through December 31, 2000.

SUMMARY

REQUEST: The Governor is hereby requested to approve this agency's adoption of the emergency regulation entitled EPSDT Residential Psychiatric Treatment. This regulation will permit DMAS to implement this service in conformance to the referenced legislative mandate.

RECOMMENDATION: Recommend approval of the Department's request to take an emergency adoption action regarding EPSDT Residential Psychiatric Treatment. The Department intends to initiate the public notice and comment requirements contained in the Code of Virginia § 9-6.14:7.1.

/s/ Dennis G. Smith, Director
Date: October 22, 1999

The above referenced emergency regulation is hereby approved in accordance with § 9-6.14:4.1.C.5 of the Code of Virginia.

/s/ James S. Gilmore, III
Governor
Date: December 30, 1999

Agency Contact: Victoria P. Simmons, Agency Regulatory Coordinator, Department of Medical Assistance Services, 600 E. Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 786-7959.

BACKGROUND: The sections of the State Plan affected by this action are Amount, Duration and Scope of Services (for both Categorically Needy and Medically Needy) (12 VAC 30-50-130), Methods and Standards for Establishing Payment Rates-Other Types of Services (12 VAC 30-80-21). The regulations affected by this action are Early and Periodic

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Screening, Diagnosis, and Treatment Services: Residential Psychiatric Treatment for Children and Adolescents (12 VAC 30-130-850 et seq.).

In 1997, the Joint Legislative Audit and Review Commission (JLARC) published its "Review of the Comprehensive Services Act." This report made a number of recommendations for improvement of the Comprehensive Services Act. One recommendation urged the use of Medicaid funding to serve children whose placements were in facilities and programs for which Medicaid payment could be made. In this way, federal matching funds could be obtained for services currently funded from state and local funds. As a result of the JLARC report, the 1999 and 1998 Appropriations Acts directed the Department of Medical Assistance Services to add coverage of residential treatment for children and adolescents to the coverage of inpatient psychiatric treatment under the Early and Periodic Screening, Diagnosis and Treatment Program (EPSDT). Medicaid coverage of this new residential treatment will become effective on January 1, 2000, as required by the Appropriation Act.

Medicaid currently covers inpatient psychiatric treatment for individuals under age 21 only in psychiatric units of acute care general hospitals or in freestanding psychiatric hospitals. This regulation will provide a lower, less intensive level of inpatient psychiatric services for children and adolescents who do not require the intensity of services offered by a hospital setting.

Residential psychiatric services are presently purchased by the Comprehensive Services Act for children and adolescents who cannot be treated on an outpatient basis and who do not need hospital care. These placements are currently funded from state and local funds. If Medicaid covers the service, federal matching funds will be available and will reduce the amount of state and local funds needed to purchase residential services for these vulnerable children.

The regulations include the definition of the service, coverage limitations, provider qualifications, utilization review, and reimbursement methodology.

The primary advantage of this action is the addition of a Medicaid reimbursable service to replace a service currently paid from only state and local funds. By making federal funding available, savings can be achieved in state General Funds and in expenditures of local governments for children and adolescents served through the Comprehensive Services Act.

The primary disadvantage of this regulation action arises from the federal mandated requirements for Medicaid reimbursement. The federal regulations are prescriptive of provider requirements and utilization management requirements. Because of the prescriptive provider requirements, only a few of the residential care facilities licensed in the Commonwealth can participate in Medicaid payments. These regulations reflect the current federal regulations.

Providers of residential treatment may resist the additional cost of complying with Medicaid regulations. In addition, they may resist Medicaid reimbursement methodologies. Currently, each facility negotiates a rate of reimbursement

with each local Community Policy and Management Team. Local governments will have to consider Medicaid reimbursement policies when referring Medicaid eligible children to a Medicaid enrolled residential treatment provider.

This regulation also includes a technical amendment to 12 VAC 30-50-130 that reinstates language that was inadvertently dropped during 1997 revisions to the 12 VAC 30-50-100. This amendment restores language that is presently cited in 12 VAC 30-50-100, linking EPSDT to Inpatient Psychiatric Hospital Services. The technical amendment restores paragraph B.6.a. to 12 VAC 30-50-130. Restoring this language ensures that inpatient psychiatric services for individuals under 21 are only available under EPSDT.

AUTHORITY TO ACT: The Code of Virginia (1950) as amended, § 32.1-325, grants to the Board of Medical Assistance Services (BMAS) the authority to administer and amend the Plan for Medical Assistance. The Code of Virginia (1950) as amended, § 32.1-324, grants to the Director of the Department of Medical Assistance Services (DMAS) the authority to administer and amend the Plan for Medical Assistance in lieu of Board action pursuant to the Board's requirements. The Code also provides, in the Administrative Process Act (APA) § 9-6.14:4.1(C)(5), for an agency's adoption of emergency regulations subject to the Governor's prior approval.

Subsequent to the emergency adoption action and filing with the Registrar of Regulations, this agency intends to initiate the public notice and comment process contained in Article 2 of the APA in order to promulgate a regulation to replace this emergency regulation, in accordance with subsection C.5. of § 9-6.14:4.1. Therefore, approval to file the required Notice of Intended Regulatory Action is also necessary and hereby being requested by this action.

Chapter 935 of the 1999 Acts of the Assembly, Item 335.X.2, and Chapter 464 of the 1998 Acts of Assembly, Item 335.X.2, mandated that the Department promulgate regulations to amend the State Plan for Medical Assistance to expand coverage of inpatient psychiatric services under the Early and Periodic Screening, Diagnosis and Treatment Program (EPSDT) to include services in residential treatment facilities. The Act mandated that such regulations be in effect on January 1, 2000, and address coverage limitations and utilization review. Such services, defined at 42 CFR § 440.160, are nevertheless being covered herein under the authority of 42 CFR 440.40.

Without an emergency regulation, this amendment to the State Plan and regulations cannot become effective until the publication and concurrent comment and review period requirements of the APA's Article 2 are met. Therefore, an emergency regulation is needed to meet the January 1, 2000 effective date established by the General Assembly.

NEED FOR EMERGENCY ACTION: The Code § 9-6.14:4.1(C)(5) provides for regulations which an agency finds are necessitated by an emergency situation. To enable the Director, in lieu of the Board of Medical Assistance Services, to comply with the requirement to reimburse for residential psychiatric treatment services, he is to take this adoption

action with the Governor's prior approval. This issue qualifies as an emergency regulation as provided for in § 9-6.14:4.1(C)(5)(ii) because Virginia statutory law or the appropriation act or federal law requires this regulation to be effective within 280 days from the enactment of the law or regulation. As such, this regulation may be adopted without public comment with the prior approval of the Governor.

Since this emergency regulation will be effective for no more than 12 months and the Director wishes to continue regulating the subject entities, the Department is initiating the Administrative Process Act Article 2 procedures.

FISCAL/BUDGETARY IMPACT: The 1999 General Assembly instructed DMAS to provide coverage of services in residential treatment facilities effective January 1, 2000. It was estimated that, at program maturity, approximately 1,600 children who are receiving residential services through the Comprehensive Services Act would be served through Title XIX. The General Funds for these services are to be transferred from CSA to DMAS as funds are expended.

In addition, DMAS was appropriated approximately \$861,000 total funds for FY2000 (\$417,000 GF) for coverage of residential treatment facilities for non-CSA children. This service will be available to all Medicaid-eligible children, as well as VCMSIP-eligible children, regardless of whether they seek assistance through CSA. DMAS expects to serve about 160 non-CSA children when the program reaches maturity.

Presently, CSA reimburses residential treatment providers approximately \$35,000 per child for a year of care.

RECOMMENDATION: Recommend approval of this request to adopt this emergency regulation to become effective January 1, 2000. From its effective date, this regulation is to remain in force for one full year or until superseded by final regulations. Without an effective emergency regulation, the Department would lack the authority to pay providers for this service for Medicaid eligible children and adolescents, and CSA would continue to rely on General Funds for these services without augmentation from federal Medicaid funds.

APPROVAL SOUGHT FOR 12 VAC 30-10-150, 12 VAC 30-50-30, 12 VAC 30-50-70, 12 VAC 30-50-130, 12 VAC 30-50-250, 12 VAC 30-80-21, and 12 VAC 30-130-850 through 12 VAC 30-130-899. Approval of the Governor is sought for an emergency modification of the Medicaid State Plan in accordance with the Code of Virginia § 9-6.14:4.1(C)(5) to adopt the following regulation:

12 VAC 30-10-150. Amount, duration, and scope of services: Medically needy.

This State plan covers the medically needy. The services described below and in 12 VAC 30-50-40 et seq. are provided. Services for medically needy include:

- (i) If services in an institution for mental diseases (42 CFR 440.140 and 440.160) or an intermediate care facility for the mentally retarded (or both) are provided to any medically needy group, then each medically needy group is provided either the services listed in § 1905(a)(1) through (5) and (17) of the Act, or seven of the services listed in § 1902(a)(1) through (20). The

services are provided as defined in 42 CFR 440, Subpart A and in § 1902, 1905, and 1915 of the Act.

The above-stated is applicable with respect to nurse-midwife services under § 1902(a)(17).

(ii) Prenatal care and delivery services for pregnant women.

(iii) Pregnancy-related, including family planning services, and postpartum services for a 60-day period (beginning on the day the pregnancy ends) and any remaining days in the month in which the 60th day falls are provided to women who, while pregnant, were eligible for, applied for, and received medical assistance on the day the pregnancy ends.

(iv) Services for any other medical condition that may complicate the pregnancy (other than pregnancy-related and postpartum services) are provided to pregnant women.

(v) Ambulatory services, as defined in 12 VAC 30-50-40 for recipients under age 18 and recipients entitled to institutional services.

(vi) Home health services to recipients entitled to nursing facility services as indicated in 12 VAC 30-10-220 of this plan.

(vii) Services for the medically needy do not include services in an institution for mental diseases for individuals over age 65.

(viii) Services for the medically needy do not include services in an intermediate care facility for the mentally retarded.

(ix) Services for the medically needy do not include inpatient psychiatric services for individuals under age 21, *other than those covered under Early and Periodic Screening, Diagnosis and Treatment (at 12 VAC 30-50-130).*

(x) Services for the medically needy do not include respiratory care services provided to ventilator dependent individuals. See 12 VAC 30-10-300 of this plan.

(xi) Home and community care for functionally disabled elderly individuals is not covered.

12 VAC 30-50-40 et seq. identifies the services provided to each covered group of the medically needy; specifies all limitations on the amount, duration, and scope of those items; and specifies the ambulatory services provided under this plan and any limitations on them. It also lists the additional coverage (that is in excess of established service limits) for pregnancy-related services and services for conditions that may complicate the pregnancy.

12 VAC 30-50-30. Services not provided to the categorically needy.

The following services and devices are not provided to the categorically needy:

1. Chiropractors' services.

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2. Private duty nursing services.
3. Dentures.
4. Other diagnostic and preventive services other than those provided elsewhere in this plan: diagnostic services (see 12 VAC 30-50-95 et seq.).
5. Inpatient psychiatric facility services for individuals under 22 years of age, *other than those covered under Early and Periodic Screening, Diagnosis, and Treatment (at 12 VAC 30-50-130)*.
6. Special tuberculosis (TB) related services under § 1902(z)(2)(F) of the Act.
7. Respiratory care services (in accordance with § 1920(e)(9)(A) through (C) of the Act).
8. Ambulatory prenatal care for pregnant women furnished during a presumptive eligibility period by a qualified provider (in accordance with § 1920 of the Act).
9. Any other medical care and any type of remedial care recognized under state law specified by the Secretary: services of Christian Science Nurses; personal care services in recipient's home, prescribed in accordance with a plan of treatment and provided by a qualified person under supervision of a registered nurse.

12 VAC 30-50-70. Services or devices not provided to the medically needy.

1. Chiropractors' services.
2. Private duty nursing services.
3. Dentures.
4. Diagnostic or preventive services other than those provided elsewhere in the State Plan.
5. Inpatient hospital services, skilled nursing facility services, and intermediate care facility services for individuals age 65 or older in institutions for mental disease(s).
6. Intermediate care facility services (other than such services in an institution for mental diseases) for persons determined in accordance with § 1905(a)(4)(A) of the Act, to be in need of such care in a public institution, or a distinct part thereof, for the mentally retarded or persons with related conditions.
7. Inpatient psychiatric facility services for individuals under 22 years of age, *other than those covered under Early and Periodic Screening, Diagnosis, and Treatment (12 VAC 30-50-130)*.
8. Special tuberculosis (TB) services under § 1902(z)(2)(F) of the Act.
9. Respiratory care services (in accordance with § 1920(e)(9)(A) through (C) of the Act).
10. Ambulatory prenatal care for pregnant women furnished during a presumptive eligibility period by a qualified provider (in accordance with § 1920 of the Act).
11. Services of Christian Science nurses.

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

13. Home and community care for functionally disabled elderly individuals, as defined, described and limited in 12 VAC 30-50-410 through 12 VAC 30-50-470.

14. Personal care services furnished to an individual who is not an inpatient or resident of a hospital, nursing facility, intermediate care facility for the mentally retarded, or institution for mental disease that are (i) authorized for the individual by a physician in accordance with a plan of treatment, (ii) provided by an individual who is qualified to provide such services and who is not a member of the individual's family, and (iii) furnished in a home.

12 VAC 30-50-130. Skilled nursing facility services, EPSDT, ~~community mental health services~~ and family planning.

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

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

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

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

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

3. Orthoptics services shall only be reimbursed if medically necessary to correct a visual defect identified by an EPSDT examination or evaluation. The department shall place appropriate utilization controls upon this service.

4. Consistent with the Omnibus Budget Reconciliation Act of 1989 § 6403, early and periodic screening, diagnostic, and treatment services means the following services: screening services, vision services, dental services, hearing services, and such other necessary health care, diagnostic services, treatment, and other measures described in Social Security Act § 1905(a) to correct or ameliorate defects and physical and mental illnesses and conditions discovered by the screening services and which are medically necessary, whether or not such services are covered under the State Plan and notwithstanding the limitations, applicable to recipients ages 21 and over, provided for by the Act § 1905(a).

G- 5. Community mental health services.

a. Intensive in-home services to children and adolescents under age 21 shall be time-limited interventions provided typically but not solely in the residence of a child who is at risk of being moved into an out-of-home placement or who is being transitioned to home from out-of-home placement due to a documented medical need of the child. These services provide crisis treatment; individual and family counseling; and communication skills (e.g., counseling to assist the child and his parents to understand and practice appropriate problem-solving, anger management, and interpersonal interaction, etc.); case management activities and coordination with other required services; and 24-hour emergency response. These services shall be limited annually to 26 weeks.

b. Therapeutic day treatment shall be provided in sessions of two or more hours per day in order to provide therapeutic interventions. Day treatment programs, limited annually to 780 units, provide evaluation; medication; education and management; opportunities to learn and use daily living skills and to enhance social and interpersonal skills (e.g., problem-solving, anger management, community responsibility, increased impulse control, and appropriate peer relations, etc.); and individual, group and family psychotherapy.

6. *Inpatient psychiatric services shall be covered for individuals younger than age 21, for medically necessary stays for the purpose of diagnosis and treatment of mental health and behavioral disorders identified under EPSDT when such services are rendered by:*

a. *A psychiatric hospital or an inpatient psychiatric program in a hospital, accredited by the Joint Commission on Accreditation of Healthcare Organizations; or*

b. *A psychiatric facility which is accredited by the Joint Commission on Accreditation of Healthcare Organizations, the Commission on Accreditation of Rehabilitation Facilities, or the Council on Accreditation of Services for Families and Children.*

Inpatient psychiatric hospital admissions at general acute care hospitals and freestanding psychiatric hospitals shall also be subject to the requirements of 12 VAC 30-50-100, 12 VAC 30-50-105, and 12 VAC 30-60-25. Inpatient psychiatric admissions to residential treatment facilities shall also be subject to the requirements of 12 VAC 30-130-850 et seq.

Inpatient psychiatric services are reimbursable only when the treatment program is fully in compliance with the Code of Federal Regulations at 42 CFR Part 441 Subpart D, as contained in 42 CFR § 441.151 (a), (b) and (d) and §§ 441.152 through 441.156. Each admission must be preauthorized and the treatment must meet DMAS requirements for clinical necessity.

D- C. Family planning services and supplies for individuals of child-bearing age.

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

2. Family planning services shall be defined as those services which delay or prevent pregnancy. Coverage of such services shall not include services to treat infertility nor services to promote fertility.

12 VAC 30-50-250. Inpatient psychiatric facility services for individuals under 22 years of age.

Inpatient psychiatric facility services for individuals under 22 years of age are not provided, other than those provided under Early and Periodic Screening, Diagnosis, and Treatment (12 VAC 30-50-130).

12 VAC 30-80-21. Inpatient psychiatric services in residential treatment facilities (under EPSDT).

Effective January 1, 2000, the state agency shall pay for inpatient psychiatric services in residential treatment facilities provided by participating providers, under the terms and payment methodology described below.

A. *Methodology. Effective January 1, 2000, payment will be made for inpatient psychiatric services in residential treatment facilities using a per diem payment rate as determined by the state agency based on information submitted by enrolled residential psychiatric treatment facilities. This rate shall constitute payment for all residential psychiatric treatment facility services, excluding all professional services.*

B. *Data collection. Enrolled residential treatment facilities shall submit cost reports on uniform reporting forms provided by the state agency, at such time as required by the agency. Such cost reports shall cover a 12-month period. If a complete cost report is not submitted by a provider, the Program shall take action in accordance with its policies to assure that an overpayment is not being made.*

PART XIV.

RESIDENTIAL PSYCHIATRIC TREATMENT FOR CHILDREN AND ADOLESCENTS.

12 VAC 30-130-850. Definitions.

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

"Active treatment" means implementation of a professionally developed and supervised individual plan of care that must be designed to achieve the recipient's discharge from inpatient status at the earliest possible time.

"Certification" means a statement signed by a physician that inpatient services in a residential treatment facility are or were needed. The certification must be made at the time of admission, or, if an individual applies for assistance while in a mental hospital or residential treatment facility, before the Medicaid agency authorizes payment.

"Comprehensive individual plan of care" or "CIPOC" means a written plan developed for each recipient in accordance with

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12 VAC 30-130-890 to improve his condition to the extent that inpatient care is no longer necessary.

"Initial plan of care" means a plan of care established at admission, signed by the attending physician or staff physician which meets the requirements in 12 VAC 30-130-890.

"Recertification" means a certification for each applicant or recipient that inpatient services in a residential treatment facility are needed. Recertification must be made at least every 60 days by a physician, or physician assistant or nurse practitioner acting within the scope of practice as defined by State law and under the supervision of a physician.

"Recipient" or "recipients" means the child or adolescent younger than 21 years of age receiving this covered service.

12 VAC 30-130-860. Service coverage; eligible individuals; service certification.

A. Residential treatment programs shall be 24-hour supervised medically necessary out-of-home programs designed to provide necessary support and address the special mental health and behavioral needs of a child or adolescent in order to prevent or minimize the need for more intensive inpatient treatment. Services must include but shall not be limited to assessment and evaluation, medical treatment (including drugs), individual and group counseling, and family therapy necessary to treat the child;

B. Residential treatment programs shall provide a total, 24-hours per day, specialized form of highly organized, intensive and planned therapeutic interventions which shall be utilized to treat some of the most severe mental, emotional, and behavioral disorders. Residential treatment is a definitive therapeutic modality designed to deliver specified results for a defined group of problems for children or adolescents for whom outpatient day treatment or other less intrusive levels of care are not appropriate, and for whom a protected structured milieu is medically necessary for an extended period of time; and

C. Active treatment shall be required. Residential treatment services shall be designed to serve the mental health needs of children. In order to be reimbursed for residential treatment, the facility must provide active mental health treatment beginning at admission and it must be related to the recipient's principle diagnosis and admitting symptoms. To the extent that any recipient needs mental health treatment and his needs meet the medical necessity criteria for the service, he will be approved for these services. The service definitions do not include interventions and activities designed only to meet the supportive non-mental health special needs, including, but not limited to personal care, habilitation or academic educational needs of the recipients.

D. Eligible individual. A recipient under the age of 21 years whose treatment needs cannot be met by ambulatory care resources available in the community, for whom proper treatment of his psychiatric condition requires services on an inpatient basis under the direction of a physician; and the services can reasonably be expected to improve his condition

or prevent further regression so that the services will no longer be needed.

E. Certification of the need for services; independent certifying team. In order for Medicaid to reimburse for residential treatment to be provided to a recipient, the need for the service must be certified according to the standards and requirements set forth below. At least one member of the independent certifying team must have pediatric mental health expertise.

1. For an individual who is already a Medicaid recipient when he is admitted to a facility or program, certification must be made by an independent certifying team:

- a. That includes a licensed physician;
- b. That has competence in diagnosis and treatment of pediatric mental illness; AND
- c. That has knowledge of the recipient's mental health history and current situation.

2. For a recipient who applies for Medicaid while an inpatient in the facility or program, the certification must:

- a. Be made by the team responsible for the plan of care and
- b. Cover any period of time before the application for Medicaid eligibility for which claims for reimbursement by Medicaid are made; and
- c. Be signed by a physician member of the team.

12 VAC 30-130-870. Preauthorization.

A. Authorization for residential treatment shall be required at admission and shall be conducted by DMAS or its utilization management contractor using medical necessity criteria specified by DMAS. At preauthorization, an initial length of stay shall be assigned and the residential treatment provider shall be responsible for obtaining authorization for continued stay. Reimbursement for residential treatment will be implemented on January 1, 2000. For cases already in care, DMAS will reimburse beginning January 1, 2000, or from the date when the required documentation is received and approved, if the provider has a valid Medicaid provider agreement in effect on that date.

B. DMAS will not pay for admission to or continued stay in residential facilities that were not authorized by DMAS.

C. Information which is required in order to obtain admission preauthorization for Medicaid payment shall include:

1. A completed state designated uniform assessment instrument as specified in a guidance document.
2. A certification of the need for this service by the team described in 12 VAC 30-130-860 that:

- a. The ambulatory care resources available in the community do not meet the specific treatment needs of the recipient;

b. Proper treatment of the recipient's psychiatric condition requires services on an inpatient basis under the direction of a physician; AND

c. The services can reasonably be expected to improve the recipient's condition or prevent further regression so that the services will not be needed.

3. Additional required written documentation shall include all of the following:

a. Diagnosis, as defined in the *Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition (DSM IV)*, including Axis I (Clinical Disorders), Axis II (Personality Disorders/Mental Retardation), Axis III (General Medical Conditions), Axis IV (Psychosocial and Environmental Problems), and Axis V (Global Assessment of Functioning);

b. A description of the child's behavior during the seven days immediately prior to admission;

c. A description of alternative placements tried or explored and the outcomes of each placement;

d. The child's functional level and clinical stability;

e. The level of family support available; and

f. The initial plan of care as defined and specified at 12 VAC 30-130-890.

D. Denial of authorization shall be subject to the reconsideration process. Denial of service may be appealed by the recipient consistent with 12 VAC 30-110-10 et seq.; denial of reimbursement may be appealed by the provider consistent with the Administrative Process Act § 9-6.14:4.1 et seq.

12 VAC 30-130-880. Provider qualifications.

A. All providers must provide all residential treatment services as defined within these regulations and set forth in 42 CFR Part 441 Subpart D.

B. Providers must be:

1. A residential treatment program for children and adolescents licensed by DMHMRSAS that is located in a psychiatric hospital accredited by the Joint Commission on Accreditation of Healthcare Organizations; OR

2. A residential treatment program for children and adolescents licensed by DMHMRSAS that is located in a psychiatric unit of an acute general hospital accredited by the Joint Commission on Accreditation of Healthcare Organizations; OR

3. A psychiatric facility which is: (a) accredited by the Joint Commission on Accreditation of Healthcare Organizations, the Commission on Accreditation of Rehabilitation Facilities, or the Council on Accreditation of Services for Families and Children; and (b) licensed by DMHMRSAS as a residential treatment program for children and adolescents.

12 VAC 30-130-890. Plans of care; review of plans of care.

A. An initial plan of care must be completed at admission and a Comprehensive Individual Plan of Care must be completed no later than 14 days after admission.

B. Initial plan of care must include:

1. Diagnoses, symptoms, complaints, and complications indicating the need for admission;

2. A description of the functional level of the recipient;

3. Treatment objectives with short- and long-term goals;

4. Any orders for medications, treatments, restorative and rehabilitative services, activities, therapies, social services, diet, and special procedures recommended for the health and safety of the patient;

5. Plans for continuing care, including review and modification to the plan of care; and

6. Plans for discharge.

C. The Comprehensive Individual Plan of Care (CIPOC) must meet all of the following criteria:

1. Be based on a diagnostic evaluation that includes examination of the medical, psychological, social, behavioral, and developmental aspects of the recipient's situation and must reflect the need for inpatient psychiatric care;

2. Be developed by an interdisciplinary team of physicians and other personnel specified under subsection F of this regulation, who are employed by, or provide services to, patients in the facility, in consultation with the recipient and his parents, legal guardians, or appropriate others in whose care he will be released after discharge;

3. State treatment objectives which must include measurable short and long term goals;

4. Prescribe an integrated program of therapies, activities, and experiences designed to meet the treatment objectives related to the diagnosis; AND

5. Describe discharge plans and coordination of inpatient services and post-discharge plans with related community services to ensure continuity of care upon discharge with the recipient's family, school, and community.

D. Review of the Comprehensive Individual Plan of Care. The CIPOC must be reviewed every 30 days by the team specified in subsection F of this regulation to:

1. Determine that services being provided are or were required on an inpatient basis, and

2. Recommend changes in the plan as indicated by the recipient's overall adjustment as an inpatient.

E. The development and review of the plan of care as specified in this section satisfies the facility's utilization control requirements for recertification and establishment and

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periodic review of the plan of care, as required in 42 CFR §§ 456.160 and 456.180.

F. Team developing the Comprehensive Individual Plan of Care. The following requirements must be met:

1. At least one member of the team must have expertise in pediatric mental health. Based on education and experience, preferably including competence in child psychiatry, the team must be capable of all of the following:

- a. Assessing the recipient's immediate and long-range therapeutic needs, developmental priorities, and personal strengths and liabilities;
- b. Assessing the potential resources of the recipient's family;
- c. Setting treatment objectives; AND
- d. Prescribing therapeutic modalities to achieve the plan's objectives.

2. The team must include, at a minimum, either:

- a. A Board-eligible or Board-certified psychiatrist;
- b. A clinical psychologist who has a doctoral degree and a physician licensed to practice medicine or osteopathy; OR
- c. A physician licensed to practice medicine or osteopathy with specialized training and experience in the diagnosis and treatment of mental diseases, and a psychologist who has a master's degree in clinical psychology or who has been certified by the State or by the State psychological association.

3. The team must also include one of the following:

- a. A psychiatric social worker;
- b. A registered nurse with specialized training or one year's experience in treating mentally ill individuals.
- c. An occupational therapist who is licensed, if required by the state, and who has specialized training or one year of experience in treating mentally ill individuals; or
- d. A psychologist who has a master's degree in clinical psychology or who has been certified by the State or by the State psychological association.

G. All Medicaid services are subject to utilization review. Absence of any of the required documentation may result in denial or retraction of any reimbursement.

VA.R. Doc. No. R00-79; Filed December 30, 1999, 4:56 p.m.

* * * * *

Title of Regulation: Expansion of School Based Services for Special Education Children. 12 VAC 30-50-10 et seq. Amount, Duration, and Scope of Medical and Remedial Care Services (amending 12 VAC 30-50-229.1).

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

Effective Dates: January 12, 2000, through January 11, 2001.

REQUEST: The Governor is hereby requested to approve this agency's adoption of the emergency regulation entitled Expansion of School-Based Services for Special Education Children as a result of the 1999 Virginia Acts of Assembly (Chapter 967) which expanded service coverage for Medicaid children in Special Education.

RECOMMENDATION: Recommend approval of the Department's request to take an emergency adoption action regarding Medicaid Expansion of School-Based Services for Special Education Children. The Department intends to initiate the public notice and comment requirements contained in the Code of Virginia § 9-6.14:7.1.

/s/ Dennis G. Smith, Director
Date: November 3, 1999

/s/ Claude A. Allen
Secretary of Health and Human Resources
Date: January 10, 2000

/s/ James S. Gilmore, III
Governor
Date: January 10, 2000

Filed with:
/s/ Jane D. Chaffin
Registrar of Regulations
Date: January 12, 2000

DISCUSSION

BACKGROUND: The sections of the State Plan affected by this action are the Narrative for the Amount, Duration, and Scope of Services (Supplement 1 to Attachment 3.1 A&B) (12 VAC 30-50-229.1).

In 1991, the Department of Medical Assistance Services began covering physical, occupational and speech-language therapies for the special education population in Virginia school divisions. This DMAS coverage expansion began as a result of a study by the Governor's Child Health Task Force as described in its report entitled "Investing in Virginia's Future" (December 1991). Virginia school divisions are required to offer special education services under federal law to children with handicapping conditions. DMAS became involved in covering special education services due to budgetary initiatives within the Commonwealth to utilize available federal Medicaid funding for services which otherwise had been funded by state and local sources. The particular services were selected by DMAS for coverage because the existing DMAS requirements for covering them were similar to the definitions and provider qualifications already implemented by the school divisions.

The federal *Individuals with Disabilities Education Act* (IDEA) (reauthorized as P.L. 105-17) requires school divisions to provide all special education and related services to children with one or more of thirteen specified disabilities. Under the federal IDEA law, school divisions prepare an Individualized Education Program (IEP) plan for each child qualifying under IDEA, specifying all special education and related services needed by the child. The IEP is the child-specific definitive

document enumerating the care and services required. The children are to receive a “free appropriate” education (federally defined as special education and related services which includes transportation and such developmental, corrective, and other supportive services as are required to assist a child with a disability to benefit from special education), at no cost to the parents. The IEP may refer to services such as speech therapy or nursing services for the treatment of the child.

Federal funds are authorized under IDEA for the services but the majority of the funds have historically been from state and local revenues. The *Medicare Catastrophic Coverage Act of 1988* amended Title XIX of the *Social Security Act* (the authority for the Medicaid program) providing that nothing under the Medicaid statute should be interpreted to prohibit Medicaid payments for services simply because they are prescribed in a child’s Individualized Education Program.

The 1997 federal amendments re-authorizing IDEA added specificity as to the role of Medicaid and other non-education entities in reimbursing for special education services. The greater specificity provided that agencies other than the local school authority had an obligation to precede the local school division in financing necessary special education services.

For the special education services covered by DMAS, reimbursement is only for the federal portion of the payment. DMAS does not receive a General Fund appropriation to reimburse for these school-based services. The school divisions provide documentation to DMAS that they expended funds for the services billed to DMAS. DMAS then reimburses the local school divisions for the federal share of the payment.

Since the initial DMAS coverage of school-based services in 1991, discussions have been ongoing between DMAS and the Department of Education (DOE) into further service expansions. The 1996 General Assembly requested DMAS to study its coverage of school-based health services. One of the recommendations of this referenced study was for DMAS to expand coverage to include skilled nursing services and the Individualized Education Program meetings for the special education population. Furthermore, the 1997 General Assembly directed DMAS to cover these services by July 1, 1997. DMAS received final approval from its federal funding agency, the Health Care Financing Administration (HCFA), for coverage of these services in State Plan Amendment 97-19, effective July 1, 1997.

In the fall of 1998, a joint legislative subcommittee discussed Medicaid coverage of school-based services. The discussions included presentations from DMAS and DOE staff, as well as representatives from local school divisions and consultants. Two bills were introduced in the 1999 General Assembly session, SB1199 (patron Senator Houck) and HB2360 (patron Delegate Bloxom), which further addressed DMAS’ coverage of special education services. SB 1199 was approved by the General Assembly and signed by the Governor to become Chapter 967.

The 1999 *Virginia Acts of Assembly* Chapter 967 addressed several areas (listed below) of Medicaid coverage of special education services and prompted this emergency regulation.

For example, coverage of psychological/psychiatric services in schools, changes in provider qualifications for psychologists and speech therapists, substantial revisions to the DMAS/DOE interagency agreement, revisions to payment rates for services, development of methods to assist school divisions to identify Medicaid eligible children, and development of a document for the IEP which includes elements of the DMAS Plan of Care.

In addition to Virginia’s legislative activity, the U.S. Supreme Court issued a decision (*Cedar Rapids Community School District v. F. Garret, et al*) in March 1999 further affecting DMAS’ considerations in expanding coverage of special education services. The Garret case involved a special education child who was wheelchair bound and ventilator dependent who required all day nursing services. The school division (Cedar Rapids) maintained that Garret needed medical services that are not included under the federal *Individuals with Disabilities Education Act*. The Court rejected this position finding that supportive services (such as nursing care) are included under the *IDEA Act* and school districts were required to fund the care, even for children having extensive nursing needs.

While Medicaid was not mentioned in this decision, the Garret case has received considerable publicity and underscores the extensive health care services school divisions must provide to children with special education needs under *IDEA*. The 1997 federal amendments re-authorizing *IDEA* provided that states identify agencies, other than education agencies, with responsibility for paying for special education services. These agencies are to have financial responsibility for the special education services preceding the local education agency. Title XIX Medicaid programs are specifically mentioned as part of this process.

DMAS was directed by the 1999 General Assembly, in Chapter 967 of the *Code*, to cover psychology and psychiatry services for children in special education. Chapter 967 includes language not only to address qualifications of psychologists but also speech therapists. With both these professions, Chapter 967 directs DMAS to recognize qualifications for services beyond what is currently recognized for reimbursement in non-school settings. DMAS is also extending with these regulations the length of coverage of skilled nursing services for children in special education. Currently DMAS covers a maximum 90 minutes a day of skilled nursing services. The decision to cover beyond 90 minutes a day of skilled nursing services is based on a Virginia Office of Attorney General memorandum in August 1999 citing language in Chapter 967 that DMAS coverage is to assist school divisions in the funding of medically necessary services “...by making use of every possible, cost-effective means...”, the 1997 amendments to IDEA, and the Garret court decision.

PREVIOUSLY PROPOSED REGULATIONS

In 1995, DMAS proposed revisions to its coverage of school-based services. In cooperation with DOE, DMAS proposed to differentiate in the regulations between adult and pediatric rehabilitation requirements. It had become problematical for the enrolled school divisions to obtain physician re-certifications (every 60 days) for children having permanent

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disabilities. DMAS recognized that its 60-day physician recertification requirements were appropriate for adults (who were healing from accidents or serious illnesses) but not for permanently disabled children who required ongoing care. This proposed regulation also provided for the coverage of psychological/psychiatric services, for these special education children in the schools.

Based on public comments received, DMAS was directed to remove the coverage of psychological/psychiatric services from the package prior to the adoption action. DMAS was unable to comply with the 1998 General Assembly mandate to cover school-based psychiatry and psychology services due to unresolved issues of qualifications for psychologists. Like other DMAS covered school-based special education services, the services in this emergency regulation must be included in the child's Individualized Education Program plan for DMAS coverage to occur.

AUTHORITY TO ACT: The Code of Virginia (1950) as amended, § 32.1-324, grants to the Director of the DMAS the authority to administer and amend the Plan for Medical Assistance in lieu of Board action pursuant to the Board's requirements. The Code also provides, in the Administrative Process Act (APA) § 9-6.14:4.1(C)(5), for an agency's adoption of emergency regulations subject to the Governor's prior approval. Subsequent to the emergency adoption action and filing with the Registrar of Regulations, this agency intends to initiate the public notice and comment process contained in Article 2 of the APA.

Without an emergency regulation, this amendment to the State Plan cannot become effective until the publication and concurrent comment and review period requirements of the APA's Article 2 are met.

NEED FOR EMERGENCY ACTION: The Code § 9-6.14:4.1(C)(5) provides for regulations which an agency finds are necessitated by an emergency situation. To enable the Director, in lieu of the Board of Medical Assistance Services, to comply with the General Assembly's direction, he must adopt this emergency change to the State Plan. This issue qualifies as an emergency regulation as provided for in § 9-6.14:4.1(C)(5)(ii), because the 1999 Virginia Appropriation Act requires this regulation to be effective within 280 days from the enactment of the law. As such, this regulation may be adopted without public comment with the prior approval of the Governor. Since this emergency regulation will be effective for no more than 12 months and the Director wishes to continue regulating the subject entities, the Department is initiating the Administrative Process Act Article 2 procedures.

Chapter 967 of the Code, which was passed by the 1999 General Assembly and prompted this emergency regulation, specified that DMAS promulgate all necessary regulations to implement these provisions within 280 days of the law's enactment (or no later than January 12, 2000).

FISCAL/BUDGETARY IMPACT: For the 1998-99 school year, DMAS "reimbursed" approximately \$1.76 million to school divisions for Medicaid covered special education services. One-half of this amount is federal funds reimbursed by DMAS and the other half is documented matching funds from school divisions allowing DMAS to draw-down the

federal funds. The 1998-99 school year reimbursement represents about 11,200 claims paid for services.

Currently only about 44 school divisions actively bill Medicaid since enrollment by school divisions is voluntary. The expanded coverage in this regulatory package is also only for federal funds reimbursed by DMAS. The three items that account for the federal fund fiscal impact are: coverage for psychiatry and psychological services; the additional speech therapists providing services; and the longer duration of skilled nursing services covered. The total annual federal funds estimated to be needed are \$884,000 which will be prospectively adjusted (in the HCFA-37 requested funds report).

RECOMMENDATION: Recommend approval of this request to adopt this emergency regulation to become effective on January 12, 2000. From its effective date, this regulation is to remain in force for one full year or until superseded by final permanent regulations. Without an effective emergency regulation, the Department lacks the authority to reimburse school divisions for these additional services.

APPROVAL SOUGHT FOR 12 VAC 30-50-229.1. Approval of the Governor is sought for an emergency modification of the Medicaid State Plan in accordance with the Code of Virginia § 9-6.14:4.1(C)(5) to adopt the following regulation:

Agency Contact: Victoria P. Simmons, Agency Regulatory Coordinator, Department of Medical Assistance Services, 600 E. Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 786-7959.

12 VAC 30-50-229.1. School health services.

A. School health services shall be defined as those therapy and nursing services *and well-child screenings* rendered by *employees of* school divisions which are enrolled with DMAS to serve children who:

1. Qualify to receive special education services as described under Part B of the federal Individuals with Disabilities Education Act, as amended (20 USC § 1400 et seq.). Children qualifying for special education services pursuant to Part B of the federal Individuals with Disabilities Education Act, as amended, shall not be restricted in their choice of enrolled providers of medical care services as described in the State Plan for Medical Assistance; *or*
2. *Qualify for routine health screenings, but not diagnostic and treatment services, which are covered under Early and Periodic Screening, Diagnosis and Treatment services.*

B. Physical therapy and related services.

1. The services covered under this subsection shall include physical therapy, occupational therapy, and speech/language pathology services. All of the requirements, *with the exception of the 24 visit limit*, of 12 VAC 30-50-200 and 42 CFR 440.110 applicable to these services shall continue to apply with regard to, but not necessarily limited to, necessary authorizations, documentation requirements, *and provider qualifications, and service limitations.* *Consistent with the child's*

Individualized Education Program, 35 therapy visits will be covered per year per discipline without DMAS prior authorization.

2. Consultation by physical therapy, occupational therapy, or speech pathology providers in meetings for the development, evaluation, or reevaluation of the Individualized Education Program (IEP) for specific children shall be covered when the IEP with the physical therapy, occupational therapy, or speech pathology services is implemented (based on the date of services billed to DMAS) as soon as possible after the IEP meeting, not to exceed 60 days, except where there are extenuating circumstances. This consultation is to be billed to DMAS no earlier than the date such services are implemented. No more than two consultations may be billed for each child annually. This annual limitation includes consultations billed to DMAS attended by either registered nurses or licensed practical nurses. If an IEP eligibility meeting is billed to DMAS, then the subsequent IEP plan meeting must also be billed for any DMAS reimbursement to occur.

3. Extenuating circumstances are recognized regarding the coverage of the IEP consultation when the physical therapy, occupational therapy, or speech pathology services cannot be implemented as soon as possible following the effective date of the IEP. Such extenuating circumstances may include, but shall not be limited to, arrangements for transportation, hospitalization of the child, or summer or vacation periods. DMAS or its contractor must approve other extenuating circumstances.

4. *Consistent with the COV § 32.1-326.3, speech-language services must be rendered either by:*

a. A speech-language pathologist who meets the qualifications under 42 CFR 440.110(c): (i) Has a certificate of clinical competence from the American Speech and Hearing Association; or (ii) Has completed the equivalent educational requirements and work experience necessary for the certificate; or (iii) Has completed the academic program and is acquiring supervised work experience to qualify for the certificate; OR

b. A speech-language pathologist with a current license in speech pathology issued by the Board of Audiology and Speech-Language Pathology; OR

c. A speech-language pathologist licensed by the Board of Education with an endorsement in speech-language disorders preK-12 and a master's degree in speech-language pathology. These persons also have a license without examination from the Board of Audiology and Speech-Language Pathology; OR

d. A speech-language pathologist who does not meet the criteria for (a), (b), or (c) above and is directly supervised by a speech-language pathologist who meets the criteria (a)(i), (a)(ii), (b), or (c) above. The speech-language pathologist must be licensed by the Board of Education with an endorsement in speech-language disorders preK-12 but does not hold a

master's degree in speech-language pathology. Direct supervision must take place on-site at least every 30-calendar days for a minimum of two hours and must be documented accordingly. The speech-language pathologist who meets the criteria for (a)(i), (a)(ii), (b), or (c) above is readily available to offer needed supervision when speech-language services are provided.

C. Skilled nursing services.

1. These must be medically necessary skilled nursing services which are required by a child in order to benefit from an educational program, as described under Part B of the federal Individuals with Disabilities Education Act, as amended (20 USC § 1400 et seq.). These services shall be limited to a maximum of ~~six~~ 26 units a day of medically necessary services. Services not deemed to be medically necessary, upon utilization review, shall not be covered. A unit, for the purposes of this school-based health service, shall be defined as 15 minutes of ~~medical care~~ *skilled nursing care*.

2. These services must be performed by a Virginia-licensed registered nurse (RN), or licensed practical nurse (LPN) under the supervision of a licensed RN. The service provider shall be either employed by the school division or under contract to the school division. The skilled nursing services shall be rendered in accordance with the licensing standards and criteria of the Virginia Board of Nursing. Supervision of LPNs shall be provided consistent with the regulatory standards of the Board of Nursing at 18 VAC 90-20-270.

3. Consultation by skilled nursing providers in meetings for the development, evaluation, or reevaluation of the IEP for specific children shall be covered when the IEP with the skilled nursing services is implemented (based on the dates of services billed to DMAS) as soon as possible after the IEP meeting, not to exceed 60 days, except where there are extenuating circumstances. This consultation is to be billed to DMAS no earlier than the date such services are implemented. No more than two consultations may be billed for each child annually. This annual limitation includes consultations billed to DMAS attended by physical therapists, occupational therapists, and speech therapists. If an IEP eligibility meeting is billed to DMAS, then the subsequent IEP plan meeting must also be billed for any DMAS reimbursement to occur.

4. Extenuating circumstances are recognized regarding the coverage of the IEP consultation when the skilled nursing services cannot be implemented as soon as possible following the effective date of the IEP. Such extenuating circumstances may include, but shall not be limited to, arrangements for transportation, hospitalization of the child, or summer or vacation periods. DMAS or its contractor must approve other extenuating circumstances.

5. The services shall be of a level of complexity and sophistication which are consistent with skilled nursing services. These skilled nursing services shall include,

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but not necessarily be limited to, dressing changes, maintaining patent airways, medication administration/monitoring and urinary catheterizations. *Skilled nursing services shall be consistent with the medical necessity criteria in the school services manual.*

6. Skilled nursing services shall be directly and specifically related to an active, written plan of care which is based on a physician's or nurse practitioner's written order for skilled nursing services. The registered nurse shall establish, sign, and date the plan of care. The plan of care shall be periodically reviewed by a physician or nurse practitioner after any needed consultation with skilled nursing staff. The services shall be specific and provide effective treatment for the child's condition in accordance with accepted standards of skilled nursing practice. The plan of care is further described in subdivision 7 of this subsection. Skilled nursing services rendered which exceed the physician's or nurse practitioner's written order for skilled nursing services shall not be reimbursed by DMAS. A copy of the plan of care shall be given to the child's Medicaid primary care provider.

7. Documentation of services shall include a written plan of care which identifies the medical condition or conditions to be addressed by skilled nursing services, goals for skilled nursing services, time tables for accomplishing such stated goals, actual skilled nursing services to be delivered and whether the services will be delivered by an RN or LPN. Services which have been delivered and for which reimbursement from Medicaid is to be claimed must be supported with like documentation. Documentation of school-based skilled nursing services shall include the dates and times of services entered by the responsible licensed nurse; the actual nursing services rendered; the identification of the child on each page of the medical record; the current diagnosis and elements of the history and exam which form the basis of the diagnosis; any prescribed drugs which are part of the treatment including the quantities and dosage; and notes to indicate progress made by the child, changes to the diagnosis, or treatment and response to treatment. The plan of care is to be part of the child's medical record. Actions related to the skilled nursing services such as notifying parents, calling the physician, or notifying emergency medical services shall also be documented. All documentation shall be signed and dated by the person performing the service. *Lengthier skilled nursing services shall have more extensive documentation.* The documentation shall be written immediately, or as soon thereafter as possible, after the procedure or treatment was implemented with the date and time specified, unless otherwise instructed in writing by Medicaid. Documentation is further described in the Medicaid school services manual. Skilled nursing services documentation shall otherwise be in accordance with the Virginia Board of Nursing, Department of Health, and Department of Education statutes, regulations, and standards relating to school health. Documentation shall also be in accordance with school division standards.

8. Service limitations. The following general conditions shall apply to reimbursable skilled nursing services in school divisions:

a. Patient must be under the care of a physician or nurse practitioner who is legally authorized to practice and who is acting within the scope of his license.

b. A recertification by a physician or nurse practitioner of the skilled nursing services shall be conducted at least once each school year. The recertification statement must be signed and dated by the physician or nurse practitioner who reviews the plan of care, and may be obtained when the plan of care is reviewed. The physician or nurse practitioner recertification statement must indicate the continuing need for services and should estimate how long rehabilitative services will be needed.

c. Physician or nurse practitioner orders for nursing services shall be required.

d. Utilization review shall be performed to determine if services are appropriately provided and to ensure that the services provided to Medicaid recipients are medically necessary and appropriate. Services not specifically documented in the child's school medical record as having been rendered shall be deemed not to have been rendered and no payment shall be provided.

e. Skilled nursing services are to be terminated when further progress toward the treatment goals are unlikely or when they are not benefiting the child or when the services can be provided by someone other than the skilled nursing professional.

D. Psychiatric and psychological services. Evaluations and therapy services shall be covered when rendered by individuals who are licensed by the Board of Medicine and practice as psychiatrists or by psychologists licensed by the Board of Psychology as clinical psychologists or by school psychologists-limited licensed by the Board of Psychology. Parental involvement and permission shall be required for all such services to be covered.

E. Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) services. Routine screening services shall be covered for school divisions when rendered by either physicians or nurse practitioners. Diagnostic and treatment services also covered under EPSDT shall not be covered for school divisions. Schools divisions shall be required to refer children who are identified through health assessment screenings as having potential abnormalities to their primary care physician for further diagnostic and treatment procedures. Parental involvement and permission shall be required for all such services to be covered.

F. Specific exclusions from school health services. All services encompassing and related to family planning, pregnancy, and abortion services shall be specifically excluded from Medicaid reimbursement if rendered in the school district setting.

VA.R. Doc. No. R00-88; Filed January 12, 2000, 9:03 a.m.

Title of Regulation: **Treatment Foster Care Services. 12 VAC 30-50-10 et seq. Amount, Duration, and Scope of Medical and Remedial Care Services (amending 12 VAC 30-50-480).**
12 VAC 30-60-10 et seq. Standards Established and Methods Used to Assure High Quality Care (amending 12 VAC 30-60-170).
12 VAC 30-80-10 et seq. Methods and Standards for Establishing Payment Rates; Other Types of Care (adding 12 VAC 30-80-111).
12 VAC 30-129-100 et seq. Treatment Foster Care Providers (adding 12 VAC 30-129-100 through 12 VAC 30-129-150).

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

Effective Dates: January 1, 2000, through December 31, 2000.

SUMMARY

REQUEST: The Governor is hereby requested to approve this agency's adoption of the emergency regulation entitled Treatment Foster Care Case Management to amend the State Plan to comply with Chapter 935 of the 1999 Virginia Acts of Assembly Item 335X.1. directing DMAS to cover treatment foster care services for children subject to the Comprehensive Services Act.

RECOMMENDATION: Recommend approval of the Department's request to take an emergency adoption action regarding Treatment Foster Care Case Management. The Department intends to initiate the public notice and comment requirements contained in the Code of Virginia § 9-6.14:7.1.

/s/ Dennis G. Smith, Director
Date: November 8, 1999

The above referenced emergency regulation is hereby approved in accordance with § 9-6.14:4.1.C.5 of the Code of Virginia.

/s/ James S. Gilmore, III
Governor
Date: December 30, 1999

Agency Contact: Victoria P. Simmons, Agency Regulatory Coordinator, Department of Medical Assistance Services, 600 E. Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 786-7959.

BACKGROUND: The sections of the State Plan affected by this action are Case Management Services (Attachment 3.1-A, Supplement 2 (12 VAC 30-50-480)), Standards Established and Methods Used to Assure High Quality of Care (Attachment 3.1-C (12 VAC 30-60-170)), Methods and Standards for Establishing Payment Rates-Other Types of Care (Attachment 4.19-B (12 VAC 30-80-11)). The state regulations affected by this action are Treatment Foster Care Services (12 VAC 30-129-100 through 12 VAC 30-129-170).

Chapter 935 of the 1999 Virginia Acts of Assembly and Chapter 464 of the 1998 Virginia Acts of Assembly directed the Department to submit an amendment to the State Plan for Medical Assistance to provide Medicaid coverage for

treatment foster care. The amendment was initially to have been effective January 1, 1999. The 1999 Appropriations Act extended the effective date to January 1, 2000. The amendment for treatment foster care was to have taken effect within 280 days of enactment of the Act, giving DMAS the authority to promulgate emergency regulations.

This new service was designed to provide federal Medicaid matching funds for a service funded at the present time only through state and local funding. Prior to this legislative mandate, the Joint Legislative Audit and Review Commission (JLARC) completed in 1997 a review of the Comprehensive Services Act. JLARC recommended that Medicaid coverage be extended to include treatment foster care. More access to this level of care can be instrumental in avoiding the use of more restrictive and expensive institutional services. The 1998 and 1999 Appropriations Act provisions were based upon these JLARC recommendations.

During 1998, DMAS staff worked with a large work group of stakeholders, including representatives from the Office of Comprehensive Services, to design a program intended to meet all federal requirements. The proposed State Plan amendment was informally submitted to the Health Care Financing Administration (HCFA) for review in November, 1998. In December, 1998, federal staff informed DMAS that the coverage of treatment foster care would not be approved as a State Plan amendment because the service included components not qualifying for Medicaid federal matching funds.

During 1999, DMAS continued to explore with HCFA alternative available avenues to federal funding for treatment foster care services for CSA children. Based on technical assistance by staff of HCFA, the covered service was redesigned and redefined as case management of treatment foster care. This revision permits Medicaid reimbursement for case management services that are a major portion of costs for CSA children in treatment foster care. This approach removes other components of treatment foster care that did not qualify for Medicaid federal matching funds, such as the stipend for foster parents.

Comprehensive Services Act

In 1992, the Virginia General Assembly enacted the Comprehensive Services Act for At-Risk Youth and Families (Chapter 46, Title 2.1 of the Code of Virginia). The intent of the legislation was to create a collaborative system of services and funding that is child-centered, family-focused and community-based when addressing the strengths and needs of troubled and at-risk youths and their families. The purpose is to preserve families and provide appropriate services in the least restrictive environment while protecting the welfare of children and maintaining public safety. Part of the initiatives to improve services to children was the development of a continuum of care for children including in-home services, specialized foster homes, and residential treatment services. The specialized foster homes include treatment foster homes for children with behavioral or mental health problems.

DMAS expects that coverage of case management for children who are receiving treatment foster care services will

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provide additional support and services to families in trouble. This is expected to promote family unity and healing of dysfunctional relationships.

AUTHORITY TO ACT: The Code of Virginia (1950) as amended, § 32.1-325, grants to the Board of Medical Assistance Services (BMAS) the authority to administer and amend the Plan for Medical Assistance. The Code of Virginia (1950) as amended, § 32.1-324, grants to the Director of the Department of Medical Assistance Services (DMAS) the authority to administer and amend the Plan for Medical Assistance in lieu of Board action pursuant to the Board's requirements. The Code also provides, in the Administrative Process Act (APA) § 9-6.14:4.1(C)(5), for an agency's adoption of emergency regulations subject to the Governor's prior approval.

Subsequent to the emergency adoption action and filing with the Registrar of Regulations, this agency intends to initiate the public notice and comment process contained in Article 2 of the APA. Therefore, approval to file the required Notice of Intended Regulatory Action is also necessary and hereby being requested by this action.

Chapter 935 of the 1999 Virginia Acts of Assembly contains the following language to replace similar authority granted in the 1998 Appropriations Act.

"As a condition of this appropriation, the Department [of Medical Assistance Services] shall promulgate regulations to implement Medicaid reimbursement for treatment foster care designed to serve children and youth referred by local Comprehensive Services Act teams. If the Health Care Financing Administration approves treatment foster care for Medicaid reimbursement, emergency regulations as specified in §9-6.14:4.1.C.5, Code of Virginia, shall be effective January 1, 2000, or earlier. However, emergency regulations may become effective at a later date if the federal Health Care Financing Administration determines, upon submission of a proposal by the Department, that federal regulations preclude earlier implementation."

Furthermore,

"...if the United States Department of Health and Human Services or the Health Care Financing Administration determines that the process for accomplishing the intent of a part, section, subsection, paragraph, clause, or phrase of this item is out of compliance or in conflict with federal law and regulation and recommends another method of accomplishing the same intent, the Director of the Department of Medical Assistance Services, after consultation with the Attorney General, is authorized to pursue the alternative method."

Without an emergency regulation, this amendment to the State Plan and the related regulations cannot become effective until the publication and concurrent comment and review period requirements of the APA's Article 2 are met. Therefore, an emergency regulation is needed to meet the January 1, 2000, effective date established by the General Assembly.

NEED FOR EMERGENCY ACTION: The Code § 9-6.14:4.1(C)(5) provides for regulations which an agency finds are necessitated by an emergency situation. To enable the Director, in lieu of the Board of Medical Assistance Services, to comply with Chapter 935 of the 1999 Virginia Acts of Assembly, he is to take this adoption action, with the Governor's prior approval. This issue qualifies as an emergency regulation as provided for in § 9-6.14:4.1(C)(5)(ii), because Virginia Appropriation Act requires this regulation to be effective on January 1, 2000. As such, this regulation may be adopted without public comment with the prior approval of the Governor.

Since this emergency regulation will be effective for no more than 12 months and the Director wishes to continue regulating the subject entities, the Department is initiating the Administrative Process Act Article 2 procedures.

FISCAL/BUDGETARY IMPACT: Treatment foster care will be offered by child placing agencies that operate such programs and that are licensed or certified by the Department of Social Services to comply with the Medicaid provider qualifications. JLARC estimated that there are 1,305 children who can benefit from treatment foster care services at an average cost of \$15,978 per year per child. Only a portion of the services included in the JLARC estimate has been approved by the federal government for Medicaid coverage. It is estimated that the average cost for the covered services is \$12,143 per child. Based on these costs, it is estimated that moving these services to Medicaid will result in \$7.6 M in state savings. The local share of the savings is 37.3% and the state share is 62.7%. Federal matching funds will be available for 51.67% of the program expenditures during federal Fiscal Year 2000. The funds approved in the 1998 Appropriations Act have taken these savings into account. The appropriations were placed in CSA's budget and will be transferred to DMAS as needed to make expenditures to the providers. There are no localities that are uniquely affected by these regulations as they apply statewide.

RECOMMENDATION: Recommend approval of this request to adopt this emergency regulation to become effective on January 1, 2000. From its effective date, this regulation is to remain in force for one full year or until superseded by final permanent regulations promulgated through the APA. Without an effective emergency regulation, the Department would lack the authority to pay for case management for CSA children who are receiving treatment foster care services.

APPROVAL SOUGHT FOR 12 VAC 30-50-480, 12 VAC 30-60-170, 12 VAC 30-80-111, 12 VAC 30-129-100 et seq. Approval of the Governor is sought for an emergency modification of the Medicaid State Plan in accordance with the Code of Virginia § 9-6.14:4.1(C)(5) to adopt the following regulation:

12 VAC 30-50-480. §8. Case Management for Foster Care Children.

A. *Target Group: Children or youth with behavioral disorders or emotional disturbances who are referred to treatment foster care by the Family Assessment and Planning Team of the Comprehensive Services Act for Youth and Families (CSA). 'Child' or 'youth' means any Medicaid eligible*

individual to 21 years of age who is otherwise eligible for CSA services. Family Assessment and Planning Teams (FAPT) are multidisciplinary teams of professionals established by each locality in accordance with § 2.1-754 of the Code of Virginia to assess the needs of referred children. The FAPT shall develop individual services plans for youths and families who are reviewed by the team. The FAPT shall refer those children needing treatment foster care case management to a qualified participating case manager.

B. Areas of State in which services will be provided.

Entire State

Only in the following geographic areas (authority of section 1915(g)(1) of the Act is invoked to provide services less than Statewide:

C. Comparability of Services.

Services are provided in accordance with section 1902(a)(10)(B) of the Act.

Services are not comparable in amount, duration, and scope. Authority of section 1915(g)(1) of the Act is invoked to provide services without regard to the requirements of section 1902(a)(10)(B) of the Act.

D. Definition of Services. Case management shall assist individuals eligible for Medicaid in gaining and coordinating access to necessary care and services appropriate to the needs of a child. Case management services will coordinate services to minimize fragmentation of care, reduce barriers, and link children with appropriate services to ensure comprehensive, continuous access to needed medical, social, educational, and other services appropriate to the needs of the child. The foster care case manager will provide:

1. Periodic assessments to determine clients' needs for psychosocial, nutritional, medical, and educational services.

2. Service planning by developing individualized treatment and service plans to describe what services and resources are needed to meet the service needs of the client and help access those resources. Such service planning shall not include performing medical and psychiatric assessment but shall include referrals for such assessments. The case manager shall collaborate closely with the FAPT and other involved parties in preparation of all case plans.

3. Coordination and referral by assisting the client in arranging for appropriate services and ensuring continuity of care for a child in treatment foster care. The case manager shall link the child to services and supports specified in the individualized treatment and service plan. The case manager shall directly assist the child to locate or obtain needed services and resources. The case manager shall coordinate services and service planning with other agencies and providers involved with the child by arranging, as needed, medical, remedial, and dental services.

4. Follow-up and monitoring by assessing ongoing progress in each case and ensuring services are

delivered. The case manager shall continually evaluate and review each child's plan of care. The case manager shall collaborate with the FAPT and other involved parties on reviews and coordination of services to youth and families.

5. Education and counseling by guiding the client and developing a supportive relationship that promotes the service plan.

E. Provider Participation. Any public or private child placing agency licensed or certified by the Department of Social Services for treatment foster care may be a provider of treatment foster care case management.

Providers may bill Medicaid for case management for children in treatment foster care only when the services are provided by qualified treatment foster care case managers. The case manager must meet, at a minimum, the case worker qualifications found in the Minimum Standards for Child Placing Agencies Who Render Treatment Foster Care (22 VAC 40-130-10 through 22 VAC 40-130-550). In addition, the case manager must possess a combination of mental health work experience or relevant education which indicates that the individual possesses the following minimum knowledge, skills, and abilities. The following must be documented or observable in the application form or supporting documentation or in a job interview (with appropriate documentation).

1. Knowledge of:

a. The nature of serious mental illness and serious emotional disturbance in children and adolescents;

b. Treatment modalities and intervention techniques, such as behavior management, independent living skills training, supportive counseling, family education, crisis intervention, discharge planning and service coordination;

c. Different types of assessments, including behavioral and functional assessments, and their uses in service planning;

d. Childrens' rights;

e. Local community resources and service delivery systems, including support services (e.g., housing, financial, social welfare, medical, dental, educational, transportation, communication, recreational, vocational, legal/advocacy), eligibility criteria and intake processes, termination criteria and procedures, and generic community resources (e.g., churches, clubs, self-help groups); and

f. Types of mental health treatment services.

2. Skills in:

a. Interviewing;

b. Negotiating with children and service providers;

c. Observing, recording, and reporting behaviors;

d. Identifying and documenting a child's needs for resources, services, and other assistance;

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- e. Identifying services within the established service system to meet the child's needs;
- f. Coordinating the provision of services by diverse public and private providers;
- g. Using information from assessments, evaluations, observations, and interviews to develop service plans;
- h. Formulating, writing and implementing individualized case management plans to promote goal attainment for individuals with behavioral disorders or emotional disturbances. This individualized case management plan is performed by the foster care case manager to guide his work in monitoring and linking the child to the services identified in the child's individualized service plan; and
- i. Using assessment tools designated by the state; and
- j. Identifying community resources and organizations and coordinating resources and activities.

3. Abilities to:

- a. Demonstrate a positive regard for children and their families (e.g., treating children as individuals, allowing risk taking, avoiding stereotypes of people in treatment foster care, respecting children's and families' privacy, believing children can grow);
- b. Persist in applying service plan objectives towards goal attainment and remain objective;
- c. Work as team member, maintaining effective inter- and intra-agency working relationships;
- d. Work independently, performing position duties under general supervision;
- e. Communicate effectively, verbally and in writing, and;
- f. Establish and maintain ongoing supportive relationships.

F. Freedom of Choice. Section 1915(g)(1) of the Act specifies that there shall be no restriction on free choice of qualified providers, in violation of §1902(a)(23) of the Act. The State assures that there will be no restriction on a recipient's free choice of qualified providers of case management services. In addition, the State assures that case management services will not restrict an individual's free choice of providers of other Medicaid services.

- 1. Eligible recipients will have free choice of the providers of case management services.
- 2. Eligible recipients will have free choice of the providers of other medical care under the plan.
- 3. Eligible recipients will be free to refuse case management services.

G. Payment for case management services under the plan does not duplicate payments made to public agencies or private entities under other program authorities for this same purpose. The case management services will be funded from

Medicaid service funds, not administrative. This case management service shall not be construed as case management under EPSDT.

12 VAC 30-60-170. Utilization review of foster care case management services (FC).

Service description and provider qualifications. FC case management is a community based program where treatment services are designed to address the special needs of children. FC case management focuses on a continuity of services, is goal directed, results oriented, and emphasizes permanency planning for the child in care. Services shall not include room and board. Child placing agencies licensed or certified by the Virginia Department of Social Services and which meet the provider qualifications for treatment foster care set forth in these regulations shall provide these services.

A. Utilization control.

- 1. Assessment. Each child referred for FC case management must be assessed by a Family Assessment and Planning Team (FAPT) under the Comprehensive Services Act or by an interdisciplinary team described in this section. The team must: (i) Assess the child's immediate and long-range therapeutic needs, developmental priorities, and personal strengths and liabilities; (ii) Assess the potential for reunification of the recipient's family; (iii) Set treatment objectives; and (iv) Prescribe therapeutic modalities to achieve the plan's objectives.
- 2. Qualified Assessors: A Family Assessment and Planning Team as authorized by the Code of Virginia under Section § 2.1-754.
- 3. Preauthorization. Preauthorization shall be required for Medicaid payment of FC case management services for each admission and will be conducted by DMAS or its utilization management contractor. Failure to obtain authorization of Medicaid reimbursement for this service prior to onset of services may result in denial of payments or recovery of expenditures.
- 4. Medical Necessity Criteria. Children whose conditions meet this medical necessity criteria will be eligible for Medicaid payment for FC case management. FC case management will serve children under age 21 in treatment foster care who are seriously emotionally disturbed (SED) or children with behavioral disorders who in the absence of such programs, would be at risk for placement into more restrictive residential settings such as psychiatric hospitals, correctional facilities, residential treatment programs or group homes. The child must have a documented moderate to severe impairment and moderate to severe risk factors as recorded on a state designated uniform assessment instrument. The child's condition must meet one of the three levels described below.
 - a. Level I: Moderate impairment with one or more of the following moderate risk factors as documented on the state designated uniform assessment instrument:

(1) Needs intensive supervision to prevent harmful consequences;

(2) Moderate/frequent disruptive or noncompliant behaviors in home setting which increase the risk to self or others;

(3) Needs assistance of trained professionals as caregivers.

b. *Level II: The child must display a significant impairment with problems with authority, impulsivity and caregiver issues as documented on the state designated uniform assessment instrument. For example, the child must:*

(1) Be unable to handle the emotional demands of family living;

(2) Need 24-hour immediate response to crisis behaviors; or

(3) Have severe disruptive peer and authority interactions that increase risk and impede growth.

c. *Level III: Child must display a significant impairment with severe risk factors as documented on the state designated uniform assessment instrument. Child must demonstrate risk behaviors that create significant risk of harm to self or others.*

5. *FC case management admission documentation required. Before Medicaid preauthorization will be granted, the referring entity must submit to DMAS the following documentation. The documentation will be evaluated by DMAS or its designee to determine whether the child's condition meets the Department's medical necessity criteria.*

a. *A completed state designated uniform assessment instrument; AND*

b. *All of the following documentation:*

(1) *Diagnosis, (Diagnostic Statistical Manual, Fourth Revision (DSM IV), including Axis I (Clinical Disorders); Axis II (Personality Disorders/Mental Retardation); Axis III (General Medical Conditions); Axis IV (Psychosocial and Environmental Problems); and Axis V (Global Assessment of Functioning);*

(2) *A description of the child's immediate behavior prior to admission;*

(3) *A description of alternative placements tried or explored;*

(4) *The child's functional level;*

(5) *Clinical stability; and*

(6) *The level of family support available. AND*

c. *Written documentation that the Community Planning and Management Team (CPMT) has approved the admission to treatment foster care;*

6. *Penalty for failure to obtain preauthorization or to prepare and maintain the previously described*

documentation. The failure to obtain authorization of Medicaid reimbursement for this service or to develop and maintain the documentation enumerated above prior to the onset of services may result in denial of payments or recovery of expenditures.

12 VAC 30-80-111. Foster Care (FC) Case Management.

The Medicaid agency will reimburse providers for the covered services for FC case management for each eligible child at the daily rate agreed upon between the local Community Policy and Management Team (CPMT) in the locality which is responsible for the child's care and the FC case management provider. This daily rate shall be based upon the intensity of the case management needed by the child and be subject to an upper limit set by the Medicaid agency. DMAS shall pay the lesser of the rate negotiated by the CPMT or the maximum rate established by the Department.

CHAPTER 129.

TREATMENT FOSTER CARE PROVIDERS.

12 VAC 30-129-100. Definitions.

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

"Case management" means an activity, including casework, which assists Medicaid eligibles in gaining and coordinating access to necessary care and services appropriate to his needs.

"Casework" means both direct treatment with an individual or several individuals, and intervention in the situation on the client's behalf. The objectives of casework include: meeting the client's needs, helping the client deal with the problem with which he is confronted, strengthening the client's capacity to function productively, lessening distress, and enhancing opportunities and capacities for fulfillment.

"Child" means any individual less than eighteen years of age or under twenty-one if placed by a local department of social services or through referral from a Family Assessment and Planning Team.

"Child's family" means the birth or adoptive parent, or parents, legal guardian, or guardians, or family to whom the child may return.

"Child-placing agency" or "agency" or "agencies" means any person who places children in foster homes, adoptive homes, child-caring institutions or independent living arrangements in response to §§ 63.1-204, 63.1-205, and 63.1-220.2 of the Code of Virginia or a local board of public welfare or social services that places children in foster homes or adoptive homes pursuant to §§ 63.1-56, 63.1-204, and 63.1-220.2. Officers, employees, or agents of the Commonwealth, or of any county, city, or town, acting within the scope of their authority as such, who serve as or maintain a child-placing agency shall not be required to be licensed, if authorized by the Code of Virginia to provide the services of a child-placing agency.

"Client" means Medicaid-eligible and enrolled individual.

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"Code" means the Code of Virginia, 1950, as amended.

"Community Planning and Management Team" means a team described in § 2.1-750 of the Code of Virginia.

"Comprehensive Services Act" means the Code of Virginia § 2.1-745 et seq.

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

"Family Assessment and Planning Team" means a team described in § 2.1-754 of the Code of Virginia.

"Foster care services" means the provision of a full range of casework, treatment and community services for a planned period of time to a child under age 21 who is abused or neglected as defined, except for age, in § 63.1-248.2 of the Code of Virginia or in need of services as defined in § 16.1-228 of the Code of Virginia and his family when the child (i) Has been identified as needing services to prevent or eliminate the need for foster care placement, (ii) Has been placed through an agreement between the local board of social services or the public agency designated by the community policy and management team and the parents or guardians, (iii) Has been committed or entrusted to a local board of social services or child-placing agency.

"Foster care placement" means placement of a child through (i) An agreement between the parents or guardians and the local board or the public agency designated by the community policy and management team where legal custody remains with the parents or guardians, or (ii) An entrustment or commitment of the child to the local board or child-placing agency.

"Foster home" means the place of residence of any individual or individuals approved by a local department of social services or licensed child placing agency in which any child, other than a child by birth or adoption resides as a member of the household.

"Records" means the written information assembled in a file relating to the agency, staff, volunteers, the child, the child's birth family, foster family, treatment foster family, and adoptive family.

"Treatment" is the coordinated provision of services and use of professionally developed and supervised interventions designed to produce a planned outcome in a person's behavior, attitude, emotional functioning or general condition.

"Treatment foster care (TFC)" means a community-based program where services are designed to address the special needs of children. Services to the children are delivered primarily by treatment foster parents who are trained, supervised, and supported by agency staff. Treatment is primarily foster family-based, is planned and delivered by a treatment team.

Treatment foster care focuses on a continuity of services, is goal-directed, results oriented, and emphasizes permanency planning for the child in care.

"Treatment and service plan" means a written comprehensive plan of care, based on an assessment of the medical, psychological, social, behavioral and developmental

aspects of the child's situation, containing measurable goals, procedures and interventions for achieving them, and a process for assessing the results. The treatment plan must state the treatment objectives, prescribe an integrated program of therapies, activities, and experiences designed to meet the objectives and must include coordination with related community services to ensure continuity of care with the child's family, school and community.

"Treatment team" means the group that may consist of the child, professional agency staff, other professionals, the child's family members (where appropriate), the child-placing agency and treatment foster parents who provide mutual support, evaluate treatment, and design, implement and revise the treatment and service plan.

12 VAC 30-129-110. Targeted case management for foster care children in treatment foster care covered services and utilization control.

A. Service description. Case management is a component of treatment foster care (TFC) through which a case manager or caseworker provides treatment planning, treatment services, monitors the treatment plan and links the child to other community resources as necessary to address the special identified needs of the child. Services to the children shall be delivered primarily by treatment foster parents who are trained, supervised and supported by professional child placing agency staff. TFC case management focuses on a continuity of services, is goal directed, results oriented, and emphasizes permanency planning for the child in care. Services shall not include room and board. The following activities are considered covered services related to TFC case management services.

1. Placement activities, which may include, but are not restricted to, care planning, placement monitoring, and discharge planning;
2. Case management and casework services; and
3. Supervision of foster parents to evaluate the effectiveness of the child's plan of treatment.

B. Provider Qualifications.

1. License or certification. Treatment foster care case management shall be provided by child placing agencies with treatment foster care programs that are licensed or certified by the Virginia Department of Social Services to be in compliance with the Minimum Standards for Licensed Child-Placing Agencies (22 VAC 40-130-10 et seq.) and meet the provider qualifications for treatment foster care set forth in these regulations.

2. Caseload size.

a. The treatment foster care case manager shall have a maximum of 12 children in his caseload for a full-time professional staff person. The caseload shall be adjusted downward if:

- 1) The caseworker's job responsibilities exceed those listed in the agency's job description for a caseworker, as determined by the supervisor; or

2) The difficulty of the client population served requires more intensive supervision and training of the treatment foster parents.

3) Exception: A caseworker may have a maximum caseload of 15 children as long as not more than ten of the children are in treatment foster care and the above criteria for adjusting the caseload downward do not apply.

b. There shall be a maximum of six children in the caseload for a beginning trainee that may be increased to nine by the end of the first year and 12 by the end of the second year.

c. There shall be a maximum of three children in a caseload for a student intern, if any student intern works in the agency.

C. Utilization Control.

1. **Assessment.** Each child referred for TFC case management must be assessed by a Family Assessment and Planning Team (FAPT) under the Comprehensive Services Act. The team must (i) Assess the child's immediate and long-range therapeutic needs, developmental priorities, and personal strengths and liabilities; (ii) Assess the potential for reunification of the child's family; (iii) Set treatment objectives; and (iv) Prescribe therapeutic modalities to achieve the plan's objectives.

2. **Qualified Assessors:** A Family Assessment and Planning Team as authorized by the Code of Virginia under § 2.1-754;

3. **Preauthorization.** Authorization shall be required prior to the onset of Medicaid payment for TFC case management services for each admission and will be conducted by DMAS or its utilization management contractor.

4. **Medical Necessity Criteria.** Children whose conditions meet this medical necessity criteria will be eligible for Medicaid payment for TFC case management. TFC case management will serve children under age 21 in treatment foster care who are seriously emotionally disturbed (SED) or children with behavioral disorders who in the absence of such programs, would be at risk for placement into more restrictive residential settings such as psychiatric hospitals, correctional facilities, residential treatment programs or group homes. The child must have a documented moderate to severe impairment and moderate to severe risk factors as recorded on a state designated uniform assessment instrument. The child's condition must meet one of the three levels described below.

a. **Level I:** The child must display a moderate impairment in functioning with one or more of the following moderate risk factors documented on the state designated uniform assessment instrument:

(1) Needs intensive supervision to prevent harmful consequences;

(2) Moderate/frequent disruptive or noncompliant behaviors in home setting which increase the risk to self or others;

(3) Needs assistance of trained professionals as caregivers.

b. **Level II:** The child must display a significant impairment in functioning with problems with authority, impulsivity and caregiver issues documented on the state designated uniform assessment instrument. For example, the child must:

(1) Be unable to handle the emotional demands of family living;

(2) Need 24-hour immediate response to crisis behaviors; or

(3) Have severe disruptive peer and authority interactions that increase risk and impede growth.

c. **Level III:** Child must display a significant impairment in functioning with severe risk factors documented on the state designated uniform assessment instrument. Child must demonstrate risk behaviors that create significant risk of harm to self or others.

5. TFC case management admission documentation required. Before Medicaid preauthorization will be granted, the referring entity must submit to DMAS the following documentation. The documentation will be evaluated by DMAS or its designee to determine whether the child's condition meets the Department's medical necessity criteria.

a. A completed state designated uniform assessment instrument; AND

b. All of the following documentation:

(1) Diagnosis, (Diagnostic Statistical Manual, Fourth Revision (DSM IV), including Axis I (Clinical Disorders); Axis II (Personality Disorders/Mental Retardation); Axis III (General Medical Conditions); Axis IV (Psychosocial and Environmental Problems); and Axis V (Global Assessment of Functioning);

(2) A description of the child's immediate behavior prior to admission;

(3) A description of alternative placements tried or explored;

(4) The child's functional level;

(5) Clinical stability; and

(6) The level of family support available. AND

c. One of the following:

(1) Written documentation that the CPMT has approved the admission to treatment foster care; OR

(2) Certification by the FAPT that TFC case management is medically necessary.

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12 VAC 30-129-120. Reimbursement Methodology.

Medicaid will reimburse enrolled providers for the covered services of case management for treatment foster care for each eligible child at the daily rate agreed upon between the Community Policy and Management Team (CPMT) in the child's responsible locality and the treatment foster care provider, subject to an upper limit set by the Department.

12 VAC 30-129-130. Organization and administration requirements.

These standards shall be met by any enrolled provider signing an agreement with DMAS to provide case management services to children in treatment foster care.

A. A Medicaid enrolled Treatment Foster Care case management provider must be licensed by the Department of Social Services (DSS) as a child-placing agency with treatment foster care as defined in these regulations or shall be certified by DSS as designated by DMAS to meet all the requirements of these regulations. Officers, employees, or agents of the Commonwealth, or of any county, city, or town acting within the scope of their authority as such, who serve as or maintain a child-placing agency shall not be required to be licensed but shall be required to be certified to meet all the requirements of these regulations by the DSS.

B. Treatment and service plans in treatment foster care.

1. The treatment foster care case management provider shall prepare and implement an individualized treatment and service plan for each child in its care. When available, the parents shall be consulted unless parental rights have been terminated. If the parents cannot be consulted, the agency shall document the reason in the child's record.

2. When the treatment foster care case management provider holds custody of the child, a service plan shall be filed with the court within 60 days after the agency receives custody unless the court grants an additional 60 days, or the child is returned home or placed for adoption within 60 days. Providers with legal custody of the child shall follow the requirements of COV §§ 16.1-281 and 16.1-282.

3. The permanency planning goals and the requirements and procedures in the Department of Social Services Service Programs Manual, Volume VII, Section III, Chapter B, "Preparing the Initial Service Plan" may be consulted.

4. Comprehensive treatment and service plan. The case manager and other designated child placing agency staff shall develop and implement for each child in care an individualized comprehensive treatment and service plan within the first 45 days of placement that shall include:

- a. A comprehensive assessment of the child's emotional, behavioral, educational, nutritional, and medical needs;
- b. The treatment goals and objectives including the child's specific problems, behaviors and skills to be

addressed, the criteria for achievement and target dates for each goal and objective;

c. The treatment foster care case management provider's program of therapies, activities and services, including the specific methods of intervention and strategies designed to meet the above goals and objectives, and describing how the provider is working with related community resources including the child's primary care physician to provide a continuity of care;

d. The permanency planning goals and objectives, services to be provided for their achievement, and plans for reunification of the child and the child's family, where appropriate.

e. The target date for discharge from the program.

f. For children age 16 and over, the plan shall include a description of the programs and services that will help the child transition from foster care to independent living.

g. The plan shall include the dated signature of the case manager and identify all members of the treatment team that participated in its development.

5. The case manager shall include and work with the child, the custodial agency, the treatment foster parents and the parents, where appropriate, in the development of the treatment and service plan and a copy shall be provided to the custodial agency. A copy shall be provided to the treatment foster parents as long as confidential information about the child's birth family is not revealed. A copy shall be provided to the parents, if appropriate, as long as confidential information about the treatment foster parents is not revealed. If any of these parties do not participate in the development of the treatment and service plan, the case manager shall document the reasons in the child's record.

6. The case manager shall provide supervision, training, support and guidance to foster families in implementing the treatment and service plan for the child;

7. The case manager shall arrange for and encourage contact and visitation between the foster child, his family and others as specified in the treatment and service plan.

C. Progress report and ongoing services plans.

1. The case manager shall complete written progress reports beginning 90 days after the date of the child's placement and every 90 days thereafter.

2. The progress report shall specify the time period covered and include:

a. Progress on the child's specific problems and behaviors and any changes in the methods of intervention and strategies to be implemented;

(1) Description of the treatment goals and objectives met, goals and objectives to be continued or added, the criteria for achievement and target dates for each goal and objectives

(2) Include a description of the therapies, activities, and services provided during the previous 90 days toward the treatment goals and objectives; and

(3) Any changes needed for the next 90 days;

b. Services provided during the last 90 days towards the permanency planning goals, including plans for reunification of the child and family or placement with relatives, any changes in these goals, and services to be provided during the next 90 days;

c. The child's assessment of his progress and his description of services needed, where appropriate;

d. Contacts between the child and the child's family, where appropriate;

e. Medical needs, specifying medical treatment provided and still needed and medications provided;

f. An update to the discharge plans including the projected discharge date; and

g. A description of the programs and services provided to children 16 and older to help the child transition from foster care to independent living, where appropriate.

3. Annually, the progress report shall address the above requirements as well as evaluate and update the comprehensive treatment and service plan for the upcoming year.

4. The case manager shall date and sign each progress report.

5. The case manager shall include each child who has the ability to understand in the preparation of the child's treatment and service plans and progress reports or document the reasons this was not possible. The child's comments shall be recorded in the report.

6. The case manager shall include and work with the child, the treatment foster parents, the custodial agency and the parents, where appropriate, in the development of the progress report. A copy shall be provided to the placing agency worker and, if appropriate, to the treatment foster parents.

D. Contacts with child.

1. There shall be face-to-face contact between the case manager and the child, based upon the child's treatment and service plan and as often as necessary to ensure that the child is receiving safe and effective services.

2. Face-to-face contacts shall be no less than twice a month, one of which shall be in the foster home. One of the contacts shall include the child and at least one treatment foster parent and shall assess the relationship between the child and the treatment foster parents.

3. The contacts shall assess the child's progress, provide training and guidance to the treatment foster parents, monitor service delivery and allow the child to communicate concerns.

4. A description of all contacts shall be documented in the narrative.

5. Children who are able to communicate shall be interviewed privately at least once a month.

6. Unless specifically prohibited by court or custodial agency, foster children shall have access to regular contact with their families as described in the treatment and service plan.

7. The case manager shall work actively to support and enhance child-family relationships and work directly with the child's family toward reunification as specified in the treatment and service plan.

8. The case manager shall record all medications prescribed for each child and all reported side effects or adverse reactions.

E. Professional clinical or consultative services. In consultation with the custodial agency, the case manager or caseworker shall provide or arrange for a child to receive psychiatric, psychological, and other clinical services if the need for them has been recommended or identified.

F. Narratives in the child's record.

1. Narratives shall be in chronological order and current within 30 days. Narratives shall include areas specified in these regulations and shall cover:

a. Treatment and services provided;

b. All contacts related to the child;

c. Visitation between the child and the child's family; and

d. Other significant events.

2. There shall be a monthly summary of the child's progress towards the goals and objectives identified in the treatment and service plan.

G. Treatment teams in treatment foster care.

1. The treatment foster care case management provider shall assure that a professional staff person provides leadership to the treatment team that includes:

a. Managing team decision-making regarding the care and treatment of the child and services to the child's family;

b. Providing information and training as needed to treatment team members; and

c. Involving the child and the child's family in treatment team meetings, plans, and decisions, and keeping them informed of the child's progress, whenever possible.

2. Treatment team members shall consult as often as necessary, but at least on a quarterly basis.

12 VAC 30-129-140. Discharge from Care.

A. A discharge summary shall be developed for each child and placed in the child's record within 30 days of discharge.

Emergency Regulations

It shall include the date of and reason for discharge; the name of the person with whom the child was placed or to whom he was discharged; and a description of the services provided to the child and progress made while the child was in care. Written recommendations for aftercare shall be made for each child prior to the child's discharge. Such recommendations shall specify the nature frequency and duration of aftercare services to be provided to the child and the child's family.

B. The summary shall also include an evaluation of the progress made towards the child's treatment goals.

C. Discharge planning shall be developed with the treatment team and with the child, the child's parents or guardian, and the custodial agency.

D. Children in the custody of a local department of social services or private child-placing agency shall not be discharged without the knowledge, consultation, and notification of the custodial agency.

12 VAC 30-129-150. Entries in case records.

All entries shall be dated and shall identify the individual who performed the service. If a treatment foster care case management provider has offices in more than one location, the record shall identify the office that provided the service. Each child's record shall contain documentation that verifies the services rendered for billing.

VA.R. Doc. No. R00-78; Filed December 30, 1999, 4:59 p.m.



FORMS

TITLE 4. CONSERVATION AND NATURAL RESOURCES

DEPARTMENT OF MINES, MINERALS AND ENERGY

EDITOR'S NOTICE: The following forms have been amended by the Department of Mines, Minerals and Energy. The forms are not being published due to the large number of pages; however, the name of each form is listed below. The forms are available for public inspection at the Department of Mines, Minerals and Energy, Ninth Street Office Building, 202 North 9th Street, Richmond, VA 23219, or at the department's Abingdon, Big Stone Gap, or Charlottesville offices. Copies of the forms may be obtained from Cheryl Cashman, Department of Mines, Minerals and Energy, Ninth Street Office Building, 202 North 9th Street, Richmond, VA 23219, telephone (804) 692-3213.

Title of Regulation: 4 VAC 25-40-10 et seq. Safety and Health Regulations for Mineral Mining.

Note: The only change to the forms listed under this regulation is a change in the telephone number.

Permit/License Application, DMM-101 (rev. 9/98 9/99).

Notice of Application to Mine, DMM-103 (rev. 4/94 9/99).

Surety Bond, DMM-107 (rev. 4/98 9/99).

Legend, DMM-109 (rev. 4/94 9/99).

Relinquishment of Mining Permit, DMM-112 (rev. 4/94 9/99).

Request for Amendment, DMM-113 (rev. 2/95 7/99).

Mineral Mining Annual Tonnage Report, DMM-146 (rev. 9/98 9/99).

Request for Release of Mine Map, DMM-155/DM-MR-1 (rev. 3/97 9/99).

Notice of Operator Intent, DMM-156 (rev. 4/99 9/99).

License Renewal Application, DMM-157 (rev. 9/98 9/99).

Permit Transfer Acceptance, DMM-161 (eff. 9/99).

Title of Regulation: 4 VAC 25-130-10 et seq. Coal Surface Mining Reclamation Regulations.

Anniversary Notification, DMLR-PT-028 (eff. 9/99).

Change Order Justification, DMLR-AML-065 (eff. 8/99).

Ground Water Monitoring Report, DMLR-PT-101 (rev. 2/95 11/99).

Title of Regulation: 4 VAC 25-150-10 et seq. Virginia Gas and Oil Regulation.

Application for a New Permit, Permit Modification, or Transfer of Permit Rights, DGO-GO-1, (rev. 4/98 11/99).

Operator's Surety Bond, DGO-GO-2, (rev. 4/98 11/99).

Operator's Cash Bond, DGO-GO-3, (rev. 4/98 11/99).

Notice of Application for a Permit or Permit Modification, DGO-GO-4, (rev. 7/97 11/99).

Technical Data Sheet for Permit Modification to Plug or Replug, DGO-GO-11, (rev. 4/98 11/99).

Operations Plan--Checklist, DGO-GO-12, (rev. 4/98 11/99).

Plugging Affidavit, DGO-GO-18, (rev. 4/98 11/99).

Monthly Gas Production Report, DGO-GO-19, (rev. 4/98 11/99).

Monthly Oil Production, DGO-GO-20, (rev. 4/98 11/99).

Notice of Right to Object, DGO-GO-21, (rev. 2/99 11/99).

License to Perform--Plugging of Orphaned Well, DGO-GO-23, 4/96 (rev. 11/99).

License to Perform--Plugging of Well/Bond Forfeiture, DGO-GO-24, 4/96 (rev. 11/99).

Affidavit and Release in Support of Surface Owner's Application to the Virginia Division of Gas and Oil for Use of an Orphaned Well as a Water Well, DGO-GO-25, 4/96 (rev. 11/99).



GENERAL NOTICES/ERRATA

DEPARTMENT OF ENVIRONMENTAL QUALITY

Notice of Public Meeting and Public Comment Concerning TMDL for Fecal Coliform Bacteria on Accotink Creek

The Department of Environmental Quality (DEQ) and the Department of Conservation and Recreation (DCR) seek written and oral comments from interested persons on the development of a total maximum daily load (TMDL) for fecal coliform bacteria on a 4.5 mile segment of Accotink Creek. This impaired segment is located in Fairfax County and begins at the confluence of Crooks Branch and extends to Lake Accotink. Accotink Creek is identified in Virginia's 1998 § 303(d) TMDL priority list and report as impaired due to violations of the state's water quality standard for fecal coliform bacteria.

Section 303(d) of the federal Clean Water Act and § 62.1-44.19:7 C of the Code of Virginia require DEQ to develop TMDLs for pollutants responsible for each impaired water contained in Virginia's § 303(d) TMDL priority list and report.

The second public meeting on the development of the Accotink Creek fecal coliform TMDL will be held on Wednesday, March 1, 2000, at 7 p.m. in the cafeteria of the Robert Frost Middle School located at 4101 Pickett Road in Fairfax County.

The public comment period will end on March 15, 2000. A fact sheet on the development of the TMDL for fecal coliform bacteria on Accotink Creek is available upon request. Questions or information requests should be addressed to Joan Crowther. Written comments should include the name, address, and telephone number of the person submitting the comments and should be sent to Joan Crowther, Department of Environmental Quality, 13901 Crown Court, Woodbridge, Virginia 22193, telephone (703) 583-3828, Fax (703) 583-3841, or e-mail jccrowther@deq.state.va.us.

Notice of Public Comment Concerning Virginia's Continuing Planning Process

The Department of Environmental Quality (DEQ) in cooperation with the Department of Conservation and Recreation; Department of Forestry; Chesapeake Bay Local Assistance Department; Department of Mines, Minerals, and Energy; Department of Agriculture and Consumer Services, and the Department of Health seeks written and oral comments from interested persons on Virginia's Continuing Planning Process (CPP) for the Commonwealth's water quality management programs. This document explains the processes for implementing federal and state water quality laws, regulations, and pollution reduction strategies. This is a document that the general public can use to obtain information about Virginia's programs to monitor, protect, or improve the quality of the waters of the state.

Section 303(e) of the federal Clean Water Act requires DEQ to develop and submit the state's Continuing Planning

Process to the U.S. Environmental Protection Agency's regional administrator.

The public comment period will end on March 1, 2000. A copy of the draft Continuing Planning Process is available upon request. Questions, information requests, or comments should be addressed to Erlinda Patron, Department of Environmental Quality, 629 E. Main Street, Richmond, Virginia, 23240, telephone (804) 698-4047, FAX (804) 698-4136, or e-mail elpatron@deq.state.va.us. Written comments should include the name, address, and telephone number of the person submitting the comments.

DEPARTMENT OF TRANSPORTATION

Periodic Review of Regulations

Pursuant to Executive Order Number 25 (98), the Virginia Department of Transportation has scheduled the regulations listed below for review. VDOT will conduct this review to determine whether the regulations should be terminated, amended, or retained as written. If any changes are deemed necessary, VDOT will file the appropriate documentation as required by statute or procedures established by the Registrar of Regulations.

VDOT seeks public comment to determine whether the regulations protect the public's health, safety, and welfare with the least possible cost and intrusiveness to the citizens of the Commonwealth.

Regulation Title: 24 VAC 30-570-10 et seq. Procedures for Inclusion of Routes into Non-Interstate Qualifying Network and Virginia Access Systems.

Subject: Establishes policies and procedures to be followed by parties involved in the formulation of decisions concerning requests for inclusion of routes into the Surface Transportation Assistance Act (STAA) Network. The procedures include a written request by the requesting party, specifying the desired route for study, location, termini, and vehicle type, as well as field reviews and exceptions.

APA Exemption: § 9-6.14:4.1 B 11

Comments may be submitted from January 31, 2000, through February 21, 2000.

Contact: Curtis W. Myers, Jr., Transportation Engineer Traffic Engineering Division, 2nd Floor, Virginia Department of Transportation, 1401 East Broad Street, Richmond, Virginia 23219, telephone (804) 786-2967, FAX 804-225-4978, e-mail myers_cw@vdot.state.us.

Regulation Title: 24 VAC 30-580-10 et seq. Guidelines for Considering Requests for Restricting Through Trucks on Secondary Highways.

Subject: Establishes policies and procedures concerning decisions made by the Commonwealth Transportation Board (CTB) dealing with the restriction or prohibition of the use of any part of a secondary highway by through traffic, as provided for by § 46.2-809 of the Code of Virginia. The

guidelines establish requirements which local governments must follow to conform to the Code of Virginia.

APA Exemption: § 9-6.14:4.1 B 11

Comments may be submitted from January 31, 2000, through February 21, 2000.

Contact: Curtis W. Myers, Jr., Transportation Engineer, Traffic Engineering Division, 2nd Floor, Virginia Department of Transportation, 1401 East Broad Street, Richmond, Virginia 23219, telephone (804) 786-2967, FAX 804-225-4978, e-mail myers_cw@vdot.state.va.us.

Regulation Title: 24 VAC 30-590-10 et seq. Policies and Procedures for Control of Residential and Nonresidential Cut-Through Traffic.

Subject: Establishes policies and procedures to be followed by VDOT and local governments concerning decisions made in dealing with cut-through traffic.

APA Exemption: § 9-6.14:4.1 B 11

Comments may be submitted from January 31, 2000 through February 21, 2000.

Contact: Curtis W. Myers, Jr., Transportation Engineer, Traffic Engineering Division, 2nd Floor, Virginia Department of Transportation, 1401 East Broad Street, Richmond, Virginia 23219, telephone (804) 786-2967, FAX 804-225-4978, e-mail myers_cw@vdot.state.va.us.

Regulation Title: 24 VAC 30-600-10 et seq. Terms for Installation and Cost of Supplemental Signs Erected by VDOT (Criteria for Supplemental Signing).

Subject: Establish criteria which should be followed by a business, organization, or other entity wishing to post a supplemental guide sign on VDOT's right of way in addition to the major guide signs at intersections or interchanges.

APA Exemption: § 9-6.14:4.1 B 11

Comments may be submitted from January 31, 2000, through February 21, 2000.

Contact: Chandra A. Clayton, Transportation Engineer Program Supervisor, Traffic Engineering Division, 2nd Floor, Virginia Department of Transportation, 1401 East Broad Street, Richmond, Virginia 23219, telephone (804) 786-0134, FAX 804-225-4978, e-mail clayton_ca@vdot.state.va.us.

Regulation Title: 24 VAC 30-610-10 et seq. List of Differentiated Speed Limits.

Subject: Lists road segments where the Commonwealth Transportation Commissioner or other appropriate authority has increased or decreased speed limits, including the differentiation of speed limits for daytime and nighttime driving. Such differentiation is to become effective only after a traffic engineering investigation and when indicated on the highway by signs. These limits are effective only when prescribed in writing by the commissioner and kept on file in the central office of VDOT

APA Exemption: § 9-6.14:4.1 B 11

Comments may be submitted from January 31, 2000, through February 21, 2000.

Contact: Robert M. Kray, Traffic Engineering Division, 2nd Floor, Virginia Department of Transportation, 1401 East Broad Street, Richmond, Virginia 23219, telephone (804) 786-4567, FAX 804-225-4978, e-mail kray_rm@vdot.state.va.us.

STATE WATER CONTROL BOARD

Proposed Amended Special Order Massaponax Wastewater Treatment Plant

The State Water Control Board (board) proposes to issue an amended consent special order (order) to the County of Spotsylvania regarding the Massaponax Wastewater Treatment Plant (WWTP) located in Spotsylvania County, Virginia.

The Massaponax WWTP is subject to VPDES Permit No. VA0025658. The amended order provides interim effluent permit limitations for total kjeldahl nitrogen (TKN) and ultimate oxygen demand during the months of August, September, and October until the on-going expansion and upgrade project at the WWTP is complete.

On behalf of the board, the Department of Environmental Quality's Northern Virginia regional office will receive written comments relating to the order through March 1, 2000. Please address comments to Elizabeth Anne Crosier, Northern Virginia Regional Office, Department of Environmental Quality, 13901 Crown Court, Woodbridge, Virginia, 22193. Please write or visit the Woodbridge address, or call (703) 583-3886 in order to examine or to obtain a copy of the order.

Proposed Consent Special Order Orange County School Board

The State Water Control Board (board) proposes to issue a consent special order (order) to the Orange County School Board regarding the Lightfoot Elementary School Sewage Treatment Plant (VPDES Permit No. VA0062961), the Locust Grove Elementary School Sewage Treatment Plant (VPDES Permit No. VA0078131), and the Unionville Elementary School Sewage Treatment Plant (VPDES Permit No. VA0060330), located in Orange County, Virginia.

The order provides, among other things, that the Orange County School Board complete construction of the upgrades for each of the schools and comply with ammonia and total kjeldahl nitrogen (TKN) final effluent limits by June 15, 2000. In addition, the order provides interim limits for ammonia and TKN until the schedule of compliance requirements have been completed. The Orange County School Board has agreed to the issuance of the order.

On behalf of the board, the Department of Environmental Quality's Northern Virginia regional office will receive written comments relating to the order through March 1, 2000. Please address comments to Douglas E. Washington, Northern Virginia Regional Office, Department of

General Notices/Errata

Environmental Quality, 13901 Crown Court, Woodbridge, Virginia 22193, or call (703) 583-3888.

Proposed Consent Special Order Sandy's Mobile Court, Inc.

The State Water Control Board proposes to enter into a consent special order with Sandy's Mobile Court, Inc. to resolve violations of the State Water Control Law and regulations at Sandy's Mobile Court, Inc. sewage treatment plant in Frederick County. Sandy's discharges treated wastewater into unnamed tributary to Crooked Run in the Shenandoah River subbasin, Potomac River basin under authority of a VPDES Permit.

On March 3, 1999, DEQ staff conducted an inspection of the sewage treatment facilities. DEQ found that the facility's laboratory records were not being accurately kept and that the operator was not properly testing and reporting effluent test data. The facility has failed to comply with the permit's schedule of compliance to meet final effluent limitations and has exceeded the effluent limitations for BOD, ammonia, and chlorine.

The order also assesses a civil charge for the violations. The proposed consent special order settles the outstanding notice of violation and incorporates a schedule of compliance to upgrade the facility to meet final effluent limitations.

The board will receive written comments relating to the proposed consent special order until March 1, 2000. Comments should be addressed to Steven W. Hetrick, Department of Environmental Quality, Post Office Box 1129, Harrisonburg, Virginia 22801 and should refer to the consent special order.

The proposed order may be examined at the Department of Environmental Quality, Valley Regional Office, 4411 Early Road, Harrisonburg, Virginia 22801. A copy of the order may be obtained in person or by mail from this office.

VIRGINIA CODE COMMISSION

Notice to State Agencies

Mailing Address: 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 FAX two copies and do not follow up with a mailed copy. Our FAX number is: (804) 692-0625.

Forms for Filing Material for Publication in *The Virginia Register of Regulations*

All agencies are required to use the appropriate forms when furnishing material for publication in *The Virginia Register of Regulations*. The forms may be obtained from: Virginia Code Commission, 910 Capitol Street, General Assembly Building, 2nd Floor, Richmond, VA 23219, telephone (804) 786-3591.



Internet: Forms and other *Virginia Register* resources may be printed or downloaded from the *Virginia Register* web page: <http://legis.state.va.us/codecomm/register/regindex.htm>

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 OBJECTIONS
- RR08


CALENDAR OF EVENTS

Symbol Key

-  Location accessible to handicapped
-  Teletype (TTY)/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) 698-1500 or Senate Information and Constituent Services at (804) 698-7410 or (804) 698-7419/TTY , or visit the General Assembly web site's Legislative Information System (<http://leg1.state.va.us/lis.htm>) and select "Meetings."

VIRGINIA CODE COMMISSION


EXECUTIVE

809, Richmond, VA, telephone (804) 786-3936, FAX (804) 371-7788.

DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

Consumer Affairs Advisory Committee


Virginia Aquaculture Advisory Board

February 24, 2000 - 11:30 a.m. -- Open Meeting
Virginia State University, Cooperative Extension Pavilion,
4415 River Road, Ettrick, Virginia 


A regular meeting to discuss issues related to Virginia aquaculture. The board will entertain public comment at the conclusion of all other business for a period not to exceed 30 minutes. Any person who needs any accommodation in order to participate at the meeting should contact the person identified in this notice at least five days before the meeting date so that suitable arrangements can be made.

Contact: T. Robins Buck, Secretary, Virginia Aquaculture Advisory Board, Department of Agriculture and Consumer Services, 1100 Bank Street, Room 211, Richmond, VA 23219, telephone (804) 371-6094, FAX (804) 371-7679.


February 14, 2000 - 9:30 a.m. -- Open Meeting

Washington Building, 1100 Bank Street, Second Floor Board Room, Richmond, Virginia  (Interpreter for the deaf provided upon request)

The Consumer Affairs Advisory Committee communicates the views and interests of Virginians on issues related to the Department of Agriculture and Consumer Services' consumer education and fraud prevention programs, their availability to citizens, and the utilization of a state-wide network of volunteer program presenters. The February meeting is the first of two meetings held annually. Members will review 1999's events, plan for 2000, and elect the chairperson for the year. Any person who needs any accommodation in order to participate at the meeting should contact the person identified in this notice at least five days before the meeting date so that suitable arrangements can be made.

Contact: Evelyn A. Jez, Administrative Staff Specialist, Department of Agriculture and Consumer Services, Office of Consumer Affairs, 1100 Bank St., Room 1101, Richmond, VA, telephone (804) 786-1308, FAX (804) 786-5112, toll-free (800) 552-9963, (800) 828-1120/TTY 


Virginia Charity Food Assistance Advisory Board

† February 24, 2000 - 10:30 a.m. -- Open Meeting
Washington Building, 1100 Bank Street, Second Floor Board Room, Richmond, Virginia 23219 

A routine meeting to discuss issues related to food insecurity. The board will entertain public comment at the conclusion of all other business for a period not to exceed 30 minutes. Any person who needs any accommodation in order to participate at the meeting should contact Steven W. Thomas at least five days before the meeting date so that suitable arrangements can be made.

Contact: Steven W. Thomas, Executive Director, Virginia Charity Food Assistance Advisory Board, Department of Agriculture and Consumer Services, 1100 Bank St., Room

Virginia Corn Board

† February 16, 2000 - 8 a.m. -- Open Meeting
Richmond Airport Hilton, 5501 Eubank Road, Sandston, Virginia 


A meeting to discuss checkoff revenues resulting from sales of the 1999 corn crop and approve the previous meeting minutes. The board will hear FY 1999-2000 project reports and will receive FY 2000-2001 project proposals. Following all the presentations, the group will make funding decisions for the fiscal year beginning on July 1, 2000. The board will entertain public comment at the conclusion of all other business for a period not to

Calendar of Events

exceed 30 minutes. Any person who needs any accommodation in order to participate at the meeting should contact the person identified in this notice at least five days before the meeting date so that suitable arrangements can be made.

Contact: Philip T. Hickman, Program Director, Department of Agriculture and Consumer Services, 1100 Bank St., Room 1005, Richmond, VA 23219, telephone (804) 371-6157, FAX (804) 371-7786.


Virginia Irish Potato Board

† **February 7, 2000 - 7:30 p.m.** -- Open Meeting
Eastern Shore Agricultural Research and Extension Center, Painter, Virginia. 


A meeting to approve minutes of the last meeting and hear a presentation of the board's financial statement. The board will discuss and consider programs (promotion, research and education), the annual budget and other business that may be presented. The board will entertain public comment at the conclusion of all other business for a period not to exceed 30 minutes. Any person who needs any accommodation in order to participate at the meeting should contact the person identified in this notice at least five days before the meeting date so that suitable arrangements can be made.

Contact: J. William Mapp, Program Director, Department of Agriculture and Consumer Services, P.O. Box 26, Onley, VA 23418, telephone (757) 787-5867, FAX (757) 787-5973.


Virginia Plant Pollination Advisory Board

February 4, 2000 - 10 a.m. -- Open Meeting
Washington Building, 1100 Bank Street, First Floor Conference Room, Richmond, Virginia. 

An annual meeting. The board will entertain public comment at the conclusion of all other business for a period not to exceed 30 minutes. Any person who needs any accommodation in order to participate at the meeting should contact Robert G. Wellemeyer at least five days before the meeting date so that suitable arrangements can be made.

Contact: Robert G. Wellemeyer, Secretary-Treasurer, Plant Pollination Advisory Board, Department of Agriculture and Consumer Services, 234 West Shirley Ave., Warrenton, Va. 20186, telephone (540) 347-6380, FAX (540) 347-6384, (804) 371-6344/TTY 

Virginia Soybean Board


† **February 24, 2000 - 8 a.m.** -- Open Meeting
Williamsburg Hospitality House, 415 Richmond Road, Williamsburg, Virginia. 

A meeting to discuss checkoff revenues resulting from sales of the 1999 soybean crop and approve previous meeting minutes. The board will hear project reports for

FY 1999-2000 project proposals for FY 2000-2001. Funding decisions will be made for the fiscal year beginning on July 1, 2000. The board will entertain public comment at the conclusion of all other business for a period not to exceed 30 minutes. Any person who needs any accommodation in order to participate at the meeting should contact the person identified in this notice at least five days before the meeting date so that suitable arrangements can be made.

Contact: Philip T. Hickman, Program Director, Department of Agriculture and Consumer Services, 1100 Bank St., Room 1005, Richmond, VA, telephone (804) 371-6157, FAX (804) 371-7786.

Virginia Sweet Potato Board

† **February 15, 2000 - 7 p.m.** -- Open Meeting
Little Italy Restaurant, 10227 Rogers Drive, Nassawadox, Virginia. 

A meeting to hear and approve minutes of the last meeting and the presentation of the board's financial statement. The board will discuss and consider programs (promotion, research and education), the annual budget and other business that may be presented. The board will entertain public comment at the conclusion of all other business for a period not to exceed 30 minutes. Any person who needs any accommodation in order to participate at the meeting should contact the person identified in this notice at least five days before the meeting date so that suitable arrangements can be made.

Contact: J. William Mapp, Program Director, Department of Agriculture and Consumer Services, P.O. Box 26, Onley, VA 23418, telephone (757) 787-5867, FAX (757) 787-5973.


Virginia Winegrowers Advisory Board

February 22, 2000 - 10 a.m. -- Open Meeting
Washington Building, 1100 Bank Street, Second Floor, Board Room, Richmond, Virginia. 


A quarterly business meeting, including hearing and potential approval of minutes from the prior meeting, committee reports, treasurer's report, and a report from the Alcoholic Beverage Control Board. The board will entertain public comment at the conclusion of all other business for a period not to exceed 30 minutes. Any person who needs any accommodations in order to participate at the meeting should contact Mary E. Davis-Barton at least five days before the meeting date so that suitable arrangements can be made.

Contact: Mary Davis-Barton, Board Secretary, Virginia Winegrowers Advisory Board, Washington Building, 1100 Bank Street, Suite 1010, Richmond, VA 23219, telephone (804) 371-7685, FAX (804) 786-3122.


BOARD FOR ARCHITECTS, PROFESSIONAL ENGINEERS, LAND SURVEYORS, CERTIFIED INTERIOR DESIGNERS AND LANDSCAPE ARCHITECTS

March 8, 2000 - 9 a.m. -- Open Meeting
Department of Professional and Occupational Regulation,
3600 West Broad Street, 4th Floor, Richmond, Virginia. 


A meeting of the full board to conduct business. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact the department at least 10 days prior to the meeting so that suitable arrangements can be made. The department fully complies with the Americans with Disabilities Act.

Contact: Mark N. Courtney, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., 5th Floor, Richmond, VA 23230-4917, telephone (804) 367-514, FAX (804) 367-2475 or (804) 367-9753/TTY 


Architect Section

February 2, 2000 - 9 a.m. -- Open Meeting
Department of Professional and Occupational Regulation,
3600 West Broad Street, 5th Floor, Richmond, Virginia. 
(Interpreter for the deaf provided upon request)


The Architect Section will conduct board business. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact the department at least 10 days prior to the meeting so that suitable arrangements can be made. The department fully complies with the Americans with Disabilities Act.

Contact: Mark N. Courtney, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., 5th Floor, Richmond, VA 23230-4917, telephone (804) 367-8514, FAX (804) 367-2475 or (804) 367-9753/TTY 


Certified Interior Designer Section

March 1, 2000 - 9 a.m. -- Open Meeting
Department of Professional and Occupational Regulation,
3600 West Broad Street, 5th Floor, Richmond, Virginia. 
(Interpreter for the deaf provided upon request)


The Certified Interior Designer Section will conduct board business. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact the department at least 10 days prior to the meeting so that suitable arrangements can be made. The department fully complies with the Americans with Disabilities Act.

Contact: Mark N. Courtney, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., 5th Floor, Richmond, VA 23230-4917, telephone (804) 367-8514, FAX (804) 367-2475 or (804) 367-9753/TTY 


Landscape Architect Section

February 23, 2000 - 9 a.m. -- Open Meeting
Department of Professional and Occupational Regulation,
3600 West Broad Street, 5th Floor, Richmond, Virginia. 
(Interpreter for the deaf provided upon request)


The Landscape Architect Section will conduct board business. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact the department at least 10 days prior to the meeting so that suitable arrangements can be made. The department fully complies with the Americans with Disabilities Act.

Contact: Mark N. Courtney, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., 5th Floor, Richmond, VA 23230-4917, telephone (804) 367-8514, FAX (804) 367-2475 or (804) 367-9753/TTY 


Land Surveyor Section

February 16, 1999 - 9 a.m. -- Open Meeting
Department of Professional and Occupational Regulation,
3600 West Broad Street, 5th Floor, Richmond, Virginia. 
(Interpreter for the deaf provided upon request)


The Land Surveyor Section will conduct board business. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact the department at least 10 days prior to the meeting so that suitable arrangements can be made. The department fully complies with the Americans with Disabilities Act.

Contact: Mark N. Courtney, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., 5th Floor, Richmond, VA 23230-4917, telephone (804) 367-8514, FAX (804) 367-2475 or (804) 367-9753/TTY 

Professional Engineer Section


February 9, 2000 - 9 a.m. -- Open Meeting
Department of Professional and Occupational Regulation,
3600 West Broad Street, 5th Floor, Richmond, Virginia. 
(Interpreter for the deaf provided upon request)

The Professional Engineer Section will conduct board business. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact the department at least 10 days prior to the meeting so that suitable arrangements can be made. The department fully complies with the Americans with Disabilities Act.

Contact: Mark N. Courtney, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., 5th Floor, Richmond, VA 23230-4917, telephone (804) 367-8514, FAX (804) 367-2475 or (804) 367-9753/TTY 

Calendar of Events

ART AND ARCHITECTURAL REVIEW BOARD

February 4, 2000 - 10 a.m. -- Open Meeting
The Library of Virginia, 800 East Broad Street, Conference Room A, Richmond, Virginia.  (Interpreter for the deaf provided upon request)


A monthly meeting to review projects submitted by state agencies.

Contact: Richard L. Ford, AIA, Chairman, Art and Architectural Review Board, 1011 E. Main Street, Suite 221, Richmond, VA 23219, telephone (804) 643-1977.

VIRGINIA BOARD FOR ASBESTOS AND LEAD

March 7, 2000 - 10 a.m. -- Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, Conference Room 5W, Richmond, Virginia.


A meeting to conduct routine business. A public comment period will be held at the beginning of the meeting.

Contact: David E. Dick, Assistant Director, Virginia Board for Asbestos and Lead, Department of Professional and Occupational Regulation, 3600 W. Broad Street, Richmond, VA 23230, telephone (804) 367-8505, FAX (804) 367-2475, (804) 367-9753/TTY , e-mail asbestos@dpor.state.va.us.


ASSISTIVE TECHNOLOGY LOAN FUND AUTHORITY

February 17, 2000 - 10 a.m. -- Open Meeting
Department of Rehabilitative Services, 8004 Franklin Farms Drive, Richmond, Virginia.  (Interpreter for the deaf provided upon request)


A monthly board meeting of the Board of Directors to review applications for guaranteed loans. Public comment is invited. The board will meet in closed session to review loan applications in order to protect the personal information of the applicants.

Contact: Gail Stubbs, Assistive Technology Loan Fund Authority, 8004 Franklin Farms Drive, Richmond, VA 23228, telephone (804) 662-7331, FAX (804) 662-9533, (804) 662-7331/TTY , e-mail loanfund@erols.com, homepage <http://www.cns.state.va.us/atlfa>.

BOARD OF AUDIOLOGY AND SPEECH-LANGUAGE PATHOLOGY


† February 17, 2000 - 9 a.m. -- Public Hearing
Department of Health Professions, 6606 West Broad Street, 5th Floor, Conference Room 3, Richmond, Virginia 

A public hearing to receive comments on the proposed regulations for school speech-language pathologist. Following the public hearing the board will hold a regular meeting.

Contact: Senita Booker, Administrative Staff Assistant, Department of Health Professions, 6606 W. Broad St., Suite 403, Richmond, VA 23230-1717, telephone (804) 662-9111, FAX (804) 662-9523, (804) 662-7197/TTY , e-mail sbooker@dhp.state.va.us.

COMPREHENSIVE SERVICES FOR AT-RISK YOUTH AND THEIR FAMILIES


State Management Team

† February 3, 2000 - 9:15 a.m. -- Open Meeting
St. Joseph's Villa, 8000 Brook Road, Richmond, Virginia.  (Interpreter for the deaf provided upon request)


A meeting to discuss recommendations for policy and procedure to the State Executive Council on the Comprehensive Services Act. Public comment will be received from 9:45 to 10 a.m.

Contact: Elisabeth Hutton, Secretary, Department of Health, P.O. Box 2448, Richmond, VA 23218, telephone (804) 371-4099.


BOARD FOR BARBERS

February 7, 2000 - 10 a.m. -- Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, 4th Floor, Richmond, Virginia.  (Interpreter for the deaf provided upon request)

An open meeting to discuss regulatory review and other matters requiring board action, including disciplinary cases. All meetings are subject to cancellation. The time of the meeting is subject to change. A public comment period will be held at the beginning of the meeting. Any person desiring to attend the meeting and requiring special accommodations or interpretive services should contact the department at 804-367-8590 or 367-9753/TTY at least 10 days prior to the meeting so that suitable arrangements can be made for an appropriate accommodation. The department fully complies with the Americans with Disabilities Act.

Contact: Nancy Taylor Feldman, Assistant Director, Department of Professional and Occupational Regulation, 3600 West Broad Street, 4th Floor, Richmond, VA 23230-4917, telephone (804) 367-8590, FAX (804) 367-2474, (804) 367-9753/TTY , e-mail barbers@dpor.state.va.us, homepage <http://www.state.va.us/dpor>.

BOARD FOR BRANCH PILOTS

January 31, 2000 - 9:30 a.m. -- Open Meeting
Virginia Pilot Association, 3329 Shore Drive, Virginia Beach, Virginia.  (Interpreter for the deaf provided upon request)

A meeting to conduct examinations.

Contact: Mark N. Courtney, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad

St., Richmond, VA 23230, telephone (804) 367-8514, FAX (804) 367-2475, (804) 367-9753/TTY ☎, e-mail branchpilots@dpor.state.va.us.

February 1, 2000 - 9:30 a.m. -- Open Meeting

NOTE: CHANGE IN MEETING LOCATION

Virginia Port Authority, 600 World Trade Center, Norfolk, Virginia. ♿ (Interpreter for the deaf provided upon request)

A meeting to conduct board business. Persons desiring to participate in the meeting and requiring special accommodations or interpretative services should contact the department at (804) 367-8514 at least 10 days prior to this meeting so that suitable arrangements can be made. The department fully complies with the Americans with Disabilities Act.

Contact: Mark N. Courtney, Assistant Director, Department of Professional and Occupational Regulation, 3600 West Broad St., Richmond, VA 23230, telephone (804) 367-8514, FAX (804) 367-2475, (804) 367-9753/TTY ☎, e-mail branchpilots@dpor.state.va.us.

CHESAPEAKE BAY LOCAL ASSISTANCE BOARD

Northern Area Review Committee

† **February 8, 2000 - 10 a.m.** -- Open Meeting

James Monroe Building, 101 North 14th Street, 17th Floor, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

A meeting to review Chesapeake Bay Preservation Area programs for the northern area. Persons interested in observing should call the Chesapeake Bay Local Assistance Department to verify meeting time, location and schedule. No comments from the public will be entertained at the review committee meeting. However, written comments are welcome.

Contact: Carolyn J. Elliott, Executive Secretary Senior, Chesapeake Bay Local Assistance Department, James Monroe Bldg., 101 N. 14th St., 17th Floor, Richmond, VA 23219, telephone (804) 371-7505, FAX (804) 225-3447, toll-free (800) 243-7229, (804) 243-7229/TTY ☎, e-mail celliot@cblad.state.va.us.

Southern Area Review Committee

† **February 8, 2000 - 2 p.m.** -- Open Meeting

James Monroe Building, 101 North 14th Street, 17th Floor, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

A meeting to review Chesapeake Bay Preservation Area programs for the southern area. Persons interested in observing should call the Chesapeake Bay Local Assistance Department to verify meeting time, location and schedule. No comments from the public will be entertained at the review committee meeting. However, written comments are welcome.

Contact: Carolyn J. Elliott, Executive Secretary Senior, Chesapeake Bay Local Assistance Department, James Monroe Bldg., 101 N. 14th St., 17th Floor, Richmond, VA 23219, telephone (804) 371-7505, FAX (804) 225-3447, toll-free (800) 243-7229, (804) 243-7229/TTY ☎, e-mail celliot@cblad.state.va.us.

BOARD OF CONSERVATION AND RECREATION

† **February 3, 2000 - 10 a.m.** -- Open Meeting

Madison Building, 109 Governor Street, 13th Floor, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

A general business meeting. Public comment will be received at the conclusion of regular business.

Contact: Leon E. App, Acting Deputy Director, Department of Conservation and Recreation, 203 Governor St., Suite 302, Richmond, VA 23219, telephone (804) 786-4570 or FAX (804) 786-6141.

DEPARTMENT OF CONSERVATION AND RECREATION

February 10, 2000 - 7 p.m. -- Open Meeting

South Warren Fire Department, Route 340, Bentonville, Virginia. ♿ (Interpreter for the deaf provided upon request)

A meeting to present the draft master plan for Raymond R. "Andy" Guest/Shenandoah River State Park to the public for information and to receive input. The South Warren Fire Department building is located approximately 10 miles south of Front Royal on the east side of Route 340.

Contact: Tony Widmer, Park Manager, Department of Conservation and Recreation, P.O. Box 235, Bentonville, VA 22610, telephone (540) 622-6840 or FAX (540) 622-6841.

BOARD FOR CONTRACTORS

† **February 2, 2000 - 9 a.m.** -- Open Meeting

Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

A regular meeting of the board to address policy and procedural issues; review and render case decisions in matured complaints against licensees, and other matters which may require board action. The meeting is open to the public, however, a portion of the board's business may be discussed in closed meeting. The department fully complies with the Americans with Disabilities Act. Persons desiring to participate in the meeting and require special accommodations or interpreter services should contact Kelley L. Hellams.

Contact: Kelley L. Hellams, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-2785, FAX (804) 367-2474, (804) 367-9753/TTY ☎, e-mail contractors@dpor.state.va.us.

Calendar of Events

BOARD FOR COSMETOLOGY

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March 6, 2000 - 8:30 a.m. -- Open Meeting
Department of Professional and Occupational Regulation,
3600 W. Broad Street, 4th Floor, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A meeting to discuss regulatory review and other matters requiring board action, including disciplinary cases. A public comment period will be held at the beginning of the meeting. All meetings are subject to cancellation. The time of the meeting is subject to change. Any persons desiring to attend the meeting and requiring special accommodations or interpretative services should contact the department at 804-367-8590 or 804-367-9753/TTY at least 10 days prior to the meeting so that suitable arrangements can be made for an appropriate accommodation. The department fully complies with the Americans with Disabilities Act.

Contact: Nancy Taylor Feldman, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad Street, 4th Floor, Richmond, VA 23230-4917, telephone (804) 367-8590, FAX (804) 367-2474, (804) 367-9753/TTY, e-mail cosmo@dpor.state.va.us.

DEPARTMENT FOR THE DEAF AND HARD-OF-HEARING

February 2, 2000 - 9 a.m. -- Open Meeting
Department for the Deaf and Hard-of-Hearing, 1602 Rolling Hills Drive, 2nd Floor Conference Room, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A regular meeting of the advisory board.

Contact: Leslie G. Hutcheson, Regulatory Coordinator, Department for the Deaf and Hard-of-Hearing, 1602 Rolling Hills Dr., Suite 203, Richmond, VA 23229-5012, telephone (804) 662-9703, FAX (804) 662-9718, toll-free (800) 552-7917, (800) 552-7917/TTY, e-mail hutchelg@ddhh.state.va.us.

BOARD OF EDUCATION

February 24, 2000 - 9 a.m. -- Open Meeting
March 23, 2000 - 9 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 its regularly scheduled meeting. Business will be conducted according to items on the agenda. The agenda is available upon request.

Contact: Dr. Margaret Roberts, Executive Assistant for State Board of Education, Department of Education, Monroe Building, 101 North 14th Street, P.O. Box 2120, Richmond, VA 23218-2120, telephone (804) 225-2540, FAX (804) 225-2524 or toll-free (800) 292-3829.

February 28, 2000 - 7 p.m. -- Public Hearing
Marion Senior High School, 848 Stage Street, Marion, Virginia.

February 28, 2000 - 7 p.m. -- Public Hearing
John Marshall High School, 4225 Old Brook Road, Richmond, Virginia.

February 28, 2000 - 7 p.m. -- Public Hearing
Lake Braddock High School, 9200 Burke Lake Road, Burke, Virginia.

February 28, 2000 - 7 p.m. -- Public Hearing
Linkhorne Elementary School, 2501 Linkhorne Drive, Lynchburg, Virginia.

February 28, 2000 - 7 p.m. -- Public Hearing
Heritage High School, 5800 Marshall Avenue, Newport News, Virginia.

February 28, 2000 - 7 p.m. -- Public Hearing
Shelburne Middle School, 300 Grubert Avenue, Staunton, Virginia.

March 17, 2000 - Public 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 State Board of Education intends to amend regulations entitled: **8 VAC 20-80-10 et seq. Regulations Governing Special Education Programs for Children with Disabilities in Virginia** and repeal regulations entitled: **8 VAC 20-750-10 et seq. Special Education Program Standards**. These regulations ensure that Virginia complies with the Individuals with Disabilities Education Act (IDEA) (20 USC § 1400 et seq.) and that all children with disabilities in the Commonwealth have available a free appropriate public education and procedural safeguards. The Special Education Program Standards, which provide special education teacher staffing and assignments, is being incorporated into the board of Virginia's special education regulations and is, therefore, being repealed.

Statutory Authority: §§ 22.1-16 and 22.1-214 of the Code of Virginia.

Contact: Catherine A. Pomfrey, Executive Secretary Senior, Department of Education, P.O. Box 2120, Richmond, VA 23218-2120, telephone (804) 225-2402, FAX (804) 371-8796 or (804) 371-2822/TTY.

DEPARTMENT OF GAME AND INLAND FISHERIES

February 8, 2000 - 7 p.m. -- Open Meeting
Department of Game and Inland Fisheries, Williamsburg Regional Office, 5806 Mooretown Road, Williamsburg, Virginia. (Interpreter for the deaf provided upon request)

February 9, 2000 - 7 p.m. -- Open Meeting
Department of Game and Inland Fisheries, Lynchburg Regional Office, 910 Thomas Jefferson Road, Forest, Virginia. (Interpreter for the deaf provided upon request)

February 10, 2000 - 7 p.m. -- Open Meeting
Department of Game and Inland Fisheries, Fredericksburg
Regional Office, 1320 Belman Road, Fredericksburg,
Virginia. (Interpreter for the deaf provided upon request)

February 15, 2000 - 7 p.m. -- Open Meeting
Smyth-Bland Regional Library, Copenhaver Meeting Room,
118 South Sheffey Street, Marion, Virginia. (Interpreter for
the deaf provided upon request)

February 16, 2000 - 7 p.m. -- Open Meeting
Department of Game and Inland Fisheries, Verona (Staunton)
Regional Office, 4724 Lee Highway, Verona, Virginia. (Interpreter for the deaf provided upon request)

The Virginia Department of Game and Inland Fisheries (DGIF) is hosting five public meetings in February 2000 to discuss Virginia's freshwater fishing regulations and agency programs with anglers and other interested parties. Interested individuals are invited to join the DGIF staff to discuss these subjects. Public comments and suggestions received will be considered by staff as they refine current programs, develop new ones, and develop staff recommendations for amendments to freshwater fish and fishing regulations. Agency staff will present such recommendations to the Board of Game and Inland Fisheries at its August 2000 meeting as part of the regular biennial review of freshwater fish and fishing regulations.

Contact: Phil Smith, Policy Analyst, Department of Game and Inland Fisheries, 4010 W. Broad Street, Richmond, VA, telephone (804) 367-1000 or FAX (804) 367-0488.

STATE BOARD OF HEALTH

† **February 3, 2000 - 10 a.m.** -- Open Meeting
AmeriSuites Hotel, 4100 Cox Road, Glen Allen, Virginia. (Interpreter for the deaf provided upon request)

A work session of the board. An informal dinner will be at 7 p.m.

Contact: Paul W. Matthias, Staff to the Board of Health, Department of Health, P.O. Box 2448, Suite 227, telephone (804) 371-2909, FAX (804) 786-4616, e-mail pmatthias@vdh.state.va.us.

† **February 4, 2000 - 9 a.m.** -- Open Meeting
AmeriSuites Hotel, 4100 Cox Road, Glen Allen, Virginia. (Interpreter for the deaf provided upon request)

A regular business meeting.

Contact: Paul W. Matthias, Staff to the Board of Health, Department of Health, P.O. Box 2448, Suite 227, telephone (804) 371-2909, FAX (804) 786-4616, e-mail pmatthias@vdh.state.va.us.

DEPARTMENT OF HEALTH PROFESSIONS

February 11, 2000 - 9 a.m. -- Open Meeting
Department of Health Professions, 6606 West Broad Street,
5th Floor, Conference Room 4, Richmond, Virginia. (Interpreter for the deaf provided upon request)

The Intervention Program Committee will meet with its contractor and representatives to review reports, policies and procedures for the Health Practitioner's Intervention Program. The committee will meet in open session for general discussion of the program. The committee may meet in executive sessions for the purpose of consideration of specific requests from applicants to or participants in the program.

Contact: John W. Hasty, Director, Department of Health Professions, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9424, FAX (804) 662-9114 or (804) 662-7197/TTY

† **February 16, 2000 - 9 a.m.** -- Open Meeting
Department of Health Professions, 6606 West Broad Street,
5th Floor, Conference Room 2, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A meeting of the Enforcement Committee to review issues related to the disciplinary roles of health regulatory boards.

Contact: Elizabeth A. Carter, Ph.D., Deputy Executive Director, Board of Health Professions, Southern States Bldg., 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-7691, FAX (804) 662-9504, (804) 662-7197/TTY, e-mail ecarter@dhp.state.va.us.

† **February 16, 2000 - 10 a.m.** -- Open Meeting
Department of Health Professions, 6606 West Broad Street,
5th Floor, Conference Room 2, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A meeting of the Regulatory Research Committee to review research on the regulation of clinical lab specialists and other issues related to the regulation of health care professionals.


Contact: Elizabeth A. Carter, Ph.D., Deputy Executive Director, Board of Health Professions, Southern States Bldg., 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-7691, FAX (804) 662-9504, (804) 662-7197/TTY, e-mail ecarter@dhp.state.va.us.

† **February 16, 2000 - 11:30 a.m.** -- Open Meeting
Department of Health Professions, 6606 West Broad Street,
5th Floor, Conference Room 2, Richmond, Virginia. (Interpreter for the deaf provided upon request)


New members will receive orientation on the purpose and functions of the board and its various committees.

Contact: Elizabeth A. Carter, Ph.D., Deputy Executive Director, Board of Health Professions, Southern States Bldg., 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-7691, FAX (804) 662-9504, (804) 662-7197/TTY, e-mail ecarter@dhp.state.va.us, homepage <http://www.dhp.state.va.us>.


Calendar of Events

† **February 16, 2000 - 1 p.m.** -- Open Meeting
Department of Health Professions, 6606 West Broad Street,
5th Floor, Conference Room 2, Richmond, Virginia 
(Interpreter for the deaf provided upon request)


A meeting of the full board to consider reports from committees, review action plan for year, and discuss issues related to the regulation of health care professions.

Contact: Elizabeth A. Carter, Ph.D., Deputy Executive Director, Board of Health Professions, Southern States Bldg., 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-7691, FAX (804) 662-9504, (804) 662-7197/TTY , e-mail ecarter@dhp.state.va.us, homepage <http://www.dhp.state.va.us>.


BOARD FOR HEARING AID SPECIALISTS

† **April 4, 2000 - 8:30 a.m.** -- Open Meeting
Department of Professional and Occupational Regulation,
3600 West Broad Street, 4th Floor, Richmond, Virginia. 
(Interpreter for the deaf provided upon request)

An open meeting to discuss regulatory review, disciplinary cases and other matters requiring board action. A public comment period will be held at the beginning of the meeting. All meetings are subject to cancellation. The time of the meeting is subject to change. Any persons desiring to attend the meeting and requiring special accommodations or interpretative services should contact the department at least 10 days prior to the meeting so that suitable arrangements can be made. The department fully complies with the Americans with Disabilities Act.


Contact: Nancy Taylor Feldman, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., 4th Floor, Richmond, VA 23230-4917, telephone (804) 367-8590, FAX (804) 367-2474, (804) 367-9753/TTY , e-mail hearingaidspec@dpor.state.va.us.

STATE COUNCIL OF HIGHER EDUCATION FOR VIRGINIA

† **February 8, 2000 9 a.m.** -- Open Meeting
† **March 14, 2000 - 9 a.m.** -- Open Meeting
† **April 11, 2000 - 9 a.m.** -- Open Meeting
State Council of Higher Education, James Monroe Building,
101 North 14th Street, Richmond, Virginia.  (Interpreter for the deaf provided upon request)


A teleconferenced meeting. Locations available include McGuire, Woods, Battle and Boothe, World Trade Center, Suite 9000, Norfolk, Virginia and 420 Park Street, Charlottesville, Virginia. Time may vary.

Contact: Kathy R. Robinson, Executive Secretary Senior, State Council of Higher Education for Virginia, James Monroe Bldg., 101 N. 14th St., Richmond, VA 23219, telephone (804) 225-2628, FAX (804) 225-2638, e-mail robinson@schev.edu.

† **February 15, 2000 - 8:30 a.m.** -- Open Meeting
State Council of Higher Education, James Monroe Building,
101 North 14th Street, 9th Floor, Richmond, Virginia. 
(Interpreter for the deaf provided upon request)

Monthly committee and council meetings.


Contact: Kathy R. Robinson, Executive Secretary Senior, State Council of Higher Education for Virginia, James Monroe Bldg., 101 N. 14th St., Richmond, VA 23219, telephone (804) 225-2628, FAX (804) 225-2638, e-mail robinson@schev.edu.

† **March 21, 2000 - 8:30 a.m.** -- Open Meeting
Longwood College, Farmville, Virginia.  (Interpreter for the deaf provided upon request)

A monthly meeting.

Contact: Kathy R. Robinson, Executive Secretary Senior, State Council of Higher Education for Virginia, James Monroe Bldg., 101 N. 14th St., Richmond, VA 23219, telephone (804) 225-2628, FAX (804) 225-2638, e-mail robinson@schev.edu.

HOPEWELL INDUSTRIAL SAFETY COUNCIL


February 1, 2000 - 9 a.m. -- Open Meeting
March 7, 2000 - 9 a.m. -- Open Meeting
Hopewell Community Center, 100 West City Point Road,
Hopewell, Virginia.  (Interpreter for the deaf provided upon request)

Local Emergency Preparedness Committee meeting on emergency preparedness as required by SARA Title III.


Contact: Robert Brown, Emergency Services Coordinator, Hopewell Industrial Safety Council, 300 N. Main Street, Hopewell, VA 23860, telephone (804) 541-2298.

DEPARTMENT OF LABOR AND INDUSTRY


Virginia Apprenticeship Council Subcommittee

† **February 10, 2000 - 9:30 a.m.** -- Open Meeting
Department of Labor and Industry, Powers-Taylor Building, 13
South Thirteenth Street, Richmond, Virginia.  (Interpreter for the deaf provided upon request)

Agenda to be announced.

Contact: Beverley Donati, Assistant Program Director, Department of Labor and Industry, Powers-Taylor Building, 13 S. Thirteenth Street, Richmond, VA, telephone (804) 786-2382, FAX (804) 786-8418, (804) 786-2376/TTY , e-mail bgd@doli.state.va.us.

STATE LIBRARY BOARD

March 13, 2000 - 8:15 a.m. -- Open Meeting
The Library of Virginia, 800 East Broad Street, Richmond,
Virginia. 

A meeting to discuss matters pertaining to The Library of Virginia and the State Library Board.

The following committees will meet at 8:15 a.m.:

Public Library Development Committee (Orientation Room)
Publications and Educational Services Committee (Conference Room B)
Records Management Committee (Conference Room C)

The following committees will meet at 9:30 a.m.:

Archival and Information Services Committee (Orientation Room)
Collection Management Services Committee (Conference Room B)
Legislative and Finance Committee (Conference Room C).

The full board will meet in the conference room on 2M at 10:30 a.m. Public comment will be received at approximately 11 a.m.

Contact: Jean H. Taylor, Executive Secretary Senior, The Library of Virginia, 800 East Broad Street, Richmond, VA 23219-8000, telephone (804) 692-3535, FAX (804) 692-3594, (804) 692-3976/TTY ☎, e-mail jtaylor@vsla.edu, homepage <http://www.lva.lib.va.us>.

COMMISSION ON LOCAL GOVERNMENT

February 21, 2000 - 10:30 a.m. -- Public Hearing
Clifton Forge area; site to be determined.

Oral presentations regarding the City of Clifton Forge's proposed reversion to a town in Alleghany County. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact the commission.

Contact: Barbara W. Bingham, Administrative Assistant, Commission on Local Government, 900 E. Main Street, Suite 103, Richmond, VA 23219-3513, telephone (804) 786-6508, FAX (804) 371-7999, (800) 828-1120/TTY ☎, e-mail bbingham@clg.state.va.us, <http://www.state.va.us/clg>.

February 21, 2000 - 7 p.m. -- Public Hearing
Clifton Forge area; site to be determined.

A public hearing regarding the City of Clifton Forge's proposed reversion to a town in Alleghany County. Persons desiring to participate in the commission's proceedings and requiring special accommodations or interpreter services should contact the commission.

Contact: Barbara W. Bingham, Administrative Assistant, Commission on Local Government, 900 E. Main Street, Suite 103, Richmond, VA 23219-3513, telephone (804) 786-6508, FAX (804) 371-7999, (800) 828-1120/TTY ☎, e-mail bbingham@clg.state.va.us, <http://www.state.va.us/clg>.

February 22, 2000 - 9 a.m. -- Public Hearing
Clifton Forge area; site to be determined.

Oral presentations regarding the City of Clifton Forge's proposed reversion to a town in Alleghany County. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact the commission.

Contact: Barbara W. Bingham, Administrative Assistant, Commission on Local Government, 900 E. Main Street, Suite 103, Richmond, VA 23219-3513, telephone (804) 786-6508, FAX (804) 371-7999, (800) 828-1120/TTY ☎, e-mail bbingham@clg.state.va.us, <http://www.state.va.us/clg>.

MARINE RESOURCES COMMISSION

February 22, 2000 - 9:30 a.m. -- Open Meeting

March 28, 2000 - 9:30 a.m. -- Open Meeting
Marine Resources Commission, 2600 Washington Avenue, Room 403, Newport News, Virginia. ♿ (Interpreter for the deaf provided upon request)

The commission will hear and decide the following marine environmental matters beginning at 9:30 a.m.: permit applications for projects in wetlands, bottom lands, coastal primary sand dunes and beaches; appeals of local wetland board decisions; and policy and regulatory issues. The commission will hear and decide the following fishery management items beginning at approximately noon: regulatory proposals; fishery management plans; fishery conservation issues; licensing; and shellfish leasing. Meetings are open to the public. Testimony will be taken under oath from parties addressing agenda items on permits and licensing. Public comments will be taken on resource matters, regulatory issues and items scheduled for public hearing.

Contact: LaVerne Lewis, Secretary to the Commission, Marine Resources Commission, P.O. Box 756, Newport News, VA 23607-0756, telephone (757) 247-2261, toll-free (800) 541-4646 or (757) 247-2292/TTY ☎

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

February 17, 2000 - 2 p.m. -- Open Meeting
Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Board Room, Richmond, Virginia. ♿

A meeting of the Drug Utilization Review Board to conduct board business.

Contact: Marianne Rollings, Program Administrator, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 225-4268, FAX (804) 786-1680, (800) 343-0634/TTY ☎, e-mail mrollings@dmas.state.va.us.

March 17, 2000 - Public comments may be submitted until 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 Medical Assistance Services intends to amend regulations entitled: **Program for All-Inclusive Care for the Elderly - PACE: 12 VAC 30-10-10 et seq. State Plan Under Title XIX of the Social Security Act Medical Assistance Program; General Provisions; 12 VAC 30-50-10 et seq. Amount, Duration, and Scope of Medical and Remedial Care Services; 12 VAC 30-120-10 et seq. Waivered Services.** These proposed regulations provide for the creation of Medicaid coverage of PACE services (Program of All-Inclusive Care for the Elderly). These regulations link all types of medical care that frail, elderly individuals might need through a system of care management. This program has been modeled after the On Lok program in California.

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

Public comments may be submitted until March 17, 2000, to T. C. Jones, Analyst, LTC-Appeals Division, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, Virginia 23219.

Contact: Victoria Simmons, Regulatory Coordinator, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 786-7959 or FAX (804) 786-1680.

March 17, 2000 - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of Medical Assistance Services intends to amend regulations entitled: **12 VAC 30-70-10 et seq. Methods and Standards for Establishing Payment Rates-Inpatient Hospital Care (Diagnosis Related Groups).** The proposed regulations amend the existing inpatient hospital payment methodology regulations to remove transition period rules and fully implement the new Diagnosis Related Grouping (DRG) methodology. These amendments fulfill a directive by the 1996 General Assembly to implement a DRG methodology (Chapter 912, Item 322 J) and the settlement terms of a case brought under the federal Boren Amendment which required DMAS and the then Virginia Hospital Association to jointly develop a replacement reimbursement method.

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

Public comments may be submitted until March 17, 2000, to Stan Fields, Director of Cost Settlement, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, Virginia 23219.

Contact: Victoria Simmons, Regulatory Coordinator, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 786-7959 or FAX (804) 786-1680.

Medicaid Pharmacy Liaison Committee

† **April 3, 2000 - 1 p.m.** -- Open Meeting
Department of Medical Assistance Services, 600 East Broad Street Suite 1300, Board Room, Richmond, Virginia.☎

A routine meeting.

Contact: Marianne Rollings, Coordinator, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 225-4268, FAX (804) 786-1680, (800) 343-0634/TTY ☎, e-mail mrollings@dmas.state.va.us.

BOARD OF MEDICINE

February 10, 2000 - 8 a.m. -- Open Meeting

February 11, 2000 - 8 a.m. -- Open Meeting

February 12, 2000 - 8 a.m. -- Open Meeting

Department of Health Professions, 6606 West Broad Street, 5th Floor, Richmond, Virginia ☎ (Interpreter for the deaf provided upon request)

A meeting to conduct general board business, receive committee and board reports, and discuss any other items which may come before the board. The board will also meet on Friday and Saturday, February 11 and 12, to review reports, interview licensees/applicants, conduct administrative proceedings, and make decisions on disciplinary matters. The board will also review any regulations that may come before it. The board will entertain public comments during the first 15 minutes on agenda items.

Contact: William L. Harp, M.D., Executive Director, Board of Medicine, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9960, FAX (804) 662-9517, (804) 662-7197/TTY ☎

Executive Committee


† **April 7, 2000 - 8 a.m.** -- Open Meeting

Department of Health Professions, 6606 West Broad Street, 5th Floor, Richmond, Virginia.☎ (Interpreter for the deaf provided upon request)


A meeting will be held in open and closed session to review disciplinary files requiring administrative action, adopt amendments and approve for promulgation regulations as presented, interview applicants, and act on other issues that come before the board. The chairman will entertain public comments on agenda items for 15 minutes following adoption of the agenda.

Contact: William L. Harp, M.D., Executive Director, Board of Medicine, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9960, FAX (804) 662-9517, (804) 662-7197/TTY ☎


Informal Conference Committee

March 9, 2000 - 9 a.m. -- Open Meeting
Central Park Hotel, 2801 Plank Road, Fredericksburg, Virginia. 


A meeting to inquire into allegations that certain practitioners may have violated laws and regulations governing the practice of medicine and other healing arts in Virginia. The committee will meet in open and closed sessions pursuant to § 2.1-344 A 7 and A 15 of the Code of Virginia. Public comment will not be received.

Contact: Peggy Sadler or Renee Dixon, Board of Medicine, 6606 W. Broad Street, 4th Floor, Richmond, VA 23230, telephone (804) 662-7332, FAX (804) 662-9517, (804) 662-7197/TTY 


STATE MILK COMMISSION

† **February 16, 2000 - 10:30 a.m.** -- Open Meeting
Department of Forestry, 900 Natural Resources Drive, 2nd Floor, Conference Room, Charlottesville, Virginia 

A regular meeting of the Board of Commissioners to consider industry issues, distributor licensing, base transfers, baseholder license amendments, fiscal matters, and to review reports from staff of the agency. Any persons requiring special accommodations in order to participate in the meeting should contact Edward C. Wilson, Jr. at least five days prior to the meeting date so that suitable arrangements can be made.

Contact: Edward C. Wilson, Jr., Deputy Administrator, State Milk Commission, Ninth Street Office Bldg., 202 N. Ninth St., Room 915 Richmond, VA 23219, telephone (804) 786-2013, FAX (804) 786-3779, (804) 786-2013/TTY , e-mail ewilson@smc.state.va.us.


VIRGINIA MUSEUM OF FINE ARTS

† **February 1, 2000 - 8 a.m.** -- Open Meeting
Virginia Museum of Fine Arts, 2800 Grove Avenue, Main Lobby Conference Room, Richmond, Virginia 


A monthly briefing for the Executive Committee by the staff. No action will be taken; public comment will not be received.


Contact: Emily C. Robertson, Secretary of the Museum, Virginia Museum of Fine Arts, 2800 Grove Avenue, Richmond, VA 23221, telephone (804) 340-1503, FAX (804) 340-1502, e-mail erobertson@vmfa.state.va.us.

BOARD OF NURSING


February 15, 2000 - 9 a.m. -- Open Meeting
Department of Health Professions, 6606 West Broad Street, 5th Floor, Conference Room 1, Richmond, Virginia. 
(Interpreter for the deaf provided upon request)

A meeting to adopt final regulations for nurses and certified nurse aides in order to increase certain fees charged to applicants and to consider any other action as may come before the board.

Contact: Nancy K. Durrett, R.N., Executive Director, Board of Nursing, 6606 W. Broad Street, 4th Floor, Richmond, VA 23230, telephone (804) 662-9909, FAX (804) 662-9512, (804) 662-7197/TTY , e-mail ndurrett@dhp.state.va.us.

† **February 8, 2000 - 8:30 a.m.** -- Open Meeting
† **February 10, 2000 - 8:30 a.m.** -- Open Meeting
† **February 15, 2000 - 8:30 a.m.** -- Open Meeting
† **February 17, 2000 - 8:30 a.m.** -- Open Meeting
† **February 22, 2000 - 8:30 a.m.** -- Open Meeting
† **February 28, 2000 - 8:30 a.m.** -- Open Meeting
Department of Health Professions, 6606 West Broad Street, 5th Floor, Conference Room 3, Richmond, Virginia. 


A Special Conference Committee will conduct informal conferences with licensees or certificate holders. Public comment will not be received.

Contact: Nancy K. Durrett, R.N., Executive Director, Board of Nursing, 6606 W. Broad St., 4th Floor, Richmond, VA 23230, telephone (804) 662-9909, FAX (804) 662-9512, (804) 662-7197/TTY , e-mail nursebd@dhp.state.va.us.


BOARD OF NURSING HOME ADMINISTRATORS

February 9, 2000 - 10 a.m. -- Open Meeting
Department of Health Professions, 6606 West Broad Street, 5th Floor, Richmond, Virginia. 

The board will conduct an informal hearing pursuant to § 9-6.14:11 of the Code of Virginia. Public comments will not be received.

Contact: Senita Booker, Administrative Staff Assistant, Board of Nursing Home Administrators, 6606 W. Broad St., Suite 403, Richmond, VA 23230-1717, telephone (804) 662-9111, FAX (804) 662-9523, (804) 662-7197/TTY , e-mail SBooker@dhp.state.va.us.

BOARD FOR OPTICIANS


February 11, 2000 - 9 a.m. -- Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, 4th Floor, Richmond, Virginia. 
(Interpreter for the deaf provided upon request)

An open meeting to discuss regulatory review and other matters requiring board action, including disciplinary cases. A public comment period will be held at the beginning of the meeting. All meetings are subject to cancellation. The time of the meeting is subject to change. Any persons desiring to attend the meeting and requiring special accommodations or interpretative services should contact the department at 804-367-8590 or 804-367-9753/TTY at least 10 days prior to the meeting so that suitable arrangements can be made for an appropriate accommodation. The department fully complies with the Americans with Disabilities Act.


Calendar of Events

Contact: Nancy Taylor Feldman, Assistant Director, Department of Professional and Occupational Regulation, 3600 West Broad Street, 4th Floor, Richmond, VA 23230-4917, telephone (804) 367-8590, FAX (804) 367-2474, e-mail opticians@dpor.state.va.us.


BOARD OF OPTOMETRY

† **February 18, 2000 - 9 a.m.** -- Open Meeting
Department of Health Professions, 6606 West Broad Street, 5th Floor, Conference Room 3, Richmond, Virginia.  (Interpreter for the deaf provided upon request)


A meeting to conduct a formal disciplinary hearing, after which general board business will resume (at approximately 11 a.m.).

Contact: Elizabeth A. Carter, Ph.D., Executive Director, Board of Optometry, Southern States Bldg., 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9910, FAX (804) 662-9504, (804) 662-7197/TTY , e-mail ecarter@dhp.state.va.us.


VIRGINIA BOARD FOR PEOPLE WITH DISABILITIES

February 3, 2000 - 8:30 a.m. -- Open Meeting
The Library of Virginia, 800 East Broad Street, Richmond, Virginia.  (Interpreter for the deaf provided upon request)


A regular meeting.


Contact: Tom Ariail, Assistant Director of Board Operations, Virginia Board for People with Disabilities, 202 N. 9th Street, 9th Floor, Richmond, VA 23219, telephone (804) 786-0016, FAX (804) 786-1118, toll-free (800) 846-4464, (804) 786-0016/TTY 

BOARD OF PHARMACY

† **February 15, 2000 - 9 a.m.** -- Open Meeting
Department of Health Professions, 6606 West Broad Street, 5th Floor, Conference Room 2, Richmond, Virginia  (Interpreter for the deaf provided upon request)

A meeting to conduct general business and consider disciplinary matters or conduct disciplinary proceedings. Public comment will be received at the beginning of the meeting immediately following approval of the agenda and acceptance of the minutes.


Contact: Elizabeth Scott Russell, RPh, Executive Director, Board of Pharmacy, Southern States Bldg., 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9911, FAX (804) 662-9313, (804) 662-7197/TTY , e-mail erussell@dhp.state.va.us.

† **February 16, 2000 - 9 a.m.** -- Open Meeting
Department of Health Professions, 6606 W. Broad Street, 5th Floor, Conference Room 4, Richmond, Virginia. 


A Special Conference Committee will hear informal conferences. Public comment will not be received.

Contact: Elizabeth Scott Russell, Executive Director, Board of Pharmacy, 6606 W. Broad St., 4th Floor, Richmond, VA 23230, telephone (804) 662-9911, FAX (804) 662-9313.


BOARD FOR PROFESSIONAL AND OCCUPATIONAL REGULATION


† **March 27, 2000 - 10 a.m.** -- Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia. 

A general business meeting. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact the department at least two weeks in advance of the meeting. The department fully complies with the Americans with Disabilities Act.


Contact: Debra L. Vought, Agency Management Analyst, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8519 or (804) 367-9753/TTY 


BOARD OF LICENSED PROFESSIONAL COUNSELORS, MARRIAGE AND FAMILY THERAPISTS AND SUBSTANCE ABUSE TREATMENT PROFESSIONALS

† **February 8, 2000 - 9 a.m.** -- Open Meeting
Department of Health Professions, 6606 West Broad Street, 5th Floor, Board Room 4, Richmond, Virginia. 


† **February 11, 2000 - 10 a.m.** -- Open Meeting
Richmond Hotel and Conference Center, 6531 West Broad Street, Richmond, Virginia. 


The Special Conference Committee will conduct informal conferences pursuant to § 9-6.14:11 of the Code of Virginia. Public comments will not be heard.

Contact: Joyce D. Williams, Administrative Assistant, Board of Licensed Professional Counselors, Marriage and Family Therapists and Substance Abuse Treatment Professionals, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9912, FAX (804) 662-9943, (804) 662-7197/TTY , e-mail coun@dhp.state.va.us.


† **February 17, 2000 - 10 a.m.** -- Open Meeting
Department of Health Professions, 6606 West Broad Street, 5th Floor, Board Room 2, Richmond, Virginia. 


A meeting of the Credentials Committee to review applicant credentials. No public comment will be received.

Contact: Joyce D. Williams, Administrative Assistant, Board of Licensed Professional Counselors, Marriage and Family Therapists and Substance Abuse Treatment Professionals, 6606 W. Broad St., 4th Floor, Richmond, VA 23230, telephone (804) 662-9912, FAX (804) 662-9943, (804) 662-7197/TTY , e-mail coun@dhp.state.va.us.


† **February 17, 2000 - 1 p.m.** -- Open Meeting
Department of Health Professions, 6606 West Broad Street,
5th Floor, Conference Room 1, Richmond, Virginia. 


The Regulatory Committee will meet to review final fee changes for its licensure and certification categories, work on consistency in the language among its regulations, discuss education requirements for certified substance abuse counselors, and discuss inactive licensure requirements.

Contact: Janet Delorme, Deputy Executive Director, Board of Licensed Professional Counselors, Marriage and Family Therapists and Substance Abuse Treatment Professionals, Southern States Bldg., 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9575, FAX (804) 662-9943, (804) 662-7197/TTY , e-mail jdellorme@dhp.state.va.us.


† **February 17, 2000 - 1 a.m.** -- Open Meeting
Department of Health Professions, 6606 West Broad Street,
5th Floor, Board Room 2, Richmond, Virginia. 


A meeting of the Supervision Committee to review supervision standards. No public comment will be heard.

Contact: Joyce D. Williams, Administrative Assistant, Board of Licensed Professional Counselors, Marriage and Family Therapists and Substance Abuse Treatment Professionals, 6606 W. Broad St., 4th Floor, Richmond, VA 23230, telephone (804) 662-9912, FAX (804) 662-9943, (804) 662-7197/TTY , e-mail coun@dhp.state.va.us.


† **February 18, 2000 - 9 a.m.** -- Open Meeting
Department of Health Professions, 6606 West Broad Street,
5th Floor, Board Room 2, Richmond, Virginia. 

A meeting of the Executive Committee to plan for the upcoming board meeting. No public comment will be heard.


Contact: Joyce D. Williams, Administrative Assistant, Board of Licensed Professional Counselors, Marriage and Family Therapists and Substance Abuse Treatment Professionals, 6606 W. Broad St., 4th Floor, Richmond, VA 23230, telephone (804) 662-9912, FAX (804) 662-9943, (804) 662-7197/TTY , e-mail coun@dhp.state.va.us.

February 18, 2000 - 10 a.m. -- Open Meeting
Department of Health Professions, 6606 West Broad Street,
5th, Floor, Board Room 2, Richmond, Virginia. 

A regular meeting to conduct general board business and to consider committee reports correspondence and any other matters under the jurisdiction of the board. Public comments will be heard at the beginning of the meeting.

Contact: Joyce D. Williams, Administrative Assistant, Board of Licensed Professional Counselors, Marriage and Family Therapists and Substance Abuse Treatment Professionals, 6606 W. Broad Street, 4th Floor, Richmond, VA 23230, telephone (804) 662-9912, FAX (804) 662-9943, (804) 662-7197/TTY , e-mail coun@dhp.state.va.us.

VIRGINIA RACING COMMISSION

February 16, 2000 - 9:30 a.m. -- Open Meeting
Tyler Building, 1300 East Main Street, Richmond, Virginia. 

A regular monthly meeting including a segment for public participation. The commission will discuss proposed amendments to its regulation 11 VAC 10-150-10 et seq., Regulations Pertaining to Horse Racing with Pari-Mutuel Wagering: Standardbred Racing. The commission will also hear a report from Colonial Downs.

Contact: William H. Anderson, Policy Analyst, Virginia Racing Commission, 10700 Horsemen's Rd., New Kent, VA 23124, telephone (804) 966-7404, FAX (804) 966-7418.

REAL ESTATE BOARD

† **February 17, 2000 - 9 a.m.** -- Open Meeting
Omni Hotel, 12th and Cary Streets, Richmond, Virginia.
(Interpreter for the deaf provided upon request)



A general business meeting.

Contact: Karen W. O'Neal, Assistant Director, Real Estate Board, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8552 or FAX (804) 367-2475.

VIRGINIA RECYCLING MARKETS DEVELOPMENT COUNCIL

† **February 8, 2000 - 10 a.m.** -- Open Meeting
Central Virginia Waste Management Authority, 2104 West Laburnum Avenue, Board Room, Richmond, Virginia. 
(Interpreter for the deaf provided upon request)

A quarterly meeting. Meetings are dependent on a quorum of 10. Subcommittee meetings may be held prior to or after the general council meeting.

Contact: Michael P. Murphy, Director, Environmental Enhancement, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240-0009, telephone (804) 698-4003, FAX (804) 698-4319, (804) 698-4021/TTY , toll free 1-800-592-5482 or (804) 698-4021/TTY 

STATE REHABILITATION COUNCIL


February 14, 2000 - 9:30 a.m. -- Open Meeting
Department of Rehabilitative Services, 8004 Franklin Farms Drive, Richmond, Virginia.  (Interpreter for the deaf provided upon request)

Council committee followed by a regular business meeting.

Contact: Kay Magill, State Rehabilitation Council Liaison, Department of Rehabilitative Services, 8004 Franklin Farms Dr., Richmond, VA 23288, telephone (804) 662-7527, FAX (804) 662-7696, or toll-free 1-800-552-5019 or 1-800-464-9950/TTY 

Calendar of Events


STATE BOARD OF SOCIAL SERVICES

† **February 9, 2000 - 9 a.m.** -- Open Meeting
† **February 10, 2000 - 9 a.m.** -- Open Meeting
Department of Social Services, Central Region Office, Koger Center, Wythe Building, 1604 Santa Rosa Road, Richmond, Virginia 

A work session and formal business meeting. Public comment will be received at 1:30 p.m. on February 9.

Contact: Pat Rengnerth, State Board Liaison, State Board of Social Services, 730 E. Broad St., Richmond, VA 23219-1849, telephone (804) 692-1826, FAX (804) 692-1962 or toll-free (800) 552-3431.

BOARD OF SOCIAL WORK


February 25, 2000 - 10 a.m. -- Open Meeting
Department of Health Professions, 6606 West Broad Street, 5th Floor, Board Room 1, Richmond, Virginia 

A meeting to conduct general board business, receive committee reports, and discuss any other items which may come before the board. The board will entertain public comments during the first 15 minutes of the meeting.

Contact: Rai Minor, Administrative Assistant, Board of Social Work, 6606 West Broad Street, 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9914, FAX (804) 662-9943, (804) 662-7197/TTY , e-mail bsw@dhp.state.va.us, homepage <http://www.dhp.state.va.us>.

DEPARTMENT OF TECHNOLOGY PLANNING


Council on Technology Services' Organizational Workgroup

February 8, 2000 - 1 p.m. -- Open Meeting
Department of Technology Planning, 110 South 7th Street, 3rd Floor, Executive Conference Room, Richmond, Virginia 


A regular meeting.


Contact: Dan Ziomek, Information Technology Manager, Department of Technology Planning, 110 S. 7th St., Suite 135, Richmond, VA 23219, telephone (804) 371-2763, FAX (804) 371-2795, e-mail dziomek@ntp.state.va.us.

BOARD OF VETERINARY MEDICINE


February 2, 2000 - 9:30 a.m. -- Open Meeting
The Homestead, Madison Room, Hot Springs, Virginia. 
(Interpreter for the deaf provided upon request)

A board meeting to approve consent orders, consider requests for licensure by endorsement, vote on the revised inspection plan, and discuss requests for regulatory interpretation and possible regulatory amendment.

Contact: Terri H. Behr, Administrative Assistant, Board of Veterinary Medicine, 6606 W. Broad St., 4th Floor, Richmond, VA 23230, telephone (804) 662-9915, FAX (804) 662-7098, (804) 662-7197/TTY , e-mail tbehr@dhp.state.va.us.


February 3, 2000 - 10 a.m. -- Open Meeting
The Homestead, Chesapeake Room, Hot Springs, Virginia. 
(Interpreter for the deaf provided upon request)

Informal hearings. These are public meetings; however, no public comment will be received.


Contact: Terri H. Behr, Administrative Assistant, Board of Veterinary Medicine, 6606 W. Broad St., 4th Floor, Richmond, VA 23230, telephone (804) 662-9915, FAX (804) 662-7098, (804) 662-7197/TTY , e-mail tbehr@dhp.state.va.us.

DEPARTMENT FOR THE VISUALLY HANDICAPPED


Statewide Rehabilitation Council for the Blind

† **March 4, 2000 - 10 a.m.** -- Open Meeting
Department for the Visually Handicapped, Administrative Headquarters, 397 Azalea Avenue, Richmond, Virginia 
(Interpreter for the deaf provided upon request)

The council meets quarterly to advise the Department for the Visually Handicapped on matters related to vocational rehabilitation services for the blind and visually impaired citizens of the Commonwealth.

Contact: James G. Taylor, Vocational Rehabilitation Program Director, Department for the Visually Handicapped, 397 Azalea Ave., Richmond, VA, 23227, telephone (804) 371-3111, FAX (804) 371-3351, toll-free (800) 622-2155, (804) 371-3140/TTY , e-mail taylorjg@dvh.state.va.us.


VIRGINIA VOLUNTARY FORMULARY BOARD

† **March 3, 2000 - 10 a.m.** -- Public Hearing
Washington Building, 1100 Bank Street, 2nd Floor Conference Room, Richmond Virginia 


A public hearing to consider the proposed adoption and issuance of revisions to the Virginia Voluntary Formulary. The proposed revisions to the formulary add and delete drugs to/from the Formulary that became effective on July 27, 1998, and the most recent supplement to the formulary. Copies of the proposed additions and deletions are available for inspection at the Department of Health, Bureau of Pharmacy Services, 101 N. 14th St., Room S-45, P.O. Box 2448, Richmond, Virginia 23218. Written comments received prior to 5 p.m. on March 3, 2000, will be made a part of the hearing record and considered by the formulary board.

Contact: James K. Thomson, Director, Bureau of Pharmacy Services, State Board of Health, 101 N. 14th St., Room S-45, P.O. Box 2448, Richmond VA 23218, telephone (804) 786-4326.


VIRGINIA WASTE MANAGEMENT BOARD

† **March 2, 2000 - 9 a.m.** -- Open Meeting
Department of Environmental Quality, 629 East Main Street,
10th Floor, Conference Room, Richmond, Virginia 

A public meeting to receive comments on the board's intended regulatory action to amend regulations 9 VAC 20-70-10 et seq., Financial Assurance Regulations for Solid Waste Management Facilities.

Contact: Melissa Porterfield, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4238, (804) 698-4021/TTY , e-mail mspporterfi@deq.state.va.us.


STATE WATER CONTROL BOARD

† **February 16, 2000 - 7 p.m.** -- Open Meeting
Hayfield High School, 7630 Telegraph Road, Alexandria,
Virginia 

A public hearing to receive comments on the proposed issuance of a VPDES Permit for Meadowood Farm L.L.P. wastewater treatment plant proposed in southeastern Fairfax County at the end of Belmont Boulevard.

Contact: Thomas A. Faha, Water Permits Manager, State Water Control Board, Northern Regional Office, Woodbridge, VA 22193, telephone (703) 583-3846, e-mail tafaha@deq.state.va.us.

BOARD FOR WATERWORKS AND WASTEWATER WORKS OPERATORS

February 24, 2000 - 8:30 a.m. -- Open Meeting
March 16, 2000 - 8:30 a.m. -- Open Meeting
Department of Professional and Occupational Regulation,
3600 West Broad Street, Conference Room 5W, Richmond,
Virginia 

A meeting to conduct routine business and adopt final regulations. A public comment period will be held at the beginning of the meeting.

Contact: David E. Dick, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad Street, Richmond, VA 23230, telephone (804) 367-8505, FAX (804) 367-2475, (804) 367-9753/TTY , e-mail waterwasteoper@dpor.state.va.us.


COLLEGE OF WILLIAM AND MARY

February 3, 2000 - 1 p.m. -- Open Meeting
Blow Memorial Hall, Richmond Road, Williamsburg, Virginia.


A regularly scheduled meeting of the Board of Visitors to receive reports from several committees of the board and to act on those resolutions that are presented by the administrations of the College of William and Mary and Richard Bland College.

Contact: William T. Walker, Jr., Director, Office of University Relations, College of William and Mary, 312 Jamestown Rd., P.O. Box 8795, Williamsburg, VA 23187-8795, telephone (757) 221-2624 or FAX (757) 221-1021.

VIRGINIA WORKFORCE COUNCIL

January 31, 2000 - 10 a.m. -- Open Meeting
Virginia Employment Commission, Central Office, 703 East Main Street, Conference Room 303, Richmond, Virginia 
(Interpreter for the deaf provided upon request)

A meeting of the Workforce Investment Act and Coordinated Planning Committees to consider the five-year strategic plan development process for the Workforce Investment Act, the policy on local board focus, staffing and restrictions, and the public participation policy.

Contact: Gail Robinson, Virginia Workforce Council Liaison, Virginia Employment Commission, P.O. Box 1358, Richmond, VA 23218-1358, telephone (804) 225-3070, FAX (804) 786-5891 or (804) 371-8050/TTY 

LEGISLATIVE

Notice to Subscribers

Legislative meetings held during the Session of the General Assembly are exempted from publication in *The Virginia Register of Regulations*. You may call Legislative Information for information on standing committee meetings. The number is (804) 698-1500.

COMMISSION ON VIRGINIA'S STATE AND LOCAL TAX STRUCTURE FOR THE 21ST CENTURY

† **February 17, 2000 - 1 p.m.** -- Public Hearing
American Type Culture Collection, 10801 University Boulevard, Lobby Conference Room, Manassas, Virginia.

A public hearing to receive testimony concerning possible changes in Virginia's state and local tax structure to address the needs of the Commonwealth in the 21st century. Individuals and groups that wish to address the commission at the hearing are requested to preregister with the commission's staff in Richmond at the address below.

Contact: M. H. Wilkinson, Staff Director, Commission on Virginia's State and Local Tax Structure for the 21st Century, 700 E. Franklin St., Suite 700, Richmond, VA 23219-2318, telephone (804) 786-4273, FAX (804) 371-0234.

† **February 17, 2000 - 7 p.m.** -- Open Meeting
† **February 18, 2000 - 8 a.m. (if necessary)** -- Open Meeting
American Type Culture Collection, 10801 University Boulevard, Lobby Conference Room, Manassas, Virginia

A meeting devoted to the commission's discussion and consideration of issues concerning the adequacy of

Calendar of Events

Virginia's state and local tax structure to address the needs of the Commonwealth in the 21st Century. The meeting will be continued, if necessary, on February 18 and 8 a.m. at the same location.

Contact: M. H. Wilkinson, Staff Director, Commission on Virginia's State and Local Tax Structure for the 21st Century, 700 E. Franklin St., Suite 700, Richmond, VA 23219-2318, telephone (804) 786-4273, FAX (804) 371-0234.

OPEN MEETINGS

January 31

Branch Pilots, Board for
Workforce Council, Virginia
- Workforce Investment Act and Coordinated Planning Committee

February 1

Branch Pilots, Board for
Hopewell Industrial Safety Council
† Museum of Fine Arts, Virginia
- Executive Committee

February 2

Architects, Professional Engineers, Land Surveyors,
Certified Interior Designers and Landscape Architects,
Board for
- Architects Section
† Contractors, Board for
Deaf and Hard-of-Hearing, Department for the
Veterinary Medicine, Board of

February 3

† At-Risk Youth and Their Families, Comprehensive
Services for
- State Management Team
† Conservation and Recreation, Board of
† Health, State Board of
People with Disabilities, Virginia Board for
Veterinary Medicine, Board of
William and Mary, The College of
- Board of Visitors

February 4

Agriculture and Consumer Services, Department of
- Virginia Plant Pollination Advisory Board
Art and Architectural Review Board
† Health, State Board of

February 7

† Agriculture and Consumer Services, Department of
- Virginia Irish Potato Board
Barbers, Board for

February 8

† Chesapeake Bay Local Assistance Board
- Northern Area Review Committee
- Southern Area Review Committee
Game and Inland Fisheries, Department of
Higher Education for Virginia, State Council of
† Nursing, Board of

† Professional Counselors, Marriage and Family
Therapists and Substance Abuse Treatment
Professionals, Board of Licensed
- Special Conference Committee
† Recycling Markets Development Council, Virginia
Technology Planning, Department of
- Council on Technology Services' Organizational
Workgroup

February 9

Architects, Professional Engineers, Land Surveyors,
Certified Interior Designers and Landscape Architects,
Board for
- Professional Engineers Section
Game and Inland Fisheries, Department of
† Nursing Home Administrators, Board of
- Special Conference Committee
† Social Services, State Board of

February 10

Conservation and Recreation, Department of
Game and Inland Fisheries, Department of
† Labor and Industry, Department of
- Virginia Apprenticeship Council
Medicine, Board of
† Nursing, Board of
- Special Conference Committee
† Social Services, State Board of

February 11

Health Professions, Department of
- Health Practitioners' Intervention Program
Medicine, Board of
Opticians, Board for
† Professional Counselors, Marriage and Family
Therapists and Substance Abuse Treatment
Professionals, Board of Licensed
- Special Conference Committee

February 12

Medicine, Board of

February 14

Agriculture and Consumer Services, Department of
- Consumer Affairs Advisory Committee
Rehabilitation Council, State

February 15

† Agriculture and Consumer Services, Department of
- Virginia Sweet Potato Board
Game and Inland Fisheries, Department of
† Higher Education for Virginia, State Council of
† Nursing, Board of
- Special Conference Committee
† Pharmacy, Board of

February 16

† Agriculture and Consumer Services, Department of
- Virginia Corn Board
Architects, Professional Engineers, Land Surveyors,
Certified Interior Designers and Landscape Architects,
Board for
- Land Surveyors Section
Game and Inland Fisheries, Department of
† Health Professions, Department of

- Enforcement Committee
- Regulatory Research Committee
- † Milk Commission, State
- † Pharmacy, Board of
 - Special Conference Committee
- Racing Commission, Virginia

February 17

- Assistive Technology Loan Fund Authority
- † Audiology and Speech-Language Pathology, Board of Medical Assistance Services, Department of
 - Drug Utilization Review Board
- † Nursing, Board of
 - Special Conference Committee
- † Professional Counselors, Marriage and Family Therapists and Substance Abuse Treatment Professionals, Board of Licensed
 - Credentials Committee
 - Regulatory Committee
 - Supervision Committee
- † Real Estate Board
- † Tax Structure for the 21st Century, Commission on Virginia's State and Local

February 18

- † Optometry, Board of
- † Professional Counselors, Marriage and Family Therapists and Substance Abuse Treatment Professionals, Board of Licensed
 - Executive Committee
- † Tax Structure for the 21st Century, Commission on Virginia's State and Local

February 22

- Agriculture and Consumer Services, Department of
 - Virginia Winegrowers Advisory Board
- Marine Resources Commission
- † Nursing, Board of
 - Special Conference Committee

February 23

- Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects, Board for
 - Landscape Architects Section

February 24

- † Agriculture and Consumer Services, Department of
 - Virginia Aquaculture Advisory Board
 - Virginia Charity Food Assistance Advisory Board
 - Virginia Soybean Board
- Education, Board of
- Waterworks and Wastewater Works Operators, Board for

February 25

- Social Work, Board of

February 28

- † Nursing, Board of
 - Special Conference Committee

March 1

- Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects, Board for

- Certified Interior Designer Section

March 2

- † Waste Management Board, Virginia

March 3

- † Voluntary Formulary Board, Virginia

March 4

- † Visually Handicapped, Board for the
 - Statewide Rehabilitation Council

March 6

- Cosmetology, Board for

March 7

- Asbestos and Lead, Virginia Board for Hopewell Industrial Safety Council

March 8

- Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects, Board for

March 9

- Medicine, Board of
 - Informal Conference Committee

March 13

- Library Board, State

March 14

- † Higher Education for Virginia, State Council of

March 16

- Waterworks and Wastewater Works Operators, Board for

March 21

- † Higher Education for Virginia, State Council of

March 23

- Education, Board of

March 27

- † Professional and Occupational Regulation, Board for

March 28

- Marine Resources Commission

April 3

- † Medical Assistance Services, Department of
 - Medicaid Pharmacy Liaison Committee

April 4

- † Hearing Aid Specialists, Board for

April 7

- † Medicine, Board of
 - Executive Committee

April 11

- † Higher Education for Virginia, State Council of

PUBLIC HEARINGS

February 16

- † Water Control Board, State

Calendar of Events

February 17

† Tax Structure for the 21st Century, Commission on
Virginia's State and Local

February 21

Local Government, Commission on

February 22

Local Government, Commission on

February 28

Education, State Board of