
TABLE OF CONTENTS

CUMULATIVE TABLE OF VIRGINIA ADMINISTRATIVE CODE SECTIONS ADOPTED, AMENDED, OR REPEALED

Cumulative Table.....1141

NOTICES OF INTENDED REGULATORY ACTION

TITLE 8. EDUCATION

Board of Education1148

TITLE 9. ENVIRONMENT

State Air Pollution Control Board1148

State Water Control Board1148

TITLE 11. GAMING

Virginia Racing Commission.....1149

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

Real Estate Board.....1149

TITLE 22. SOCIAL SERVICES

Child Day-Care Council.....1149

State Board of Social Services1150

PROPOSED REGULATIONS

TITLE 6. CRIMINAL JUSTICE AND CORRECTIONS

STATE BOARD OF JUVENILE JUSTICE

Regulations Governing Juvenile Record Information and the Virginia Juvenile Justice Information System (adding 6 VAC 35-160-10 through 6 VAC 35-160-380).....1151

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD OF DENTISTRY

Regulations Governing the Practice of Dentistry and Dental Hygiene (amending 18 VAC 60-20-90; adding 18 VAC 60-20-106).....1159

BOARD OF FUNERAL DIRECTORS AND EMBALMERS

Regulations of the Board of Funeral Directors and Embalmers (amending 18 VAC 65-20-10, 18 VAC 65-20-50, 18 VAC 65-20-70, 18 VAC 65-20-170, 18 VAC 65-20-350, 18 VAC 65-20-400, 18 VAC 65-20-440, 18 VAC 65-20-500, 18 VAC 65-20-570, 18 VAC 65-20-580, 18 VAC 65-20-590, and 18 VAC 65-20-700).....1164

Regulations of the Board of Funeral Directors and Embalmers (amending 18 VAC 65-20-70, 18 VAC 65-20-130, 18 VAC 65-20-140, and 18 VAC 65-20-500; adding 18 VAC 65-20-151, 18 VAC 65-20-152, 18 VAC 65-20-153, and 18 VAC 65-20-154; repealing 18 VAC 65-20-150)..... 1169

DEPARTMENT OF HEALTH PROFESSIONS

Public Participation Guidelines (adding 18 VAC 76-30-10 through 18 VAC 76-30-120)..... 1177

BOARD OF MEDICINE

Voluntary Practice by Out-of-State Licensees..... 1180

Regulations Governing the Practice of Medicine, Osteopathy, Podiatry, and Chiropractic (adding 18 VAC 85-20-225)... 1180

Regulations Governing the Practice of Respiratory Care Practitioners (adding 18 VAC 85-40-55)..... 1180

Regulations Governing the Licensure of Occupational Therapists (adding 18 VAC 85-80-65)..... 1180

Regulations Governing the Licensure of Radiologic Technologists and Radiologic Technologists-Limited (adding 18 VAC 85-101-145). 1180

Regulations Governing the Practice of Licensed Acupuncturists (adding 18 VAC 85-110-145)..... 1180

Regulations Governing the Certification of Athletic Trainers (adding 18 VAC 85-120-85)..... 1180

BOARD OF NURSING

Regulations Governing the Practice of Nursing (adding 18 VAC 90-20-271). 1184

BOARD OF OPTOMETRY

Regulations Governing the Practice of Optometry (adding 18 VAC 105-20-75). 1187

BOARD OF PHARMACY

Regulations Governing the Practice of Pharmacy (adding 18 VAC 110-20-75). 1189

FINAL REGULATIONS

TITLE 4. CONSERVATION AND NATURAL RESOURCES

MARINE RESOURCES COMMISSION

Pertaining to Importation of Fish, Shellfish or Crustacea (amending 4 VAC 20-754-30)..... 1193

Table of Contents

TITLE 9. ENVIRONMENT

CHESAPEAKE BAY LOCAL ASSISTANCE DEPARTMENT

Public Participation Guidelines (amending 9 VAC 10-10-10, 9 VAC 10-10-20 and 9 VAC 10-10-30; repealing 9 VAC 10-10-40)..... 1194

TITLE 12. HEALTH

STATE BOARD OF HEALTH

Virginia Emergency Medical Services Regulations (withdrawing 12 VAC 5-31-1050)..... 1197

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)..... 1197

State Medical Facilities Plan (amending 12 VAC 5-230-10 and 12 VAC 5-230-20)..... 1197

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)..... 1198

State Medical Facilities Plan: Perinatal Services (amending 12 VAC 5-250-30)..... 1198

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)..... 1198

State Medical Facilities Plan: General Surgical Services (amending 12 VAC 5-270-30 and 12 VAC 5-270-40)..... 1198

State Medical Facilities Plan: Organ Transplantation Services (amending 12 VAC 5-280-10, 12 VAC 5-280-30, and 12 VAC 5-280-70)..... 1198

State Medical Facilities Plan: Psychiatric and Substance Abuse Treatment Services (amending 12 VAC 5-290-10 and 12 VAC 5-290-30)..... 1198

State Medical Facilities Plan: Mental Retardation Services (amending 12 VAC 5-300-30)..... 1198

State Medical Facilities Plan: Medical Rehabilitation Services (amending 12 VAC 5-310-30)..... 1198

State Medical Facilities Plan: Diagnostic Imaging Services (amending 12 VAC 5-320-50, 12 VAC 5-320-150, and 12 VAC 5-320-430)..... 1198

State Medical Facilities Plan: Radiation Therapy Services (amending 12 VAC 5-340-30)..... 1198

State Medical Facilities Plan: Nursing Home Services (amending 12 VAC 5-360-30 and 12 VAC 5-360-40)..... 1198

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Waivered Services (amending 12 VAC 30-120-10 through 12 VAC 30-120-60; adding 12 VAC 30-120-55)..... 1212

TITLE 14. INSURANCE

STATE CORPORATION COMMISSION

Bureau of Insurance

Rules Governing Long-Term Care Insurance (amending 14 VAC 5-200-20, 14 VAC 5-200-30, 14 VAC 5-200-40, 14 VAC 5-200-60, 14 VAC 5-200-75, 14 VAC 5-200-150, and 14 VAC 5-200-200; adding 14 VAC 5-200-77 and 14 VAC 5-200-153)..... 1231

TITLE 16. LABOR AND EMPLOYMENT

DEPARTMENT OF LABOR AND INDUSTRY

Apprenticeship Council

Public Participation Guidelines (amending 16 VAC 20-10-10, 16 VAC 20-10-20, 16 VAC 20-10-40, 16 VAC 20-10-50, 16 VAC 20-10-80, 16 VAC 20-10-90, and 16 VAC 20-10-100)..... 1238

TITLE 22. SOCIAL SERVICES

STATE BOARD OF SOCIAL SERVICES

Standards and Regulations for Licensed Assisted Living Facilities (amending 22 VAC 40-71-10, 22 VAC 40-71-20, 22 VAC 40-71-30, 22 VAC 40-71-50, 22 VAC 40-71-60, 22 VAC 40-71-80, 22 VAC 40-71-90, 22 VAC 40-71-110, 22 VAC 40-71-130, 22 VAC 40-71-150, 22 VAC 40-71-160, 22 VAC 40-71-170, 22 VAC 40-71-180, 22 VAC 40-71-210, 22 VAC 40-71-270, 22 VAC 40-71-280, 22 VAC 40-71-290, 22 VAC 40-71-310, 22 VAC 40-71-330, 22 VAC 40-71-360, 22 VAC 40-71-410, 22 VAC 40-71-440, 22 VAC 40-71-450, 22 VAC 40-71-460, 22 VAC 40-71-480, 22 VAC 40-71-490, 22 VAC 40-71-530, 22 VAC 40-71-540, 22 VAC 40-71-550, 22 VAC 40-71-560, 22 VAC 40-71-570, 22 VAC 40-71-580, 22 VAC 40-71-590, 22 VAC 40-71-600, 22 VAC 40-71-630, 22 VAC 40-71-640, 22 VAC 40-71-650, 22 VAC 40-71-660, 22 VAC 40-71-670, 22 VAC 40-71-680, 22 VAC 40-71-690, and 22 VAC 40-71-700; adding 22 VAC 40-71-45 and 22 VAC 40-71-275)..... 1239

EMERGENCY REGULATIONS

TITLE 4. CONSERVATION AND NATURAL RESOURCES

MARINE RESOURCES COMMISSION

Pertaining to Restrictions on Oyster Harvest (amending 4 VAC 20-720-10, 4 VAC 20-720-20, 4 VAC 20-720-40, 4 VAC 20-720-50, 4 VAC 20-720-70, and 4 VAC 20-720-110)..... 1256

TITLE 9. ENVIRONMENT

STATE WATER CONTROL BOARD

Virginia Financial Responsibility Requirements for Mitigation Associated with Tidal Dredging Projects (adding 9 VAC 25-770-10 through 9 VAC 25-770-190).....1260

TITLE 12. HEALTH

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Demonstration Waiver Services (adding 12 VAC 30-135-10 through 12 VAC 30-135-80).1267

GENERAL NOTICES/ERRATA

DEPARTMENT OF ENVIRONMENTAL QUALITY

Total Maximum Daily Load (TMDL) for Aquatic Life on Hutton, Hall/Byers, and Cedar Creeks in the Middle Fork Holston River Watershed.....1270

Total Maximum Daily Load (TMDL) for the Blackwater River1270

COMMISSION ON LOCAL GOVERNMENT

Schedule for the Assessment of State and Federal Mandates on Local Governments1270

DEPARTMENT OF MENTAL HEALTH, MENTAL RETARDATION AND SUBSTANCE ABUSE SERVICES

Local Contract for Continuing Participation in Part C Early Intervention for Infants and Toddlers with Disabilities and Their Families.....1273

VIRGINIA CODE COMMISSION

Notice to State Agencies1273

Forms for Filing Material for Publication in *The Virginia Register of Regulations*.....1273

ERRATA

BOARD OF NURSING

Regulations Governing the Certification of Massage Therapists. (18 VAC 90-50).....1273

CALENDAR OF EVENTS

EXECUTIVE

Open Meetings and Public Hearings.....1274

INDEPENDENT

Open Meetings and Public Hearings.....1292

LEGISLATIVE

Open Meetings and Public Hearings..... 1293

CHRONOLOGICAL LIST

Open Meetings 1294

Public Hearings..... 1295

CUMULATIVE TABLE OF VIRGINIA ADMINISTRATIVE CODE SECTIONS ADOPTED, AMENDED, OR REPEALED

The table printed below lists regulation sections, by Virginia Administrative Code (VAC) title, that have been amended, added or repealed in the *Virginia Register* since the regulations were originally published or last supplemented in VAC (the Fall 2002 VAC Supplement includes final regulations published through *Virginia Register* Volume 18, Issue 24, dated August 12, 2002). Emergency regulations, if any, are listed, followed by the designation "emer," and errata pertaining to final regulations are listed. Proposed regulations are not listed here. The table lists the sections in numerical order and shows action taken, the volume, issue and page number where the section appeared, and the effective date of the section.

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
Title 4. Conservation and Natural Resources			
4 VAC 15-20-160	Amended	19:1 VA.R. 102	10/23/02
4 VAC 15-30-40	Amended	19:5 VA.R. 805	1/1/03
4 VAC 15-30-40	Amended	19:7 VA.R. 1074	11/25/02
4 VAC 15-320-20	Repealed	19:5 VA.R. 805	1/1/03
4 VAC 15-320-25	Added	19:5 VA.R. 805	1/1/03
4 VAC 15-320-30	Repealed	19:5 VA.R. 805	1/1/03
4 VAC 15-320-40	Amended	19:5 VA.R. 805	1/1/03
4 VAC 15-320-50	Amended	19:5 VA.R. 805	1/1/03
4 VAC 15-330-10	Amended	19:5 VA.R. 805	1/1/03
4 VAC 15-330-100	Amended	19:5 VA.R. 805	1/1/03
4 VAC 15-330-120	Amended	19:5 VA.R. 805	1/1/03
4 VAC 15-330-160	Amended	19:5 VA.R. 805	1/1/03
4 VAC 15-330-190	Amended	19:5 VA.R. 805	1/1/03
4 VAC 15-340-60	Amended	19:5 VA.R. 806	1/1/03
4 VAC 15-350-30	Amended	19:5 VA.R. 806	1/1/03
4 VAC 15-360-10	Amended	19:5 VA.R. 806	1/1/03
4 VAC 15-370-10	Repealed	19:5 VA.R. 807	1/1/03
4 VAC 15-370-30	Repealed	19:5 VA.R. 807	1/1/03
4 VAC 15-370-50	Amended	19:5 VA.R. 807	1/1/03
4 VAC 15-370-51	Added	19:5 VA.R. 807	1/1/03
4 VAC 15-370-70	Added	19:5 VA.R. 807	1/1/03
4 VAC 15-370-80	Added	19:5 VA.R. 807	1/1/03
4 VAC 15-380-10	Repealed	19:5 VA.R. 807	1/1/03
4 VAC 15-380-20	Repealed	19:5 VA.R. 807	1/1/03
4 VAC 15-380-30	Amended	19:5 VA.R. 807	1/1/03
4 VAC 15-380-40	Amended	19:5 VA.R. 807	1/1/03
4 VAC 15-380-50	Amended	19:5 VA.R. 807	1/1/03
4 VAC 15-380-60	Repealed	19:5 VA.R. 807	1/1/03
4 VAC 15-380-70	Amended	19:5 VA.R. 807	1/1/03
4 VAC 15-380-80 through 4 VAC 15-380-130	Added	19:5 VA.R. 807	1/1/03
4 VAC 15-390-10	Amended	19:5 VA.R. 808	1/1/03
4 VAC 15-390-11	Added	19:5 VA.R. 808	1/1/03
4 VAC 15-390-20	Amended	19:5 VA.R. 808	1/1/03
4 VAC 15-390-30	Amended	19:5 VA.R. 808	1/1/03
4 VAC 15-390-50	Amended	19:5 VA.R. 808	1/1/03
4 VAC 15-390-70	Amended	19:5 VA.R. 808	1/1/03
4 VAC 15-390-90	Amended	19:5 VA.R. 808	1/1/03
4 VAC 15-390-100	Amended	19:5 VA.R. 808	1/1/03
4 VAC 15-390-110	Amended	19:5 VA.R. 808	1/1/03
4 VAC 15-390-130	Amended	19:5 VA.R. 808	1/1/03
4 VAC 15-390-140	Added	19:5 VA.R. 808	1/1/03
4 VAC 15-390-150	Added	19:5 VA.R. 808	1/1/03
4 VAC 15-390-160	Added	19:5 VA.R. 808	1/1/03
4 VAC 15-400-20	Amended	19:5 VA.R. 808	1/1/03

Cumulative Table of VAC Sections Adopted, Amended, or Repealed

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
4 VAC 15-400-30	Amended	19:5 VA.R. 808	1/1/03
4 VAC 15-400-50	Added	19:5 VA.R. 808	1/1/03
4 VAC 15-420-10 through 4 VAC 15-420-120	Added	19:5 VA.R. 808	1/1/03
4 VAC 15-430-10 through 4 VAC 15-430-220	Added	19:5 VA.R. 809	1/1/03
4 VAC 15-440-10 through 4 VAC 15-440-60	Added	19:5 VA.R. 809	1/1/03
4 VAC 20-430-20	Amended	19:3 VA.R. 432	10/1/02
4 VAC 20-562-10 through 4 VAC 20-562-50 emer	Added	18:25 VA.R. 3570	8/16/02-8/30/02
4 VAC 20-610-60	Amended	18:25 VA.R. 3548	8/1/02
4 VAC 20-670-30	Amended	18:25 VA.R. 3550	8/1/02
4 VAC 20-720-20	Amended	19:3 VA.R. 432	10/1/02
4 VAC 20-720-40	Amended	19:3 VA.R. 433	10/1/02
4 VAC 20-720-50 through 4 VAC 20-720-80	Amended	19:3 VA.R. 434-436	10/1/02
4 VAC 20-720-80	Amended	19:5 VA.R. 809	11/1/02
4 VAC 20-752-20	Amended	19:1 VA.R. 102	9/1/02
4 VAC 20-754-10 emer	Amended	19:5 VA.R. 811	10/27/02-11/25/02
4 VAC 20-754-20 emer	Amended	19:5 VA.R. 811	10/27/02-11/25/02
4 VAC 20-754-30 emer	Amended	19:1 VA.R. 137	8/28/02-9/27/02
4 VAC 20-754-30 emer	Amended	19:5 VA.R. 811	10/27/02-11/25/02
4 VAC 20-754-30	Amended	19:3 VA.R. 440	9/26/02
Title 6. Criminal Justice and Corrections			
6 VAC 35-60-10	Amended	18:25 VA.R. 3551	11/1/02
6 VAC 35-60-20	Repealed	18:25 VA.R. 3551	11/1/02
6 VAC 35-60-30	Repealed	18:25 VA.R. 3551	11/1/02
6 VAC 35-60-40	Amended	18:25 VA.R. 3551	11/1/02
6 VAC 35-60-170	Amended	18:25 VA.R. 3551	11/1/02
6 VAC 35-60-215	Amended	18:25 VA.R. 3551	11/1/02
6 VAC 35-60-225	Added	18:25 VA.R. 3551	11/1/02
6 VAC 35-60-236	Added	18:25 VA.R. 3551	11/1/02
6 VAC 35-60-237	Added	18:25 VA.R. 3551	11/1/02
6 VAC 35-60-280	Repealed	18:25 VA.R. 3551	11/1/02
6 VAC 35-60-290	Amended	18:25 VA.R. 3551	11/1/02
6 VAC 35-60-320	Amended	18:25 VA.R. 3551	11/1/02
6 VAC 35-60-330	Amended	18:25 VA.R. 3551	11/1/02
6 VAC 35-60-390	Amended	18:25 VA.R. 3551	11/1/02
6 VAC 35-60-400	Repealed	18:25 VA.R. 3551	11/1/02
6 VAC 35-60-410	Amended	18:25 VA.R. 3551	11/1/02
6 VAC 35-60-415	Added	18:25 VA.R. 3552	11/1/02
6 VAC 35-60-440	Repealed	18:25 VA.R. 3552	11/1/02
6 VAC 35-60-450	Amended	18:25 VA.R. 3552	11/1/02
6 VAC 35-60-460	Repealed	18:25 VA.R. 3552	11/1/02
6 VAC 35-60-480	Repealed	18:25 VA.R. 3552	11/1/02
6 VAC 35-60-490	Repealed	18:25 VA.R. 3552	11/1/02
6 VAC 35-60-495	Repealed	18:25 VA.R. 3552	11/1/02
6 VAC 35-60-500	Amended	18:25 VA.R. 3552	11/1/02
6 VAC 35-60-575	Added	18:25 VA.R. 3552	11/1/02
6 VAC 35-60-580	Amended	18:25 VA.R. 3552	11/1/02
6 VAC 35-60-600	Amended	18:25 VA.R. 3552	11/1/02
6 VAC 35-60-605	Repealed	18:25 VA.R. 3552	11/1/02
Title 9. Environment			
9 VAC 5-40-90	Amended	19:6 VA.R. 996	2/1/03
9 VAC 5-40-120	Amended	19:6 VA.R. 996	2/1/03
9 VAC 5-50-90	Amended	19:6 VA.R. 997	2/1/03
9 VAC 5-50-120	Amended	19:6 VA.R. 997	2/1/03
9 VAC 5-50-400	Amended	19:6 VA.R. 998	2/1/03
9 VAC 5-50-410	Amended	19:6 VA.R. 998	2/1/03
9 VAC 5-50-420	Amended	19:6 VA.R. 1003	2/1/03

Cumulative Table of VAC Sections Adopted, Amended, or Repealed

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
9 VAC 5-60-60	Amended	19:6 VA.R. 1003	2/1/03
9 VAC 5-60-90	Amended	19:6 VA.R. 1003	2/1/03
9 VAC 5-60-100	Amended	19:6 VA.R. 1003	2/1/03
9 VAC 5-60-120 through 9 VAC 5-60-180	Amended	19:3 VA.R. 441-454	12/1/02
9 VAC 5-91-380	Amended	19:3 VA.R. 455	12/1/02
9 VAC 5-220-10 through 9 VAC 5-220-60	Added	19:3 VA.R. 456	12/1/02
9 VAC 5-221-10 through 9 VAC 5-221-60	Added	19:3 VA.R. 456	12/1/02
9 VAC 5-510-10 through 9 VAC 5-510-250	Added	19:3 VA.R. 457-466	12/1/02
9 VAC 5-510-170	Erratum	19:7 VA.R. 1119	--
9 VAC 20-60-1285	Erratum	18:25 VA.R. 3607	--
9 VAC 20-150-30	Amended	19:6 VA.R. 1008	11/13/02
9 VAC 20-150-40	Amended	19:6 VA.R. 1008	11/13/02
9 VAC 20-150-80	Amended	19:6 VA.R. 1008	11/13/02
9 VAC 20-150-100	Amended	19:6 VA.R. 1008	11/13/02
9 VAC 20-150-110	Amended	19:6 VA.R. 1008	11/13/02
9 VAC 20-150-130	Amended	19:6 VA.R. 1008	11/13/02
9 VAC 25-31-50	Amended	18:25 VA.R. 3552	9/25/02
9 VAC 25-31-100	Amended	18:25 VA.R. 3553	9/25/02
9 VAC 25-180-10	Amended	19:4 VA.R. 629	12/4/02
9 VAC 25-180-20	Amended	19:4 VA.R. 629	12/4/02
9 VAC 25-180-40	Amended	19:4 VA.R. 629	12/4/02
9 VAC 25-180-50	Amended	19:4 VA.R. 629	12/4/02
9 VAC 25-180-55	Added	19:4 VA.R. 629	12/4/02
9 VAC 25-180-60	Amended	19:4 VA.R. 629	12/4/02
9 VAC 25-180-70	Amended	19:4 VA.R. 630	12/4/02
9 VAC 25-260-5	Amended	18:20 VA.R. 2658	1/15/03*
9 VAC 25-260-140	Amended	18:24 VA.R. 3289	**
9 VAC 25-260-140	Erratum	18:25 VA.R. 3607	--
9 VAC 25-260-155	Amended	18:24 VA.R. 3289	**
9 VAC 25-260-160	Amended	18:20 VA.R. 2658	1/15/03*
9 VAC 25-260-170	Amended	18:20 VA.R. 2658	1/15/03*
9 VAC 25-260-310	Amended	18:20 VA.R. 2659	**
9 VAC 25-260-390	Amended	18:20 VA.R. 2661	**
9 VAC 25-420	Repealed	18:26 VA.R. 3808	***
9 VAC 25-430	Repealed	18:26 VA.R. 3808	***
9 VAC 25-440	Repealed	18:26 VA.R. 3808	***
9 VAC 25-450	Repealed	18:26 VA.R. 3808	***
9 VAC 25-452	Repealed	18:26 VA.R. 3808	***
9 VAC 25-460	Repealed	18:26 VA.R. 3808	***
9 VAC 25-470	Repealed	18:26 VA.R. 3808	***
9 VAC 25-480	Repealed	18:26 VA.R. 3808	***
9 VAC 25-490	Repealed	18:26 VA.R. 3808	***
9 VAC 25-500	Repealed	18:26 VA.R. 3808	***
9 VAC 25-510	Repealed	18:26 VA.R. 3808	***
9 VAC 25-520	Repealed	18:26 VA.R. 3808	***
9 VAC 25-530	Repealed	18:26 VA.R. 3808	***
9 VAC 25-540	Repealed	18:26 VA.R. 3808	***
9 VAC 25-550	Repealed	18:26 VA.R. 3808	***
9 VAC 25-560	Repealed	18:26 VA.R. 3808	***
9 VAC 25-570	Repealed	18:26 VA.R. 3808	***
9 VAC 25-572	Repealed	18:26 VA.R. 3808	***

* Notice of effective date published in 19:7 VA.R. 1074.

** 30 days after notice in the *Virginia Register* of EPA approval.

*** Effective date suspended at publication for further public comment.

Cumulative Table of VAC Sections Adopted, Amended, or Repealed

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
9 VAC 25-720-10 through 9 VAC 25-720-140	Added	18:26 VA.R. 3809-3852	***
9 VAC 25-750-10 through 9 VAC 25-750-50	Added	19:4 VA.R. 645-658	12/9/02
Title 11. Gaming			
11 VAC 10-130-80	Amended	19:3 VA.R. 478	9/27/02
Title 12. Health			
12 VAC 5-30	Repealed	19:3 VA.R. 478	1/1/03
12 VAC 5-31	Added	19:3 VA.R. 479-529	1/1/03
12 VAC 5-31-2090	Erratum	19:7 VA.R. 1119	--
12 VAC 5-410-230	Amended	19:1 VA.R. 103	11/1/02
12 VAC 5-410-230	Erratum	19:3 VA.R. 549	--
12 VAC 5-410-390	Amended	19:1 VA.R. 103	11/1/02
12 VAC 5-410-1170	Amended	19:1 VA.R. 104	11/1/02
12 VAC 5-410-1180	Amended	19:1 VA.R. 104	11/1/02
12 VAC 30-70-201 emer	Amended	18:26 VA.R. 3906	9/1/02-8/31/03
12 VAC 30-70-425 emer	Added	18:25 VA.R. 3571	8/1/02-7/31/03
12 VAC 30-70-426 emer	Added	18:25 VA.R. 3571	8/1/02-7/31/03
12 VAC 30-80-20 emer	Amended	18:25 VA.R. 3571	8/1/02-7/31/03
12 VAC 30-80-30 emer	Amended	18:25 VA.R. 3573	8/1/02-7/31/03
12 VAC 30-80-30 emer	Amended	18:25 VA.R. 3576	8/1/02-7/31/03
12 VAC 30-90-18 emer	Added	18:25 VA.R. 3575	8/1/02-7/31/03
12 VAC 30-90-19 emer	Amended	18:25 VA.R. 3575	8/1/02-7/31/03
12 VAC 30-120-210	Repealed	18:26 VA.R. 3853	10/16/02
12 VAC 30-120-211 through 12 VAC 30-120-219	Added	18:26 VA.R. 3855-3865	10/16/02
12 VAC 30-120-220	Repealed	18:26 VA.R. 3865	10/16/02
12 VAC 30-120-221 through 12 VAC 30-120-229	Added	18:26 VA.R. 3867-3875	10/16/02
12 VAC 30-120-230	Repealed	18:26 VA.R. 3875	10/16/02
12 VAC 30-120-231 through 12 VAC 30-120-237	Added	18:26 VA.R. 3878-3883	10/16/02
12 VAC 30-120-240	Repealed	18:26 VA.R. 3883	10/16/02
12 VAC 30-120-241 through 12 VAC 30-120-249	Added	18:26 VA.R. 3885-3893	10/16/02
12 VAC 30-120-249	Erratum	19:3 VA.R. 549	--
12 VAC 30-120-250	Repealed	18:26 VA.R. 3893	10/16/02
12 VAC 30-120-360	Amended	19:3 VA.R. 530	12/1/02
12 VAC 30-120-370	Amended	19:3 VA.R. 531	12/1/02
12 VAC 30-120-380	Amended	19:3 VA.R. 531	12/1/02
12 VAC 30-120-385	Repealed	19:3 VA.R. 531	12/1/02
12 VAC 30-120-390 through 12 VAC 30-120-420	Amended	19:3 VA.R. 531	12/1/02
12 VAC 30-120-700 (emer)	Amended	19:3 VA.R. 536	10/1/02-9/30/03
12 VAC 30-120-710 (emer)	Amended	19:3 VA.R. 539	10/1/02-9/30/03
12 VAC 30-120-720 (emer)	Amended	19:3 VA.R. 539	10/1/02-9/30/03
12 VAC 30-135-10 through 12 VAC 30-135-80 emer	Added	18:25 VA.R. 3579-3580	10/1/02-9/30/03
12 VAC 30-141-10 through 12 VAC 30-141-650 emer	Adding	19:1 VA.R. 138-150	9/1/02-8/31/02
12 VAC 30-141-10 through 12 VAC 30-141-650 emer	Added	18:25 VA.R. 3580-3590	8/1/02-7/31/03
12 VAC 35-105-20 emer	Amended	18:25 VA.R. 3591	9/19/02-9/18/03
12 VAC 35-105-30 emer	Amended	18:25 VA.R. 3597	9/19/02-9/18/03
12 VAC 35-105-280 emer	Amended	18:25 VA.R. 3598	9/19/02-9/18/03
12 VAC 35-105-590 emer	Amended	18:25 VA.R. 3598	9/19/02-9/18/03
12 VAC 35-105-660 emer	Amended	18:25 VA.R. 3598	9/19/02-9/18/03
12 VAC 35-105-800 emer	Amended	18:25 VA.R. 3599	9/19/02-9/18/03
12 VAC 35-190-10	Amended	19:7 VA.R. 1075	1/15/03
12 VAC 35-190-20	Repealed	19:7 VA.R. 1076	1/15/03
12 VAC 35-190-21	Added	19:7 VA.R. 1076	1/15/03
12 VAC 35-190-30	Amended	19:7 VA.R. 1076	1/15/03
12 VAC 35-190-40	Repealed	19:7 VA.R. 1076	1/15/03

*** Effective date suspended at publication for further public comment.

Cumulative Table of VAC Sections Adopted, Amended, or Repealed

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
12 VAC 35-190-41	Added	19:7 VA.R. 1076	1/15/03
12 VAC 35-190-50	Repealed	19:7 VA.R. 1076	1/15/03
12 VAC 35-190-51	Added	19:7 VA.R. 1076	1/15/03
Title 13. Housing			
13 VAC 10-20-20	Amended	19:2 VA.R. 349	9/20/02
13 VAC 10-20-40	Amended	19:2 VA.R. 349	9/20/02
13 VAC 10-20-90	Amended	19:2 VA.R. 349	9/20/02
13 VAC 10-40-20	Amended	19:2 VA.R. 349	9/20/02
13 VAC 10-50-90	Amended	19:2 VA.R. 349	9/20/02
Title 14. Insurance			
14 VAC 5-71-10 through 14 VAC 5-71-100	Amended	19:1 VA.R. 104	9/4/02
14 VAC 5-170-20	Amended	19:4 VA.R. 660	10/24/02
14 VAC 5-170-30	Amended	19:4 VA.R. 660	10/24/02
14 VAC 5-170-60	Amended	19:4 VA.R. 661	10/24/02
14 VAC 5-170-70	Amended	19:4 VA.R. 662	10/24/02
14 VAC 5-170-105	Amended	19:4 VA.R. 665	10/24/02
14 VAC 5-170-150	Amended	19:4 VA.R. 670	10/24/02
14 VAC 5-170-180	Amended	19:4 VA.R. 688	10/24/02
14 VAC 5-210-70	Amended	18:26 VA.R. 3896	9/1/02
14 VAC 5-210-90	Amended	18:26 VA.R. 3896	9/1/02
14 VAC 5-350-20	Amended	19:1 VA.R. 107	9/1/02
14 VAC 5-350-30	Amended	19:1 VA.R. 107	9/1/02
14 VAC 5-350-40 through 14 VAC 5-350-80	Repealed	19:1 VA.R. 108	9/1/02
14 VAC 5-350-85	Added	19:1 VA.R. 108	9/1/02
14 VAC 5-350-95	Added	19:1 VA.R. 108	9/1/02
14 VAC 5-350-110 through 14 VAC 5-350-140	Repealed	19:1 VA.R. 108	9/1/02
14 VAC 5-350-150	Amended	19:1 VA.R. 108	9/1/02
14 VAC 5-350-155	Added	19:1 VA.R. 108	9/1/02
14 VAC 5-350-160	Amended	19:1 VA.R. 108	9/1/02
14 VAC 5-350-165	Added	19:1 VA.R. 108	9/1/02
14 VAC 5-350-170	Repealed	19:1 VA.R. 108	9/1/02
14 VAC 5-350-180	Repealed	19:1 VA.R. 108	9/1/02
14 VAC 5-350-210	Amended	19:1 VA.R. 108	9/1/02
14 VAC 5-350 (Forms)	Amended	19:5 VA.R. 814	--
14 VAC 5-385-10 through 14 VAC 5-385-150	Added	19:2 VA.R. 351	10/1/02
Title 16. Labor and Employment			
16 VAC 5-10-10	Amended	18:26 VA.R. 3897	11/3/02
16 VAC 5-10-20	Amended	18:26 VA.R. 3897	11/3/02
16 VAC 5-10-21	Added	18:26 VA.R. 3898	11/3/02
16 VAC 5-10-22	Added	18:26 VA.R. 3898	11/3/02
16 VAC 5-10-30	Amended	18:26 VA.R. 3898	11/3/02
16 VAC 5-20-10	Amended	18:26 VA.R. 3900	11/3/02
16 VAC 5-20-20	Amended	18:26 VA.R. 3900	11/3/02
16 VAC 5-32-10	Amended	18:26 VA.R. 3900	11/3/02
16 VAC 5-32-20	Amended	18:26 VA.R. 3900	11/3/02
16 VAC 5-60-10	Amended	18:26 VA.R. 3898	11/3/02
16 VAC 5-60-20	Amended	18:26 VA.R. 3900	11/3/02
16 VAC 5-60-40	Amended	18:26 VA.R. 3900	11/3/02
16 VAC 5-70-10	Amended	18:26 VA.R. 3900	11/3/02
16 VAC 5-70-20	Amended	18:26 VA.R. 3900	11/3/02
16 VAC 5-80-10	Amended	18:26 VA.R. 3900	11/3/02
16 VAC 5-80-20	Amended	18:26 VA.R. 3900	11/3/02
16 VAC 5-80-30	Amended	18:26 VA.R. 3900	11/3/02
16 VAC 5-80-40	Amended	18:26 VA.R. 3900	11/3/02
Title 18. Professional and Occupational Licensing			
18 VAC 50-22-100	Amended	19:6 VA.R. 1011	1/1/03

Cumulative Table of VAC Sections Adopted, Amended, or Repealed

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
18 VAC 50-22-140	Amended	19:6 VA.R. 1011	1/1/03
18 VAC 50-22-170	Amended	19:6 VA.R. 1011	1/1/03
18 VAC 50-22-250	Amended	19:6 VA.R. 1011	1/1/03
18 VAC 50-30-90 through 18 VAC 50-30-130	Amended	19:6 VA.R. 1011	1/1/03
18 VAC 50-30-150	Amended	19:6 VA.R. 1011	1/1/03
18 VAC 85-20-310 through 18 VAC 85-20-390 emer	Added	19:7 VA.R. 1114-1117	11/18/02-11/17/03
18 VAC 85-80-10	Amended	19:1 VA.R. 108	10/23/02
18 VAC 85-80-26	Added	19:1 VA.R. 108	10/23/02
18 VAC 85-80-35	Amended	19:1 VA.R. 108	10/23/02
18 VAC 85-80-40	Amended	19:1 VA.R. 108	10/23/02
18 VAC 85-80-45	Added	19:1 VA.R. 108	10/23/02
18 VAC 85-80-60 through 18 VAC 85-80-110	Amended	19:1 VA.R. 108	10/23/02
18 VAC 85-80-120	Repealed	19:1 VA.R. 109	10/23/02
18 VAC 85-101-10	Amended	19:1 VA.R. 109	10/23/02
18 VAC 85-101-60	Amended	19:1 VA.R. 109	10/23/02
18 VAC 85-101-70	Amended	19:1 VA.R. 110	10/23/02
18 VAC 85-101-150	Amended	19:1 VA.R. 110	10/23/02
18 VAC 90-40-100	Amended	19:7 VA.R. 1076	1/15/03
18 VAC 90-40-110	Amended	19:7 VA.R. 1076	1/15/03
18 VAC 90-40-120	Amended	19:7 VA.R. 1076	1/15/03
18 VAC 90-50-10	Amended	19:7 VA.R. 1084	1/15/03
18 VAC 90-50-40	Amended	19:7 VA.R. 1084	1/15/03
18 VAC 90-50-50	Amended	19:7 VA.R. 1085	1/15/03
18 VAC 90-50-60	Amended	19:7 VA.R. 1085	1/15/03
18 VAC 90-50-70	Amended	19:7 VA.R. 1085	1/15/03
18 VAC 90-50-75	Added	19:7 VA.R. 1085	1/15/03
18 VAC 90-50-80	Amended	19:7 VA.R. 1086	1/15/03
18 VAC 90-50-90	Amended	19:7 VA.R. 1086	1/15/03
18 VAC 95-20-80	Amended	19:7 VA.R. 1094	1/15/03
18 VAC 105-20-10	Amended	19:7 VA.R. 1106	1/15/03
18 VAC 105-20-15	Amended	19:7 VA.R. 1106	1/15/03
18 VAC 105-20-20	Amended	19:7 VA.R. 1106	1/15/03
18 VAC 105-20-40 through 18 VAC 105-20-70	Amended	19:7 VA.R. 1106	1/15/03
18 VAC 105-30-90	Amended	19:7 VA.R. 1108	1/15/03
18 VAC 105-30-100	Amended	19:7 VA.R. 1108	1/15/03
18 VAC 105-30-120	Amended	19:7 VA.R. 1108	1/15/03
18 VAC 110-20-20	Amended	19:4 VA.R. 689	12/4/02
18 VAC 110-30-15	Amended	19:4 VA.R. 691	12/4/02
18 VAC 112-20-10	Amended	19:1 VA.R. 110	10/23/02
18 VAC 112-20-130	Amended	19:1 VA.R. 110	10/23/02
18 VAC 112-20-131	Added	19:1 VA.R. 110	10/23/02
18 VAC 112-20-135	Amended	19:1 VA.R. 110	10/23/02
18 VAC 112-20-136	Added	19:1 VA.R. 110	10/23/02
18 VAC 112-20-140	Amended	19:1 VA.R. 110	10/23/02
18 VAC 115-30-140	Amended	19:1 VA.R. 110	10/23/02
18 VAC 115-60-130	Amended	19:1 VA.R. 111	10/23/02
18 VAC 150-20-100	Amended	19:7 VA.R. 1113	1/15/03
Title 20. Public Utilities and Telecommunications			
20 VAC 5-302-20	Amended	19:1 VA.R. 115	8/21/02
20 VAC 5-302-25	Added	19:1 VA.R. 117	8/21/02
20 VAC 5-302-35	Added	19:1 VA.R. 118	8/21/02
20 VAC 5-312-90	Amended	19:1 VA.R. 121	1/1/03
20 VAC 5-312-90	Erratum	19:5 VA.R. 819	--
20 VAC 5-312-100	Amended	18:26 VA.R. 3904	1/1/03
20 VAC 5-312-120	Added	18:26 VA.R. 3905	1/1/03

Cumulative Table of VAC Sections Adopted, Amended, or Repealed

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
Title 22. Social Services			
22 VAC 5-10-10	Amended	19:1 VA.R. 124	10/23/02
22 VAC 5-10-20	Amended	19:1 VA.R. 124	10/23/02
22 VAC 5-10-100	Amended	19:1 VA.R. 124	10/23/02
22 VAC 5-20-20 through 22 VAC 5-20-100	Amended	19:1 VA.R. 124-132	10/23/02
22 VAC 5-20-110	Repealed	19:1 VA.R. 132	10/23/02
22 VAC 5-20-120	Amended	19:1 VA.R. 132	10/23/02
22 VAC 5-20-140	Amended	19:1 VA.R. 133	10/23/02
22 VAC 5-20-150	Amended	19:1 VA.R. 134	10/23/02
22 VAC 5-20-170	Amended	19:1 VA.R. 134	10/23/02
22 VAC 5-20-180	Amended	19:1 VA.R. 134	10/23/02
22 VAC 5-20-190	Amended	19:1 VA.R. 134	10/23/02
22 VAC 5-20-210	Amended	19:1 VA.R. 134	10/23/02
22 VAC 5-20-230	Amended	19:1 VA.R. 134	10/23/02
22 VAC 5-20-250	Amended	19:1 VA.R. 134	10/23/02
22 VAC 5-20-300	Amended	19:1 VA.R. 134	10/23/02
22 VAC 5-20-310	Amended	19:1 VA.R. 134	10/23/02
22 VAC 5-20-330	Amended	19:1 VA.R. 134	10/23/02
22 VAC 5-20-450	Amended	19:1 VA.R. 135	10/23/02
22 VAC 5-20-460	Amended	19:1 VA.R. 135	10/23/02
22 VAC 5-20-580	Amended	19:1 VA.R. 135	10/23/02
22 VAC 5-20-600	Amended	19:1 VA.R. 136	10/23/02
22 VAC 15-30 (Forms)	Amended	19:4 VA.R. 695	--
22 VAC 15-60-10 through 22 VAC 15-60-180	Repealed	19:2 VA.R. 351	11/6/02
22 VAC 20-20-10 through 22 VAC 20-20-110	Amended	19:4 VA.R. 694	1/1/03
22 VAC 40-60 (Forms)	Amended	19:4 VA.R. 695	--
22 VAC 40-90-10	Amended	19:2 VA.R. 352	11/6/02
22 VAC 40-90-20	Amended	19:2 VA.R. 353	11/6/02
22 VAC 40-90-60	Amended	19:2 VA.R. 353	11/6/02
22 VAC 40-92-10 through 22 VAC 40-92-180	Repealed	19:3 VA.R. 531	11/20/02
22 VAC 40-705-10	Amended	19:6 VA.R. 1011	1/1/03
22 VAC 40-705-30 through 22 VAC 40-705-160	Amended	19:6 VA.R. 1014-1023	1/1/03
22 VAC 40-705-180	Amended	19:6 VA.R. 1023	1/1/03
22 VAC 40-705-190	Amended	19:6 VA.R. 1023	1/1/03
22 VAC 40-720-10	Amended	19:3 VA.R. 531	11/20/02
22 VAC 40-730-10	Amended	19:3 VA.R. 532	11/20/02
22 VAC 40-730-20	Amended	19:3 VA.R. 533	11/20/02
22 VAC 40-730-40 through 22 VAC 40-730-90	Amended	19:3 VA.R. 533	11/20/02
Title 24. Transportation and Motor Vehicles			
24 VAC 30-270	Repealed	19:3 VA.R. 533	9/18/02
24 VAC 30-271-10	Added	19:3 VA.R. 533	9/18/02
24 VAC 30-271-20	Added	19:3 VA.R. 533	9/18/02

NOTICES OF INTENDED REGULATORY ACTION

Symbol Key

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

TITLE 8. EDUCATION

BOARD OF EDUCATION

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 that the Board of Education intends to consider amending regulations entitled: **8 VAC 20-21. Licensure Regulations for School Personnel.** The purpose of the proposed action is to incorporate recent enactments of federal and state laws: (i) the federal No Child Left Behind Act requires that all teachers of core academic subjects hired after the first day of the 2002-03 school year and teaching in a program supported with Title I, Part A, funds be "highly qualified"; and (ii) an amendment of § 22.1-298 of the Code of Virginia requires that persons seeking initial licensure or license renewal complete a study in child abuse recognition and intervention.

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

Statutory Authority: § 22.1-298 of the Code of Virginia and Title IX, Part C, § 9302 of ESEA (Public Law 107-110).

Public comments may be submitted until January 2, 2003.

Contact: Dr. Thomas Elliott, Assistant Superintendent, Teacher Licensure, P.O. Box 2120, Richmond, VA 23218-2120, telephone (804) 371-2522, FAX (804) 225-2524, or e-mail telliott@mail.vak12ed.edu.

VA.R. Doc. No. R03-67; Filed November 13, 2002, 9:41 a.m.

TITLE 9. ENVIRONMENT

STATE AIR POLLUTION CONTROL BOARD

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the State Air Pollution Control Board intends to consider amending regulations entitled: **9 VAC 5-20. General Provisions (Rev. G02).** The purpose of the proposed action is to enlarge the scope of the Hampton Roads Emissions Control Area in order to render four previously exempt jurisdictions subject to the VOC emission standards for existing sources. This action is being taken pursuant to Virginia's obligation to implement contingency measures as a result of this area's violation of the 1-hour ozone standard. (See 19:6 VA.R. 855-858 December 2, 2002, for more detailed information.)

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

Statutory Authority: § 10.1-1308 of the Code of Virginia.

Public comments may be submitted until 4:30 p.m. on January 10, 2003, to the Director, Office of Air Regulatory Development, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240.

Contact: Kathleen R. Sands, Policy Analyst, Office of Air Regulatory Development, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4413, FAX (804) 698-4510, toll-free 1-800-592-5482, or (804) 698-4021/TTY ☎

VA.R. Doc. No. R03-68; Filed November 13, 2002, 8:18 a.m.

STATE WATER CONTROL BOARD

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the State Water Control Board intends to consider amending regulations entitled: **9 VAC 25-190. Virginia Pollutant Discharge Elimination System (VPDES) General Permit Regulation for Nonmetallic Mineral Mining.** The purpose of the proposed action is reissue the existing general permit which expires on June 30, 2004. The general permit will establish limitations and monitoring requirements for point source discharges from nonmetallic mineral mining facilities. (See 19:7 VA.R. 1062-1063 December 16, 2002, for more detailed information.)

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

Statutory Authority: § 62.1-44.15 of the Code of Virginia and § 402 of the Clean Water Act (40 CFR Parts 122, 123 and 124).

Public comments may be submitted until 4 p.m., January 17, 2003.

Contact: Michael B. Gregory, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4065 or e-mail mbgregory@deq.state.va.us.

VA.R. Doc. No. R03-73; Filed November 25, 2002, 9:57 a.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the State Water Control Board intends to consider promulgating regulations entitled: **9 VAC 25-770. Financial Responsibility Requirements for Mitigation Associated with Tidal Dredging Projects.** The purpose of the proposed regulation is to specify the mechanisms by which the State Water Control Board may require demonstration of financial responsibility for the completion of compensatory mitigation requirements for dredging projects in tidal waters permitted under the Virginia Water Protection Permit (VWPP) Program. Financial responsibility may be demonstrated by letter of credit, certificate of deposit, or performance bond. When the U.S. Army Corps of Engineers

Notices of Intended Regulatory Action

requires demonstration of financial responsibility, then the mechanism and amount approved by the Corps shall be used to meet this requirement. (See 19:7 VA.R. 1063 December 16, 2002, for more detailed information.)

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

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

Public comments may be submitted until 5 p.m. January 31, 2003.

Contact: Ellen Gilinsky, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4375, FAX (804) 698-4032, or e-mail egilinsky@deq.state.va.us.

VA.R. Doc. No. R03-74; Filed November 25, 2002, 10:22 a.m.



TITLE 11. GAMING

VIRGINIA RACING COMMISSION

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Virginia Racing Commission intends to consider amending regulations entitled: **11 VAC 10-20. Regulations Pertaining to Horse Racing with Pari-Mutuel Wagering.** The purpose of the proposed action is to allow the Virginia Racing Commission to update the duties and responsibilities of the unlimited licensees contained in 11 VAC 10-20-190 as well as reassess the amendment of racing days for unlimited licenses in 11 VAC 10-20-200 and 11 VAC 10-20-220.

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

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

Public comments may be submitted until January 16, 2003.

Contact: William H. Anderson, Director of Policy and Planning, Virginia Racing Commission, 10700 Horsemen's Rd., New Kent, VA 23124, telephone (804) 966-7404, FAX (804) 966-7418, or e-mail Anderson@vrc.state.va.us.

VA.R. Doc. No. R03-78; Filed November 25, 2002, 3:23 p.m.



TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

REAL ESTATE BOARD

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Real Estate Board intends to

consider amending regulations entitled: **18 VAC 135-20. Virginia Real Estate Board Licensing Regulations.** The purpose of the proposed action is to increase licensing fees for regulants of the Real Estate Board in order to provide adequate revenue to support the costs of board operations and a proportionate share of the department's operations.

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

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

Public comments may be submitted until January 30, 2003.

Contact: Christine Martine, Assistant Director, Real Estate Board, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8552, FAX (804) 367-2475, or e-mail reboard@dpor.state.va.us.

VA.R. Doc. No. R03-84; Filed December 9, 2002, 1:36 p.m.



TITLE 22. SOCIAL SERVICES

CHILD DAY-CARE COUNCIL

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Child Day-Care Council intends to consider repealing regulations entitled: **22 VAC 15-20. General Procedures and Information for Licensure.** The purpose of the proposed action is to repeal the existing regulation that was jointly promulgated with the State Board of Social Services and to promulgate a new regulation applicable only to child day centers.

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

Statutory Authority: §§ 63.2-1734 and 63.2-1735 of the Code of Virginia.

Public comments may be submitted until January 15, 2003.

Contact: Kathryn Thomas, Program Development Consultant, Department of Social Services, 730 E. Broad St., 7th Floor, Richmond, VA 23219, telephone (804) 692-1793, FAX (804) 692-2370, or e-mail kjt7@dss.state.va.us.

VA.R. Doc. No. R03-75; Filed November 25, 2002, 1:41 p.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Child Day-Care Council intends to consider promulgating regulations entitled: **22 VAC 15-21. General Procedures and Information for Licensure for Child Day Centers.** The purpose of the proposed action is to promulgate a new regulation that applies only to licensed child day centers.

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

Notices of Intended Regulatory Action

Statutory Authority: §§ 63.2-1734 and 63.2-1735 of the Code of Virginia.

Public comments may be submitted until January 15, 2003.

Contact: Kathryn Thomas, Program Development Consultant, Department of Social Services, 730 E. Broad St., 7th Floor, Richmond, VA 23219, telephone (804) 692-1793, FAX (804) 692-2370, or e-mail kjt7@dss.state.va.us.

VA.R. Doc. No. R03-76; Filed November 25, 2002, 1:41 p.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Child Day-Care Council intends to consider amending regulations entitled: **22 VAC 15-30. Minimum Standards for Licensed Child Day Centers.** The purpose of the proposed action is to revise standards as appropriate to (i) provide more protection for children in care; (ii) be less intrusive and burdensome for providers; and (iii) clarify the language.

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

Statutory Authority: §§ 63.2-1734 and 63.2-1735 of the Code of Virginia.

Public comments may be submitted until January 15, 2003.

Contact: Arlene Kasper, Program Development Consultant, Department of Social Services, 730 E. Broad St., 7th Floor, Richmond, VA 23219, telephone (804) 692-1791, FAX (804) 692-2370, or e-mail adk7@dss.state.va.us.

VA.R. Doc. No. R03-77; Filed November 25, 2002, 1:41 p.m.

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Child Day-Care Council intends to consider repealing regulations entitled: **22 VAC 15-50. Regulation for Criminal Record Checks for Child Welfare Agencies.** The purpose of the proposed action is to repeal the existing regulation that was jointly promulgated with the State Board of Social Services. A new regulation applicable only to child day centers will be promulgated.

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

Statutory Authority: §§ 63.2-1734 and 63.2-1735 of the Code of Virginia.

Public comments may be submitted until January 29, 2003.

Contact: Wenda Singer, Program Development Consultant, Department of Social Services, 730 E. Broad St., 7th Floor, Richmond, VA 23219, telephone (804) 692-2201, FAX (804) 692-2370, or e-mail wxs2@dss.state.va.us.

VA.R. Doc. No. R03-85; Filed December 10, 2002, 11:29 a.m.

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Child Day-Care Council intends to

consider promulgating regulations entitled: **22 VAC 15-51. Minimum Standards for Background Checks for Licensed Child Day Centers.** The purpose of the proposed action is to promulgate a new regulation that applies only to licensed child day centers, conforms to the Code of Virginia, provides more protection for children in care, is less intrusive and burdensome for providers, and clarifies the language.

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

Statutory Authority: §§ 63.2-1734 and 63.2-1735 of the Code of Virginia.

Public comments may be submitted until January 29, 2003.

Contact: Wenda Singer, Program Development Consultant, Department of Social Services, 730 E. Broad St., 7th Floor, Richmond, VA 23219, telephone (804) 692-2201, FAX (804) 692-2370, or e-mail wxs2@dss.state.va.us.

VA.R. Doc. No. R03-86; Filed December 10, 2002, 11:29 a.m.

STATE BOARD OF SOCIAL SERVICES

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the State Board of Social Services intends to consider amending regulations entitled: **22 VAC 40-770. Standards and Regulations for Agency Approved Providers.** The purpose of the proposed action is to consider amendments to make the regulation consistent with changes to federal and state laws. The regulation addresses standards used by local departments of social services to approve and regulate service providers including foster and adoptive parent, family and in-home day care providers, home-based services providers, and adult foster care and day-care providers.

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

Statutory Authority: §§ 63.2-217 and 63.2-900 of the Code of Virginia.

Public comments may be submitted until January 2, 2003.

Contact: Karin Clark, Adoption Program Consultant, Department of Social Services, 730 E. Broad St., Richmond, VA 23219, telephone (804) 692-1251, FAX (804) 692-1284 or e-mail kac900@dss.state.va.us.

VA.R. Doc. No. R03-66; Filed November 13, 2002, 10:35 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 6. CRIMINAL JUSTICE AND CORRECTIONS

STATE BOARD OF JUVENILE JUSTICE

Title of Regulation: **6 VAC 35-160. Regulations Governing Juvenile Record Information and the Virginia Juvenile Justice Information System (adding 6 VAC 35-160-10 through 6 VAC 35-160-380).**

Statutory Authority: §§ 16.1-223 and 66-10 of the Code of Virginia.

Public Hearing Date: January 8, 2003 - 10 a.m.

Public comments may be submitted until February 28, 2003.
(See Calendar of Events section
for additional information)

Agency Contact: Donald R. Carignan, Regulatory Coordinator, Department of Juvenile Justice, P.O. Box 1110, Richmond, VA 23218-1110, telephone (804) 371-0743, FAX (804) 371-0773 or e-mail carigndr@djj.state.va.us.

Basis: The general authority of the Board of Juvenile Justice to promulgate regulations is found in § 66-10 (6) of the Code of Virginia, which provides that the board shall have the power and duty "[t]o promulgate such regulations as may be necessary to carry out the provisions of this title and other laws of the Commonwealth administered by the Director or the Department."

Section 16.1-223 B of the Code of Virginia leaves no discretion in its requirement that "the State Board of Juvenile Justice shall promulgate regulations governing the security and confidentiality of the data submission [to the Virginia Juvenile Justice Information System]."

Purpose: Juvenile records contain a great deal of sensitive information. The information is used by intake officers in making detention decisions, by probation officers in establishing the terms and conditions of probation, by treatment providers in planning their interventions with children who are delinquent or in need of services or supervision, by juvenile residential facility staff in developing individual service plans for juveniles, and by parole officers in planning for a juvenile's return to the community.

This regulation establishes standards for collecting and disseminating juvenile record information, including guidelines for sharing information among agencies in the juvenile justice system. The regulation also establishes standards for the operation and security of an electronic network that will make juvenile record information available to such agencies.

The regulation is essential to ensure that accurate and timely juvenile record information is available to authorized users within Virginia's juvenile justice system. It is also essential to protect the confidentiality of juvenile record information.

Substance: The regulation establishes standards for collecting and disseminating juvenile record information, including guidelines for sharing information among agencies in the juvenile justice system. The regulation also establishes standards for the operation and security of an electronic network that will make juvenile record information available to such agencies. There are guidelines for releasing juvenile record information to individuals who are the subject of such records and to agencies and individuals that are treating or supervising juveniles who have come before the court or who have a legitimate interest in the case. The regulation sets standards for ensuring the accuracy and timely submission of juvenile record information and for correcting errors.

Issues: The primary advantage to the public in general is that this regulation will facilitate the exchange of juvenile record information among authorized users, supporting the efforts of probation officers, detention homes, juvenile correctional centers, and community service providers to take appropriate action with regard to juveniles who are delinquent or in need of services or supervision.

The primary advantage to individual members of the public is that safeguards are established to protect the confidentiality of the juvenile record information, and for the first time, provision is made for individuals to challenge their records and seek corrections in the records.

There are no known disadvantages to the public.

The primary advantage to the Commonwealth is the establishment of a systematic juvenile record information system with uniform rules and guidelines. This will enable court service units, community service programs, and residential facilities such as detention homes and juvenile correctional centers to obtain meaningful, timely information on juveniles under their care or supervision.

There are no known disadvantages to the Commonwealth.

Fiscal Impact: Absent the proposed regulation, information sharing is nevertheless authorized under § 16.1-300 of the Code of Virginia and is currently taking place. There are costs inherent in any sharing of information (for example, personnel, technical infrastructure, telecommunications costs). These costs will not be significantly reduced or increased as a result of the proposed regulation. The regulation will, however, introduce some new mandates that may result in marginal costs to participants in the Virginia Juvenile Justice Information System. For example, 6 VAC 35-160-100 establishes requirements when records are automated, including:

1. A designated system administrator to maintain and control authorized user accounts, system management, and the implementation of security measures;
2. "Backup" copies of juvenile record information, preferably off-site;

Proposed Regulations

3. A disaster recovery plan; and
4. Carefully controlled system specifications and documentation to prevent unauthorized access and dissemination.

While these elements should be a part of any automated system that is currently accessing juvenile record information, the regulation will mandate that these elements be in place. The cost will vary depending on the size of the automated system of the individual program.

Also, 6 VAC 35-160-120 requires procedures to protect security of juvenile record information and to detect unauthorized access or attempted access of juvenile record information, either physically or electronically. Depending on the method chosen by the program to implement this requirement, there may be some cost involved.

Meeting the requirements of 6 VAC 35-160-130 for security of telecommunications may entail some costs, as discussed below.

1. Ordinarily, dedicated telecommunications lines shall be required for direct or remote access to computer systems containing juvenile record information. However, the department may permit the use of a nondedicated means of data transmission to access juvenile record information when there are adequate and verifiable safeguards in place to restrict access to juvenile record information to authorized persons.
2. Where remote access of juvenile record information is permitted, remote access devices must be secure. Remote access devices capable of receiving or transmitting juvenile record information shall be attended during periods of operation. When the remote access device is unattended, the device shall be made inoperable for purposes of accessing juvenile record information.
3. Telecommunications facilities used in connection with the remote access device shall also be secured. The remote access device shall be identified on a hardware basis to the host computer. In addition, appropriate identification of the remote access device operator shall be required. Equipment associated with the remote access device shall be reasonably protected from possible tampering or tapping.

There may be incidental administrative costs, such as in responding to requests within established timeframes, maintaining a dissemination log, etc. These costs will depend on how many requests each program receives for juvenile record information.

Department of Planning and Budget's Economic Impact Analysis: The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007 H of the Administrative Process Act and Executive Order Number 21 (02). Section 2.2-4007 H requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to

affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. The analysis presented below represents DPB's best estimate of these economic impacts.

Summary of the proposed regulation. The proposed regulations will establish rules for the Juvenile Information System. Almost all of the proposed rules and procedures are the same as the ones currently followed in practice. The two proposed changes that will differ from current practices are providing authority to the Department of Juvenile Justice (the department) to audit, monitor, and inspect facilities, equipment, software, systems, or procedures used by the entities participating in the juvenile information system and providing authority to participating agencies to charge a fee for search and copying expenses when individuals or nonparticipating agencies require access to juvenile information.

Estimated economic impact. These regulations will establish rules for the Juvenile Justice Information System. The Juvenile Information System was initiated in 1993 and implemented in 1996. Since its inception, it has been growing with respect to the types of information it collects, maintains, and provides; the types of tasks it executes; and the number of users it serves. Currently, it contains information on about 1,700 data items. There are 17 modules in the system and 7 more are planned to be implemented. These modules records many types of personal and demographic information collected at intake, admissions to and releases from juvenile correctional centers and detention homes. They also contain information on programs enrolled, the courts, interviews, assessments, etc. The system further exchanges information with other agencies including the Supreme Court, court service units, insurance companies, correctional centers, and detention homes, and generates standard reports, forms, and documents. For example, at intake, 223 data elements including name, address, contacts, demographics, and the type of charge are collected. Petitions, detention orders, and child support documents are automatically generated and printed. The system may be accessed at eight juvenile correctional centers, 23 detention homes, and about 130 other court service unit locations. About 1,900 to 2,000 users may simultaneously access the system through 1,800 connected personal computers. Because of the personal and confidential nature of the data and potential for abuse and misuse by criminals, access to information is restricted. This is primarily accomplished by assigning "roles" to each user and by multiple passwords in addition to other security measures. For example, most commonly used security measures are those that the user would have to enter the juvenile's state case number and would gain access only to the records associated with that case number, and only while the juvenile was actually in the care of, or under the supervision of, or receiving services from, the user. In short, the system contains, maintains, and provides information on juveniles from their first contact with the department until their release under a secure protocol.

The main goal of the system is to improve efficiency in accessing consolidated data; sharing data with other entities; and generating standard reports, documents, and forms. According to the department, the system reduces paperwork

significantly and improves employee productivity. It allows fast access to available information, which may be critical to juveniles' health and safety while under state or local care. Statewide access to the system allows identification and tracking of juveniles more efficiently and in a timely manner, which may help prevent further delinquent actions by juveniles who are wanted and improve public safety. It allows retrieval of information to identify trends or to do research, which may be helpful in determining what is needed and in using available resources efficiently. It improves efficiency at participating agencies, for instance, by eliminating repetitive entry of the information into another database. It improves efficiency further by automatically generating and printing standard reports, documents, and forms.

The department indicates that system maintenance and development costs the Commonwealth about \$3 million per year. An additional \$1 million is obtained from federal grants annually. The maintenance and development costs include costs associated with personnel, including system analysts, programmers, and support personnel; hardware, including servers, personal computers, and printers; software, including programs and databases; and telecommunications such as phone lines. In addition to these system costs, there are costs associated with providing access or information to other entities that are not part of the department. These entities are listed in §16.1-300 of the Code of Virginia and include court service units, detention homes, juveniles themselves, parents, legal custodians, attorneys, judges, probation officers, entities treating or providing services to youth pursuant to a contract with the department, and entities having a legitimate interest in the case. The costs associated with sharing information include administrative costs such as assigning passwords and the costs associated with providing security, copying records, and staff time required to assess whether the requester has the right to access the information and whether the department has a legal basis for withholding any information. In general, the department absorbs these costs associated with sharing information, though some portion of it comes from federal grants.

Currently, collection, dissemination, and sharing of juvenile justice information are done based on an inter-departmental policy. Almost all of the proposed requirements are currently followed in practice and are not likely to introduce any additional costs to the department or other related entities. However, establishing regulatory rules for the juvenile justice information system will likely be beneficial. One of the main benefits is improving the clarity of the procedures followed in practice. These include stating the administrative and technical requirements that have to be fulfilled by participating agencies for access to data, the type of data that can be accessed, the application procedure for sharing information, the procedures for entering and expunging information from the database, delineation of participating agency responsibilities and serving as a repository for other relevant information such as definitions, statutory authority, and applicability of the proposed rules. Also, the proposed regulations may produce other benefits due to the information aspect of the proposed rules. The entities that wish to share information will be provided necessary information about the rules they have to follow. Finally, some other benefits may be in terms of reducing the chance of establishing erroneous

requirements and reducing the department's liability. During the regulatory review process, many entities including public and participating agencies will be provided the opportunity to review the proposed rules and make comments. This is expected to produce some additional benefits when compared to implementation of these rules under a department policy without regulations.

There are two aspects of the proposed requirements that depart from the current practice and may have some economic effects. The proposed rules will provide authority to the department to audit, monitor, and inspect facilities, equipment, software, systems, or procedures used by the participating entities. These audits may be conducted on a random basis or may be prompted by specific events. Participating agencies include the department or any court service unit, detention home, group home or emergency shelter; or any public agency, child welfare agency, private organization, facility or person who is treating or providing services to a child pursuant to a contract with the department or pursuant to the Virginia Juvenile Community Crime Control Act (VJCCCA) and approved by the department to have direct access to juvenile records. Entities currently "on line" include court service units and detention homes, as well as the juvenile correctional centers and group homes. Some service providers in VJCCCA programs are able to enter information about juveniles, but do not otherwise have access to the juvenile's records. The proposed authority for the audit will likely help the department determine if the requirements are complied with, which may include determination of whether the information is accurate and complete, whether data is disseminated properly, and whether security measures are in place. The department plans to conduct periodic audits on a random sample of participating agencies, which may amount to as few as one or two audits annually, and plans to conduct investigate audits whenever needed. The costs to the department are expected to be in terms of costs associated with the auditor's time and travel expenses.

Second, the proposed regulations will provide authority to participating agencies to charge a fee for search and copying expenses when individuals or nonparticipating agencies with a legitimate interest in the case as allowed under the statute, request access to juvenile information. The individual who is the subject of the records, his parents, guardians and attorney, health care and mental health professionals treating the subject individual, and others who have a legitimate interest in the juvenile's case may request information. The participating agencies will have discretion in determining the amount of the fee they may charge to requestors. The amount of information requested may be small or very large. The department believes that the amount of the fee would likely be commensurate with the size of costs associated with the amount of staff time required to assemble the documents and to assess whether there is a basis for withholding information from parents or guardians, the actual cost of copying as well as the staff time required to do the copying. This search and copying fee is expected to help the participating agencies cover their costs, but also introduce costs to the requestors for access to data. If the fee is too high, this may discourage some requestors from making requests for juvenile information that may be useful for them. Thus, it may be useful for the department to reserve the right to assess the

Proposed Regulations

appropriateness of the fee asked by a participating agency to make sure that the fee is commensurate with the associated costs as a cost containment measure.

Businesses and entities affected. The proposed regulations may affect all participating agencies, which include eight juvenile correctional centers, 23 detention homes, and about 130 court service unit offices and juveniles, their families, and their representatives such as attorneys. According to the department, the number of juveniles that are entered into the system during fiscal year 2002 is 45,010.

Localities particularly affected. The proposed regulations will apply throughout the Commonwealth.

Projected impact on employment. It is likely that the proposed authority for the department to conduct audits may increase the department's need for staff by a small amount.

Effects on the use and value of private property. It is unlikely that the changes that will occur due to the proposed regulations will have a significant effect on the use and value of private property.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The Department of Juvenile Justice concurs with the economic impact analysis conducted by the Department of Planning and Budget. As suggested on page 5 of the economic impact analysis, pending public comments, the department is considering reserving the right to assess the appropriateness of fees charged for copying juvenile record information.

Summary:

The proposed regulation establishes standards governing the form and content of juvenile record information submitted to the Virginia Juvenile Justice Information System, ensures the integrity of the data, protects the confidentiality of the juvenile record information, and governs the dissemination of information in accordance with law.

CHAPTER 160.

REGULATIONS GOVERNING JUVENILE RECORD INFORMATION AND THE VIRGINIA JUVENILE JUSTICE INFORMATION SYSTEM.

PART I.

GENERAL PROVISIONS.

6 VAC 35-160-10. Definitions.

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

"Access" means the ability directly to obtain information concerning an individual juvenile contained in manual or automated files.

"Department" means the Department of Juvenile Justice.

"Destroy" means to totally eliminate and eradicate by various methods, including, but not limited to, shredding, incinerating, or pulping.

"Dissemination" means any transfer of juvenile record information, whether orally, in writing, or by electronic means to any person other than an employee of a participating agency who has both a need and a right to know the information.

"Expunge" means to destroy all records concerning an individual juvenile, or all identifying information related to an individual juvenile that is included in aggregated files and databases, in accordance with a court order.

"Juvenile record information" means any information in the possession of a participating agency pertaining to the case of a juvenile who is or has been the subject of a petition as provided by § 16.1-260 of the Code of Virginia, as well as to identifying information concerning such a juvenile in any database or other aggregated compilation of records. The term does not apply to statistical or analytical records or reports in which individuals are not identified and from which their identities are not ascertainable.

"Participating agency" means the Department of Juvenile Justice or any court service unit, detention home, group home or emergency shelter; or any public agency, child welfare agency, private organization, facility or person who is treating or providing services to a child pursuant to a contract with the department or pursuant to the Virginia Juvenile Community Crime Control Act as set out in Article 12.1 (§ 16.1-309.2 et seq.) of Chapter 11 of Title 16.1 of the Code of Virginia, that is approved by the department to have direct access to juvenile record information through the Virginia Juvenile Justice Information System or any of its component or derivative information systems. The term "participating agency" does not include any court.

"Virginia Juvenile Justice Information System (VJJIS)" means the equipment, facilities, agreements and procedures used to collect, process, preserve or disseminate juvenile record information in accordance with § 16.1-224 or § 16.1-300 of the Code of Virginia. The operations of the system may be performed manually or by using electronic computers or other automated data processing equipment.

"VJJIS administrator" means the Department of Juvenile Justice employee who is responsible for overseeing the overall operation of the Virginia Juvenile Justice Information System.

6 VAC 35-160-20. Applicability of these standards.

These regulations apply to information, data and records maintained on or derived from the Virginia Juvenile Justice Information System, including originals and copies of manual or automated juvenile record information.

PART II.

PARTICIPATING AGENCIES IN THE VIRGINIA JUVENILE JUSTICE INFORMATION SYSTEM.

6 VAC 35-160-30. Designation as a participating agency.

A. State-operated and locally operated court services units, and detention homes and boot camps as defined in § 16.1-228 of the Code of Virginia, shall be participating agencies in the Virginia Juvenile Justice Information System.

B. Any other agency that is eligible to receive juvenile record information under § 16.1-300 of the Code of Virginia may apply for status as a participating agency.

6 VAC 35-160-40. Signed agreement required.

The department shall develop a written agreement with each participating agency delineating the participating agency's access to and responsibility for information contained in the Virginia Juvenile Justice Information System.

6 VAC 35-160-50. Data submissions.

A. All participating agencies shall submit data and other information as required by department policy to ensure that juvenile record information is complete, accurate, current and consistent.

B. Administrators of participating agencies are responsible for ensuring that entries into the juvenile justice information system are accurate, timely, and in a form prescribed by the department.

C. All information entered into the Virginia Juvenile Justice Information System shall become part of a juvenile's record and shall be subject to the confidentiality provisions of § 16.1-300 of the Code of Virginia.

6 VAC 35-160-60. Access provided to participating agencies.

A. In accordance with policies governing confidentiality of information and system security, the department may limit or expand the scope of access granted to participating agencies.

B. When individuals or participating agencies are providing treatment or rehabilitative services to a juvenile as part of an agreement with the department, their access to juvenile record information shall be limited to that portion of the information that is relevant to the provision of the treatment or service.

C. An individual's juvenile record information shall be made available only to participating agencies currently supervising or providing services to the juvenile, and only upon presentation of the unique identifying number assigned to the juvenile.

6 VAC 35-160-70. Designation of authorized individuals.

A. Each participating agency shall determine what positions in the agency require regular access to juvenile record information as part of their job responsibilities.

B. In accordance with applicable law and regulations, the department may require a background check of any individual who will be given access to the VJJIS system through any participating agency. The department may deny access to any person based on the results of such background investigation or due to the person's violation of the provisions of these regulations or other security requirements established for the collection, storage, or dissemination of juvenile record information.

C. Only authorized employees shall have direct access to juvenile record information.

D. Use of juvenile record information by an unauthorized employee, or for a purpose or activity other than one for which

the person is authorized to receive juvenile record information, will be considered an unauthorized dissemination.

E. Persons who are given access to juvenile record information shall be required to sign an agreement stating that they will use and disseminate the information only in compliance with law and these regulations, and that they understand that there are criminal and civil penalties for unauthorized dissemination.

6 VAC 35-160-80. Administrator to ensure compliance with regulations.

The administrator of each participating agency shall ensure that employees who have access to juvenile record information are made familiar with the substance of this regulation and are briefed on their responsibility to protect the confidentiality of juvenile record information. The administrator of each participating agency is also responsible for reviewing all procedures connected with security of juvenile record information to ensure their relevance and continuing effectiveness.

6 VAC 35-160-90. Security of physical records.

A. A participating agency that possesses physical records or files containing juvenile record information shall institute procedures to ensure the physical security of such juvenile record information from unauthorized access, disclosure, dissemination, theft, sabotage, fire, flood, wind or other natural or man-made disasters.

B. Only authorized persons who are clearly identified shall have access to areas where juvenile record information is collected, stored, processed or disseminated. Locks, guards or other appropriate means shall be used to control access.

6 VAC 35-160-100. Requirements when records are automated.

Participating agencies having automated juvenile record information files shall:

1. Designate a system administrator to maintain and control authorized user accounts, system management, and the implementation of security measures;
2. Maintain "backup" copies of juvenile record information, preferably off-site;
3. Develop a disaster recovery plan, which shall be available for inspection and review by the department; and
4. Carefully control system specifications and documentation to prevent unauthorized access and dissemination.

6 VAC 35-160-110. Operational programs for computer security.

A. Where juvenile record information is computerized, operational programs will ensure that records can be queried, updated or destroyed only from approved terminals.

B. The operational programs described in subsection A of this section shall be known only to the employees of the participating agency who are responsible for control of the juvenile record information system or to individuals and

Proposed Regulations

agencies operating under a specific agreement with the participating agency to provide such security programs. The programs shall be kept under maximum security conditions.

C. Computer operations, whether dedicated or shared, that support juvenile record information shall operate in accordance with procedures developed or approved by the department.

D. Juvenile record information shall be stored by the computer in such a manner that it cannot be modified, destroyed, accessed, changed, purged or overlaid in any fashion by terminals outside of the participating agencies.

6 VAC 35-160-120. Procedures to protect security of juvenile record information.

Participating agencies shall establish procedures to detect unauthorized access or attempted access of juvenile record information, either physically or electronically, as well as procedures to be followed when an attempt or unauthorized access is detected. Such procedures shall be part of the orientation of employees working in any office, room, space or area in which juvenile record information is regularly collected, processed, stored, or disseminated.

6 VAC 35-160-130. Security of telecommunications.

A. Ordinarily, dedicated telecommunications lines shall be required for direct or remote access to computer systems containing juvenile record information. However, the department may permit the use of a nondedicated means of data transmission to access juvenile record information when there are adequate and verifiable safeguards in place to restrict access to juvenile record information to authorized persons.

B. Where remote access of juvenile record information is permitted, remote access devices must be secure. Remote access devices capable of receiving or transmitting juvenile record information shall be attended during periods of operation. When the remote access device is unattended, the device shall be made inoperable for purposes of accessing juvenile record information.

C. Telecommunications facilities used in connection with the remote access device shall also be secured. The remote access device shall be identified on a hardware basis to the host computer. In addition, appropriate identification of the remote access device operator shall be required. Equipment associated with the remote access device shall be reasonably protected from possible tampering or tapping.

6 VAC 35-160-140. Timelines for data submission.

The Virginia Juvenile Justice Information System makes it possible to record most juvenile record information instantaneously. All transactions that are not entered immediately into the juvenile justice information system through on-line submission shall be entered within 24 hours, except as follows:

1. Disposition. Notice of the court's final action on a case shall be recorded on the juvenile justice information system no more than 10 days from the date the order is entered by the presiding judge;

2. Appeals. In the case of an appeal, the court's action on the appeal shall be recorded within 10 days after final action of the case; and

3. Release from direct care. Designated department personnel shall record notice of a ward's release within 24 hours of the release.

6 VAC 35-160-150. Correcting errors.

Participating agencies shall immediately notify the juvenile justice information system administrator when it is found that incorrect information has been entered into the juvenile justice information system. The administrator will make arrangements to correct the information as soon as practicable in accordance with department procedures.

PART III.

RESPONDING TO REQUESTS FOR JUVENILE RECORD INFORMATION.

6 VAC 35-160-160. Existence of records shall not be confirmed or denied.

No participating agency or individual shall confirm or deny the existence or nonexistence of juvenile record information to persons or agencies that would not be eligible to receive the information pursuant to § 16.1-300 of the Code of Virginia.

6 VAC 35-160-170. Information to be disseminated only in accordance with law and regulation.

A. In accordance with § 16.1-223 of the Code of Virginia, data stored in the Virginia Juvenile Justice Information System shall be confidential, and information from such data that may be used to identify a juvenile may be released only in accordance with § 16.1-300 of the Code of Virginia and this regulation.

B. Unauthorized dissemination of juvenile record information will result in the disseminator's being subject to the administrative sanctions described in 6 VAC 35-160-380. Unlawful dissemination is also a Class 3 misdemeanor (see § 16.1-309 of the Code of Virginia).

6 VAC 35-160-180. Fees.

Participating agencies may charge a reasonable fee for search and copying time expended when an individual or a nonparticipating agency requests juvenile record information. The participating agency shall post the schedule of fees to be charged, and shall obtain approval from the requester to pay such costs prior to initiating the search.

6 VAC 35-160-190. Requesting juvenile record information.

Individuals or nonparticipating agencies requesting juvenile record information must submit a written request for each record or part thereof to which they request access. This may be done in person, by mail, or by electronic means.

6 VAC 35-160-200. Verifying requestor's identity.

A person requesting juvenile record information shall be required to present proper evidence of his own identity, the identity of the individual whose juvenile record information is requested, and authorization from the individual, the

individual's attorney, or, if the individual is a juvenile, the individual's parent, guardian or other person standing in loco parentis.

6 VAC 35-160-210. Determining requestor's eligibility to receive the information.

A. Upon receipt of a request for juvenile record information, the person responding to the request shall determine whether the requesting agency or individual is eligible to receive juvenile record information as provided in § 16.1-300 of the Code of Virginia and this regulation.

B. For purposes of this regulation, a person, agency or institution shall be deemed to have a "legitimate interest" in a juvenile's case under § 16.1-300 A 7 of the Code of Virginia when (i) the requestor is providing treatment or rehabilitative services that is related to allegations contained in a delinquency petition concerning the juvenile or (ii) the requestor has custody of or is providing supervision for a juvenile and the information is requested in the interest of maintaining security in a secure facility.

6 VAC 35-160-220. Responding to requests.

A. Once it is determined that a requestor is entitled to juvenile record information, the person responding to the request shall inform the requestor of the procedures for reviewing the juvenile record information, including the general restrictions on the use of the data, when the record will be available, and any costs that may be involved.

B. When the request for juvenile record information is made by an individual's parent, guardian, legal custodian or other person standing in loco parentis, the request shall be referred to designated personnel of the department. (See 6 VAC 35-160-230.)

C. Before beginning the search for the requested juvenile record information, the person responding to the request shall obtain the consent of the requester to pay any charges associated with the dissemination.

D. Except as provided in subsection B of this section, requested records shall be provided as soon as practicable, but in any case within seven days. If the participating agency does not have access to the entire juvenile record maintained on the VJIS, the requestor shall be so notified and shall be told how to request access to the entire record.

E. Personnel of the participating agency shall provide reasonable assistance to the individual or his attorney to help understand the record.

F. The person releasing the record shall also inform the individual of his right to challenge the record.

G. If no record can be found, a statement shall be furnished to this effect.

6 VAC 35-160-230. Certain information may be withheld from release.

Section 16.1-300 B of the Code of Virginia provides that any portion of a juvenile's record may be withheld from inspection by a child's parent, guardian, legal custodian or other person standing in loco parentis when the staff of the department

determines, in its discretion, that disclosure of such information would be detrimental to the child, provided that the juvenile and domestic relations district court of the jurisdiction in which the juvenile currently resides shall concur in such determination. If the department withholds from inspection any portion of such record or report pursuant to the preceding provisions, the department shall (i) inform the individual making the request of the action taken to withhold any information and the reasons for such action; (ii) provide such individual with as much information about the child's progress as is deemed appropriate under the circumstances; and (iii) notify the individual in writing at the time of the request of his right to request judicial review of the department's decision. The circuit court of the jurisdiction where the child currently resides shall have jurisdiction over petitions filed by a parent, guardian, legal custodian or other person standing in loco parentis for review of the department's decision to withhold reports or records as provided herein.

6 VAC 35-160-240. Notice to accompany disseminated juvenile record information.

The following printed message shall accompany all juvenile record information disseminated outside the Virginia Juvenile Justice Information System: "UNAUTHORIZED DISSEMINATION WILL SUBJECT THE DISSEMINATOR TO CRIMINAL AND CIVIL PENALTIES."

6 VAC 35-160-250. Maintaining a dissemination log.

Each participating agency shall maintain a record, either automated or manual, of any dissemination for a period of at least three years from the date of the dissemination.

The dissemination log must list all requests for juvenile record information and shall include the following information on each dissemination:

1. The date of inquiry;
2. The name and address of the individual or agency making the request;
3. If an agency request, the name and position of the individual making the request;
4. Whether the request was referred to the department (see 6 VAC 35-160-220 B); and
5. The name of the person responding to the request.

6 VAC 35-160-260. Reporting unauthorized disseminations.

A. Participating agencies shall notify the department when they observe any violations of the above dissemination regulations. The department will investigate and respond to the violation as provided in law and this chapter.

B. A participating agency that knowingly fails to report a violation may be subject to immediate audit of its entire dissemination log and procedures to ensure that disseminations are being appropriately managed.

6 VAC 35-160-270. Interstate dissemination.

Interstate dissemination of juvenile record information shall be subject to this regulation. Dissemination to an agency outside

Proposed Regulations

of the Commonwealth shall be carried out in compliance with Virginia law and this chapter, as if the agency were within the jurisdiction of the Commonwealth.

PART IV.

CHALLENGE TO AND CORRECTION OF JUVENILE RECORD INFORMATION.

6 VAC 35-160-280. Challenge.

A. Individuals, or persons acting on an individual's behalf as provided for by law, may challenge their own juvenile record information by completing documentation provided by the department and forwarding it to the Virginia Juvenile Justice Information System or the participating agency that originated the record information.

B. The individual may keep a duplicate copy of the form and the challenged record.

C. When a record that is maintained by the VJJIS is challenged, both the manual and the automated record shall be flagged with the message "CHALLENGED RECORD." The individual shall be given an opportunity to make a brief statement describing how the information contained in the record is alleged to be inaccurate. When a challenged record is disseminated while under challenge, the record shall carry both the flagged message and the individual's statement, if one has been provided.

D. The VJJIS administrator or designee shall examine the individual's record to determine if a data entry error was made. If a data entry error is not obvious, the VJJIS administrator shall send a copy of the challenge form and any relevant information to all agencies that could have originated the information under challenge, and shall ask them to examine their files to determine the validity of the challenge.

E. The participating agencies shall examine their source data, the contents of the challenge, and information supplied by the VJJIS for any discrepancies or errors, and shall advise the VJJIS administrator of the results of the examination.

F. If a modification of a VJJIS record is required, the VJJIS administrator shall make the required change and shall notify all participating agencies that were asked to examine their records in connection with the challenge.

G. The VJJIS administrator shall also send notification of the correction to all recipients of the record within the last 24 months.

H. Participating agencies that have disseminated an erroneous or incomplete record shall in turn notify all entities that have received the erroneous juvenile record information as recorded on the agency's dissemination log.

I. The participating agency that received the challenge shall notify the individual or person acting on the individual's behalf of the results of the challenge and the right to request an administrative review and appeal those results.

6 VAC 35-160-290. Administrative review of challenge results.

A. If not satisfied with the results of the challenge, the individual or those acting on his behalf may, within 30 days,

request in writing an administrative review of the challenge to the Director of the Department of Juvenile Justice.

B. Within 30 days of receiving the written request for the administrative review, the Director of the Department of Juvenile Justice, or a designee who is not the VJJIS system administrator, shall review the challenge, the findings of the review and the action taken by the VJJIS administrator. If the administrative review supports correction of the juvenile record information, the correction shall be made as prescribed above. In any event, the director or designee shall give the individual or those acting on his behalf written notice of the decision and of the option to request an administrative appeal through the department within 30 days of the postmarked date of the notification of the decision.

6 VAC 35-160-300. Removal of a challenge designation.

When juvenile record information is determined to be correct, either as a result of a challenge or an administrative review of the challenge, the VJJIS administrator shall notify the affected participating agencies to remove the challenge designation from their files.

PART V. EXPUNGEMENT.

6 VAC 35-160-310. Expungement requirements.

When a court orders the expungement of an individual's juvenile records, all records and identifying information associated with such person shall be destroyed. Nonidentifying information may be kept in databases or other aggregated files for statistical purposes.

6 VAC 35-160-320. Notification to participating agencies.

The VJJIS administrator shall notify all participating agencies to purge their records of any reference to the person whose record has been ordered expunged. The notification shall include a copy of the applicable court order, along with notice of the penalties imposed by law for disclosure of such identifying information (see § 16.1-309 of the Code of Virginia).

6 VAC 35-160-330. Procedures for expunging juvenile record information.

A. Paper versions of records that have been ordered expunged shall be destroyed by shredding, incinerating, pulping or otherwise totally eradicating the record.

B. Computerized versions of records that have been ordered expunged shall be deleted from all databases and electronic files in such a way that the records cannot be accessed or recreated through ordinary use of any equipment or software that is part of the Virginia Juvenile Justice Information System.

C. If identifying information concerning the subject individual is included in records that are not ordered expunged, the identifying information relating to the individual whose records have been ordered expunged shall be obliterated on the original or a new document shall be created eliminating the identifying references to the individual whose record has been ordered expunged.

6 VAC 35-160-340. Confirmation notice required to VJJIS administrator.

Within 30 days of receiving expungement instructions from the VJJIS administrator, the participating agency shall expunge the juvenile record information in accordance with 6 VAC 35-160-330 and shall notify the VJJIS administrator when the records have been expunged. The notification to the VJJIS administrator shall indicate that juvenile records were expunged in accordance with court order and shall not identify the juvenile whose records were expunged.

6 VAC 35-160-350. Expungement order received directly by participating agency.

When a participating agency receives an expungement order directly from a court, the participating agency shall promptly comply with the expungement order in accordance with 6 VAC 35-160-330 and shall notify the VJJIS administrator of the court-ordered expungement. The VJJIS administrator shall, upon receipt of such notification, obtain a copy of the order from the appropriate court.

PART VI.
ENFORCEMENT.

6 VAC 35-160-360. Oversight by the Department of Juvenile Justice.

A. The Department of Juvenile Justice shall have the responsibility for monitoring compliance with this chapter and for taking enforcement action as provided in this chapter or by law.

B. The department shall have the right to audit, monitor, and inspect any facilities, equipment, software, systems or procedures established pursuant to this chapter.

6 VAC 35-160-370. Audits authorized and required.

A. The department shall annually conduct an audit of a random representative sample of participating agencies to ensure and verify adherence to this chapter and to ensure that juvenile record information records are accurate and complete.

B. The audits may include, but will not be limited to, examination of (i) record accuracy, (ii) completeness of information, (iii) timely submission of information, (iv) controls governing dissemination of information and adequate dissemination logs, (v) security provisions, (vi) evidence of notification of the individual's right of access and challenge, (vii) appropriate handling of record challenges, (viii) timely correction of erroneous records, (ix) evidence of timely notifications of required changes, and (x) appropriate notifications to the department as required.

C. In addition to random audits, the department may conduct audits at any time for cause, including but not limited to occasions when erroneous record information has been identified through a challenge to any person's juvenile record information.

6 VAC 35-160-380. Administrative sanctions.

In addition to any criminal or civil sanctions to which a violator of this chapter may be subject pursuant to § 16.1-309 of the

Code of Virginia, the department may impose administrative sanctions including but not limited to the following:

1. Temporary or permanent suspension of an individual's authorization to access the Virginia Juvenile Justice Information System;
2. Temporary or permanent suspension of an entity's designation as a "participating agency"; or
3. Temporary or permanent suspension of a participating agency's authorization to access any subsystem of the Virginia Juvenile Justice Information System.

VA.R. Doc. No. R02-42; Filed December 10, 2002, 2:07 p.m.

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD OF DENTISTRY

Title of Regulation: **18 VAC 60-20. Regulations Governing the Practice of Dentistry and Dental Hygiene (amending 18 VAC 60-20-90; adding 18 VAC 60-20-106).**

Statutory Authority: § 54.1-2400 of the Code of Virginia.

Public Hearing Date: January 10, 2003 - 9 a.m.

Public comments may be submitted until February 28, 2003. (See Calendar of Events section for additional information)

Agency Contact: Elaine J. Yeatts, Agency Regulatory Coordinator, Department of Health Professions, 6603 W. Broad Street, Richmond, VA 23230, telephone (804) 662-9918, FAX (804) 662-9114 or e-mail elaine.yeatts@dhp.state.va.us.

Basis: Regulations are promulgated under the general authority of Chapter 24 of Title 54.1 of the Code of Virginia. Section 54.1-2400 provides the board the authority to promulgate regulations to administer the regulatory system.

The specific legal mandate to promulgate the regulation for the provision of voluntary health care services by out-of-state practitioners in clinics in underserved areas sponsored by nonprofit organizations is found in Chapter 740 of the 2002 Acts of Assembly.

The specific legal mandate to promulgate the regulation for issuance of temporary permits to qualified graduates of dental programs is found in Chapter 549 of the 2002 Acts of Assembly.

Purpose: The purpose of the amended regulation is to expand the opportunities for dentists or dental hygienists to be authorized to provide treatment to populations in Virginia that are underserved in their access to dental care. The regulations for voluntary practice will ensure that out-of-state practitioners who are registered and authorized to provide treatment to patients have provided sufficient information to determine their eligibility and their standing with the licensing board of their state. While the treatment is being provided free

Proposed Regulations

of charge to underserved populations in the state, the board needs to carry out its statutory mandate to protect the public health, safety and welfare. Therefore, basic information on licensure must be verified by the board of the licensing state to ensure that a practitioner whose license has been previously suspended or revoked, who has been convicted of a felony or who is otherwise found to be in violation of applicable laws or regulations does not come into Virginia to practice, even on a voluntary basis.

Regulations for issuance of a temporary permit enable a person to practice in a public health clinic for up to two years or until the second June 30 after issuance. Current regulations were more restrictive and only permitted practice until the release of grades of the next licensure examination after issuance of the temporary permit. Amendments will also allow a person to take an examination during the course of holding a temporary permit rather than being required to take the first examination available. Such amendments allow the practitioner more flexibility and potentially make his services in a public clinic available for a longer period of time. Since the temporary permit holders have completed their education and training to practice, the board believes the amendments are consistent with the Code and with their responsibility to protect the public in provision of dental and dental hygiene services.

Substance: Chapter 740 of the 2002 Acts of Assembly provides specific conditions under which a health care practitioner who is licensed in another state can provide free care in underserved areas of Virginia. Statutory requirements include that: (i) they do not regularly practice in Virginia; (ii) they hold a current valid license or certificate in another U. S. jurisdiction; (iii) they volunteer to provide free care; (iv) they file copies of their licenses or certificates in advance with the board; (v) they notify the board of the dates and location of services; and (vi) they acknowledge in writing that they will only provide services within the parameters stated in the application. The statute also provides specific requirements for the nonprofit organization sponsoring provision of health care and allows the board to charge a fee for each practitioner.

As also provided by the statute, the board has the right to deny practice to any person whose license or certificate has been previously revoked or suspended, who has been convicted of a felony, or who is otherwise found to be in violation of applicable laws or regulations. In order to protect the health, safety and welfare of the consuming public and to ensure that the care provided by out-of-state practitioners will be minimally competent, the board will use the information garnered from the application and verification from other states to determine whether the practitioner meets the criteria set forth in the law.

Chapter 549 of the 2002 Acts of Assembly provides the specific locations in which an eligible graduate of a dental program can provide services with a temporary permit issued by the board. Such permits are currently issued for work in clinics operated by the Department of Health or the Department of Mental Health, Mental Retardation and Substance Abuse Services. With the passage of HB1055, a graduate with a temporary permit may also work in a clinic operated by a charitable organization.

Regulations are amended to make the expiration of such a permit consistent with the statute, which states that it is valid for no more than two years and shall expire on the second June 30 after issuance or when the permit holder ceases to be employed at the clinic. The permit may be reissued or revoked at the discretion of the board. Amendments will eliminate the provision that the permit is valid until the release of grades of the next licensure examination given in the Commonwealth and the requirement that the permit holder take the next licensure examination given immediately after issuance. Unless there are extraordinary circumstances preventing him from doing so, the permittee is required to take the licensure examination during the term of the temporary permit.

Issues: The primary advantages to the public of implementing the amended regulations for voluntary practice are as follows: (i) additional practitioners may be available to staff voluntary or public clinics, especially in the Southwestern part of the state with proximity to several other states; (ii) a requirement for licensure in another state to be verified will ensure that the practitioner holds a current, unrestricted license; and (iii) the requirement for a notarized statement from a representative of the nonprofit organization will ensure compliance with provisions of law for voluntary practice. The primary advantages to the public of implementing the amended regulations for temporary permits are as follows: (a) additional practitioners may be available to staff public clinics and (b) graduates with temporary permits will not be required to take the first available examination and be able to more fully prepare for its passage.

There are no disadvantages to the public as all amendments are intended to provide better access to qualified practitioners who are duly licensed in another state.

There are no advantages or disadvantages to the agency; the amended regulation does not impose a new responsibility on the board. Since the number of practitioners seeking registration for voluntary practice is expected to remain very small, it does not involve additional cost or staff time. Likewise, the board already issues temporary permits. The amended regulations will not increase the number but may allow some graduates to practice longer with a temporary permit.

Fiscal Impact: Projected cost to the state to implement and enforce:

Fund source: As a special fund agency, the board must generate sufficient revenue to cover its expenditures from nongeneral funds, specifically the renewal and application fees it charges to practitioners for necessary functions of regulation.

Budget activity by program or subprogram: There is no change required in the budget of the Commonwealth as a result of this program.

One-time versus ongoing expenditures: The agency will incur some one-time costs (less than \$1,000) for mailings to the Public Participation Guidelines mailing lists, conducting a public hearing, and sending copies of final regulations to regulated entities. Every effort will be made to incorporate those into anticipated mailings and board meetings already scheduled.

Projected cost to localities: There are no projected costs to localities.

Description of entities that are likely to be affected by regulation: The entities that are likely to be affected by these regulations would be licensed dentists in other states and graduates of dental or dental hygiene programs who wish to practice in clinics with a temporary permit.

Estimate of number of entities to be affected: There is no way to predict the number who may be affected, but, given the limited scope of the law on voluntary practice, the number is expected to be very small. To day, no out-of-state dentists have been authorized to practice under the emergency regulations. There are five persons who have been issued a temporary permit to practice.

Projected costs to the affected entities: The cost for compliance is \$10 to apply for authorization to practice at a specific location for a limited period of time. Currently, the application fee for a temporary permit is \$225; the renewal fee is \$100; the amendments do not alter the fee schedule for the permit.

Department of Planning and Budget's Economic Impact Analysis: The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007 H of the Administrative Process Act and Executive Order Number 21 (02). Section 2.2-4007 H requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. The analysis presented below represents DPB's best estimate of these economic impacts.

Summary of the proposed regulation. Pursuant to a legislative mandate, the Board of Dentistry (board) proposes to: (i) establish registration for voluntary dental or dental hygienist practice by out-of-state licensees and (ii) change regulatory language on temporary permits to properly reflect the Code of Virginia.

Estimated economic impact. Chapter 740 of the 2002 Acts of Assembly mandates that the board promulgate regulations to permit individuals licensed as dentists or dental hygienists in other states to volunteer their dental services in Virginia without needing to obtain a Virginia license. The legislation sets very narrow criteria for who may qualify. Only individuals who are licensed in other states, but not in Virginia, and who volunteer "to provide free health care in an underserved area of the Commonwealth under the auspices of a publicly supported, nonprofit organization with no paid employees that sponsors the provision of health care to populations of underserved people throughout the world"¹ may register to perform volunteer dental work in the Commonwealth without a Virginia dental license or dental hygiene license.

¹ Source: Section 54.1-2701 of the Code of Virginia.

The board's proposed regulatory language essentially reiterates the requirements listed in § 54.1-2701 of the Code of Virginia with details on how the applicant is to present their qualifications, as well as establishes a \$10 processing fee for the Department of Health Professions' administrative costs.

The requirement that not only must the volunteer not receive remuneration, but that the nonprofit organization have no paid employees is very restrictive. Many, if not most, charitable organizations would not meet this criterion. For example, the Red Cross has paid employees and an out-of-state dentist could not volunteer to provide dental services through the Red Cross in Virginia under this provision. The requirement that the nonprofit organization sponsors the provision of health care to populations of underserved people throughout the world is vague and potentially extremely restrictive. It seems to exclude all noninternational organizations. Read literally, it also seems to exclude international organizations that do not provide health care to populations of underserved people in all areas of the world. The proposed regulatory language was adopted as emergency regulations on July 19, 2002. As of now, mid-November 2002, no one has completed an application to register for voluntary dental or dental hygienist practice in Virginia. Given how highly restrictive the qualification criteria are, it is unlikely that more than a very small number of individuals will apply for voluntary dental or dental hygienist practice registration in the future.

For the small population of individuals who could potentially meet the qualification criteria and wish to perform volunteer dental work in Virginia and are licensed in another state but not in Virginia, the registration for voluntary practice could be beneficial. Otherwise such individuals would need to obtain either a restricted volunteer license or a temporary permit in the case of dentists, or a restricted volunteer license or a license by endorsement in the case of dental hygienists. According to the Department of Health Professions, all of these avenues to practice take a considerably longer time to obtain than the registration for voluntary practice. All also have higher fees than the registration for voluntary practice.²

When an out-of-state dentist or dental hygienist applies for and qualifies for the registration and performs their volunteer work, citizens in Virginia will benefit by receiving dental services that they may not have otherwise received. The Code of Virginia (§ 54.1-2701) stipulates that the voluntary services must be for an underserved population and thus will most likely not provide competition for existing services. Since registration for volunteer services is expected to happen very infrequently, the proposed regulatory amendment will have little effect.

Section 54.1-2715 (dentists) of the Code of Virginia specifies that temporary permits "shall be valid for no more than two years and shall expire on the second June 30 after their issuance, or shall terminate when the holder ceases to serve as a clinician with the certifying agency³ or charitable

² Fees: restricted volunteer dental license (\$25), temporary dental permit (\$225), restricted volunteer dental hygienist license (\$25), dental hygienist license by endorsement (\$225).

³ Department of Health or Department of Mental Health, Mental Retardation and Substance Abuse Services.

Proposed Regulations

organization." Section 54.1-2726 (dental hygienists) of the Code has the same language, with the exception that dental hygienists may only use temporary permits for work with a state agency clinic (Department of Health or Department of Mental Health, Mental Retardation and Substance Abuse Services), not with charitable organizations. Depending on when during the year the temporary permit is issued, it will last between one year and one day to as much as two years. The current Regulations Governing the Practice of Dentistry and Dental Hygiene state that the temporary permit shall expire at "... the release of grades of the next licensure examination given in this Commonwealth, after the issuance of the temporary permit." Since dental licensure exams are given three times a year in the Commonwealth,⁴ and it takes about two to four weeks for the release of the grades,⁵ temporary permits last between about three and one half months to four months under the current regulatory language. This is clearly contrary to the Code of Virginia. The board proposes to amend the regulatory language so that it will no longer be contrary to the Code. According to the Department of Health Professions, the board has not used the regulatory language concerning temporary permit length in practice; it has abided by the permit length in the Code. Thus, this proposed change to the regulations will have no impact.

Graduates of a dental or dental hygiene school who have neither passed nor failed a licensure exam may obtain a temporary permit and work as a dentist or dental hygienist in a clinic operated by the Department of Health or Department of Mental Health, Mental Retardation and Substance Abuse Services or, in the case of dentists, in a clinic operated by a charitable organization.⁶ Individuals who have not passed the licensure examination are not permitted to treat patients in a private noncharitable setting. The effect of this language is that the standards of care are lower for patients at clinics operated by the Commonwealth or charitable organizations. Practitioners who may fail to pass the licensure examination are permitted to treat patients at state-run clinics or through charitable organizations before they take the exam, but are not permitted to treat patients in a private noncharitable setting. If performance on the examination is positively correlated with competence, then by allowing dentists and dental hygienists who have yet to take their licensure exam, some of who will fail their respective exams, to practice at certain settings but not others, puts patients in settings employing temporary permit holders (state-run clinics and charitable organizations) at greater risk of receiving substandard dental services. A significant portion of the examinees do fail; test-takers must pass all nine parts and the failure rate per part is as high as 19 percent.⁷

Presumably temporary permit holders are willing to work for lower wages than fully licensed dentists and dental hygienists since, unlike their fully licensed counterparts, they do not have the option of private practice. By saving on salary the state agencies and charitable organizations may be able to provide more dental services than they otherwise could or may be able to use the saved funds productively elsewhere. It seems likely that many of the patients at clinics operated by the Department of Health, the Department of Mental Health, Mental Retardation and Substance Abuse Services or charitable organizations would not receive dental care, or receive it less frequently, without the services provided by the charitable sources and the state agencies. Thus, though the probability that patients may receive substandard dental care is likely greater, it is possible that the risk may be worth bearing if many of those patients would not have received any dental care, or significantly less dental care, without the availability of temporary permit holders to provide dental services.

Information is not available pertaining to whether the quality of care provided by temporary permitted dentists and dental hygienists is significantly lower than that of fully licensed dentists and dental hygienists. In addition, it is not currently known by how much, if at all, dental services would be reduced if temporary permits were abolished. Thus, we cannot determine whether the benefits from potentially providing additional services outweigh the cost of potentially lower quality care.

Businesses and entities affected. The proposed amendments will likely affect very few Virginians. Given the highly restrictive nature of the registration qualifications, very few out-of-state dentists and dental hygienists are expected to register to provide volunteer services for underserved Virginians.

Localities particularly affected. The proposed regulations, if used at all, will mostly affect rural areas of the Commonwealth, particularly in southwestern Virginia.

Projected impact on employment. The proposed amendments will not significantly affect employment levels.

Effects on the use and value of private property. The proposed amendments will not have a large impact on the use and value of private property.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The Board of Dentistry concurs with the analysis of the Department of Planning and Budget for amendments to 18 VAC 60-20, pursuant to statutory requirements for voluntary practice by out-of-state practitioners and temporary permits.

Summary:

The proposed amendments establish registration requirements for voluntary dental or dental hygienist practice by out-of-state licensees and conform regulatory language on temporary permits with statutory provisions.

⁴ Source: Department of Health Professions.

⁵ Ibid.

⁶ The charitable organization must be granted tax-exempt status under § 501 (3) of the Internal Revenue Code and operating as a clinic for the indigent and uninsured that is organized for the delivery of primary health care services: (i) as a federally qualified health center designated by the Centers for Medicare and Medicaid Services or (ii) at a reduced or sliding fee scale or without charge.

⁷ According to the Department of Health Professions, the pass rates on the nine sections of the Virginia dental licensure examination are: 81.2%, 80.6%, 80.6%, 91.1%, 90.1%, 88.4%, 87.6%, 85.7%, 85.1%, and 96%. The Department of Health

Professions did not have data on how many first-time exam takers pass all parts of the exam.

18 VAC 60-20-90. Temporary permit, teacher's license, and full-time faculty license.

A. A temporary permit shall be issued only for the purpose of allowing dental and dental hygiene practice as limited by §§ 54.1-2715 and 54.1-2726 of the Code of Virginia ~~until the release of grades of the next licensure examination given in this Commonwealth, after the issuance of the temporary permit.~~

B. A temporary permit will not be renewed unless the permittee shows that extraordinary circumstances prevented the permittee from taking the ~~first licensure examination given immediately after the issuance during the term of the temporary permit.~~ Such permit reissuance shall expire seven days after the release of grades of the next examination given.

C. A full-time faculty license shall be issued to any dentist who meets the entry requirements of § 54.1-2713 of the Code of Virginia, who is certified by the dean of a dental school in the Commonwealth and who is serving full time on the faculty of a dental school or its affiliated clinics intramurally in the Commonwealth. A full-time faculty license shall remain valid only while the license holder is serving full time on the faculty of a dental school in the Commonwealth. When any such license holder ceases to continue serving full time on the faculty of the dental school for which the license was issued, the licensee shall surrender the license, which shall be null and void upon termination of full-time employment. The dean of the dental school shall notify the board within five working days of such termination of full-time employment.

D. A temporary permit, a teacher's license and a full-time faculty license may be revoked for any grounds for which the license of a regularly licensed dentist or dental hygienist may be revoked and for any act indicating the inability of the permittee or licensee to practice dentistry that is consistent with the protection of the public health and safety as determined by the generally accepted standards of dental practice in Virginia.

E. Applicants for a full-time faculty license or temporary permit shall be required to pass an examination on the laws and the regulations governing the practice of dentistry in Virginia.

18 VAC 60-20-106. Registration for voluntary practice by out-of-state licensees.

Any dentist or dental hygienist who does not hold a license to practice in Virginia and who seeks registration to practice on a voluntary basis under the auspices of a publicly supported, all volunteer, nonprofit organization with no paid employees that sponsors the provision of health care to populations of underserved people throughout the world shall:

1. *File a complete application for registration on a form provided by the board at least 15 days prior to engaging in such practice;*
2. *Provide a complete record of professional licensure in each state in which he has held a license and a copy of any current license;*
3. *Provide the name of the nonprofit organization, the dates and location of the voluntary provision of services;*

4. *Pay a registration fee of \$10; and*

5. *Provide a notarized statement from a representative of the nonprofit organization attesting to its compliance with provisions of subdivision 5 of § 54.1-2701 of the Code of Virginia.*

NOTICE: The forms used in administering 18 VAC 60-20, Regulations Governing the Practice of Dentistry and Dental Hygiene, are not being published due to the large number; however, the name of each form is listed below. The forms are available for public inspection at the Board of Dentistry, 6603 W. Broad Street, Richmond, Virginia, or at the office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia.

FORMS

Outline and Explanation of Documentation Required for Dental Licensure by Exam, Teacher's License, Restricted License, Full Time Faculty License, and Temporary Permit (eff. ~~11/98~~ rev. 12/02).

Application for Licensure to Practice Dentistry (eff. ~~3/98~~ rev. 12/02).

Application for Restricted Volunteer Licensure to Practice Dentistry and Dental Hygiene (eff. 7/98).

Form A, Certification of Dental/Dental Hygiene School (rev. ~~3/98~~ 12/02).

Form AA, Sponsor Certification for Dental/Dental Hygiene Volunteer License (eff. 7/98).

Form B, Chronology (rev. ~~3/98~~ 12/02).

Form C, Certification of Dental/Dental Hygiene Boards (rev. ~~3/98~~ 12/02).

Outline and Explanation of Documentation Required for Dental Hygiene Licensure by Exam, Teacher's License, Dental Hygiene by Endorsement, and Dental Hygiene Temporary Permit (rev. ~~11/98~~ 12/02).

Application for Licensure to Practice Dental Hygiene (rev. ~~3/98~~ 12/02).

Instructions for Reinstatement (rev. 12/02).

Reinstatement Application for Dental/Dental Hygiene Licensure (rev. ~~3/98~~ 12/02).

~~Expiration letter to licensee (rev. 7/98).~~

Radiology Information for Dental Assistants (rev. 7/97).

Renewal Notice and Application (~~Active licensure~~), 0401 Dentist (rev. ~~3/00~~ 12/02).

Renewal Notice and Application (~~Inactive licensure~~), 0402 Dental Hygienist (rev. ~~3/00~~ 12/02).

Renewal Notice and Application, 0404 Dental Teacher (rev. 12/02).

Renewal Notice and Application, 0406 Dental Hygiene Teacher (rev. 12/02).

Proposed Regulations

Renewal Notice and Application, 0411 Full-time Faculty (rev. 12/02).

Application for Registration for Volunteer Practice (eff. 12/02).

Sponsor Certification for Volunteer Registration (eff. 12/02).

VA.R. Doc. No. R02-281; Filed December 11, 2002, 11:41 a.m.

BOARD OF FUNERAL DIRECTORS AND EMBALMERS

Title of Regulation: 18 VAC 65-20. Regulations of the Board of Funeral Directors and Embalmers (amending 18 VAC 65-20-10, 18 VAC 65-20-50, 18 VAC 65-20-70, 18 VAC 65-20-170, 18 VAC 65-20-350, 18 VAC 65-20-400, 18 VAC 65-20-440, 18 VAC 65-20-500, 18 VAC 65-20-570, 18 VAC 65-20-580, 18 VAC 65-20-590, and 18 VAC 65-20-700).

Statutory Authority: § 54.1-2400 and Chapter 28 (§ 54.1-2800 et seq.) of Title 54.1 of the Code of Virginia.

Public Hearing Date: February 4, 2003 - 9 a.m.

Public comments may be submitted until February 28, 2003.
(See Calendar of Events section for additional information)

Agency Contact: Elaine J. Yeatts, Agency Regulatory Coordinator, Department of Health Professions, 6603 W. Broad Street, Richmond, VA 23230, telephone (804) 662-9918, FAX (804) 662-9114 or e-mail elaine.yeatts@dhp.state.va.us.

Basis: Section 54.1-2400 of the Code of Virginia establishes the general powers and duties of health regulatory boards including the responsibility to promulgate regulations, levy fees, administer a licensure and renewal program, and discipline regulated professionals.

The legal authority to promulgate regulations for the licensure and practice of funeral establishments and funeral service licensees is found in Chapter 28 of Title 54.1 of the Code of Virginia.

Purpose: Amendments to the regulation are necessary to address several problems identified during regulatory review. For several years, the board has been concerned that consumers were often unaware that they were dealing with a branch establishment in making funeral arrangements. There have been no criteria for establishing a branch and no requirements for disclosure or identification to the public. The board has also been concerned that the public was often unaware that the establishment with which they were dealing was in fact a branch of a main establishment and that certain services, such as embalming, had to be performed at another location. There were also concerns that if a problem arose requiring the use of a preparation room, there may not be a plan in place to address the need. In developing regulations, the board considered the need for disclosure and identification of a branch or chapel as a part of another establishment and also adopted amendments to require a plan for transporting dead human bodies for embalming and disclosure to the consumer of such transportation for services not available at the branch. Such requirements will protect the public by giving the consumer more information and some assurance that

services not available at a branch will be performed according to a written plan.

Other amendments or additions to regulation are proposed to provide greater protection to the public health, safety and welfare in guarding against the spread of infectious disease and in assuring the waste materials are disposed of in accordance with local, state and federal law. An amendment to require courtesy card holders to practice in Virginia in accordance with the license held in another state will provide some assurance that funeral directors or embalmers are not practicing outside their expertise. An amendment to require reinspection of a facility after it has been purchased from a previous owner will also give greater protection to employees and members of the public who come into the establishment as consumers or guests. Finally, an addition to the grounds for unprofessional conduct will make it clear that the board can take disciplinary action against a license for any violation of law or regulation.

Substance: The proposed amendments add a definition and requirements for a branch establishment, modify the requirements for a change of ownership, provide additional access to licensure by endorsement, clarify the scope of practice for courtesy card holders, and require persons who handle remains with a surface transportation and removal service registration to have OSHA training. Other recommendations for the preparation room and its equipment and for documentation of embalming came from a task force on the inspection process.

Issues: Advantages or disadvantages to the public: The intent of the amended regulations is to better inform and protect consumers of funeral services. Requirements for a branch are intended to ensure that the public dealing with such an entity is aware that it is a branch of another establishment and that the deceased may be transported to another facility for purposes of embalming or other services not available at the branch. Requirements for courtesy card holders and for surface removal and transportation companies will provide some assurance that the public is protected by adherence to OSHA standards and by having qualified professionals handling some aspect of the disposition of remains.

There are no disadvantages of these amendments to the public who is better protected and informed by the amendments.

Advantages or disadvantages to the agency or the Commonwealth: Clarification of certain rules may result in fewer calls to the board office. Modifications to regulation that responded to the recommendations of the Inspection Task Force may result in fewer citations on inspection for such things as the location of the embalming report or the eye wash station and the storage of embalming and preparation materials. Fewer inspection violations could result in fewer disciplinary cases being opened for the board.

There are no disadvantages to the agency or the Commonwealth.

Fiscal Impact: Projected cost to the state to implement and enforce:

Fund source: As a special fund agency, the board must generate sufficient revenue to cover its expenditures from nongeneral funds, specifically the renewal and application fees it charges to practitioners for necessary functions of regulation.

Budget activity by program or subprogram: There is no change required in the budget of the Commonwealth as a result of this program.

One-time versus ongoing expenditures: The agency will incur some one-time costs (less than \$1,000) for mailings to the Public Participation Guidelines mailing lists, conducting a public hearing, and sending copies of final regulations to regulated entities. Every effort will be made to incorporate those into anticipated mailings and board meetings already scheduled.

Projected cost to localities: There are no projected costs to localities.

Description of entities that are likely to be affected by regulation: The entities that are likely to be affected by these regulations would be licensed funeral directors, embalmers or licensed funeral service providers and the funeral establishments in which they work. In addition, there may be some effect on surface removal and transportation firms and courtesy card holders.

Estimate of number of entities to be affected:

Funeral service providers	1,446
Funeral directors	163
Embalmers	8
Courtesy card holders	88
Crematories	53
Surface transportation and removal services	34
Funeral establishments	495

Projected costs to the affected entities: There should be no additional cost to most licensees; the requirements for a "branch" or "chapel" will impose no new costs on licensees. The required identification and disclosures can be added to existing forms or set out separately.

There will be a new fee for approximately 20 funeral establishments that are seeking or have been granted a waiver for a full-time manager. The fee of \$100 may be shared by the establishments sharing a manager. Initial approval or renewal of the waiver is not automatic and must be handled individually by staff, who must verify with the office of Vital Statistics that the funeral homes continue to qualify. Board approval of a waiver has typically been delegated to the Executive Director, but the board retains authority to approve or disapprove so it considers the waivers at each of its meetings.

Department of Planning and Budget's Economic Impact Analysis: The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007 H of the Administrative Process Act and Executive Order Number 21 (02). Section 2.2-4007 H requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to

affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. The analysis presented below represents DPB's best estimate of these economic impacts.

Summary of the proposed regulation. The Board of Funeral Directors and Embalmers (board) proposes to: (i) require that the license, general price list, itemized statement, public information materials, and advertisements for branches and chapels clearly reflect the name of the main establishment, (ii) mandate that if the preparation of dead human bodies may require that a body be transported between a main establishment, branch, or chapel and another such facility, a statement be given to the next of kin or designee making that clear, and the branch or chapel shall maintain on file and make available for inspection a written plan detailing the method and approximate time required for transporting the body to another location for purposes of embalming or in the event there is a need for services for which a preparation room is necessary, (iii) lower two fees and establish one new fee, and (iv) permit the use of fiberglass morgue tables.

Estimated economic impact. The proposed regulations define a "branch" or "chapel" as "a secondary location or other facility where the practice of funeral services occurs, which is owned and operated by a main funeral service." The board proposes to require that the license, general price list, itemized statement, public information materials, and advertisements for branches and chapels clearly state that the facility is a branch or chapel and identify the main establishment. According to the Department of Health Professions (department), most branches and chapels already comply with this proposed requirement, but there has been some confusion concerning some branch and chapels that do not explicitly make clear their affiliation. A representative from the Association of Independent Funeral Homes of Virginia has expressed concern that changing the general price list, itemized statement, public information materials, advertisements, etc., to indicate their affiliation will cost funeral homes thousands of dollars. The department points out that the requirement could be met by using the existing materials and adding a sheet of paper (or perhaps a sticker) indicating the branch or chapel's affiliation. Also, the department states that they will give establishments a reasonable amount of time to make the changes. There will be no charge to change the establishment's license to reflect its affiliation.

Most affected establishments would eventually produce new general price lists, itemized statements, public information materials, and advertisements regardless of this proposed requirement. Thus, the requirement causes costs to be incurred earlier than they would have otherwise have occurred, but otherwise do not significantly add to firms' expenses. The information disclosure concerning affiliation is potentially quite useful for the public. For example, individuals wishing to compare prices and services among funeral homes will be able to make better-informed decisions if they know that certain homes share ownership and likely coordinate prices and services. Given the significant value to consumers of the public disclosure of affiliations, the benefit of this

¹ Source: Department of Health Professions.

Proposed Regulations

proposed requirement likely exceeds the costs to affected establishments of changing their general price lists, itemized statements, public information materials, and advertisements.

The board proposes to require that if the preparation of human remains may require that the remains be transported between a main establishment, branch, or chapel and another such facility, a statement be given to the next of kin or designee making that clear. According to the department, this issue is of great concern to some clients (individuals purchasing funeral services). The cost of producing the statement for funeral homes would be small; an additional piece of paper with the statement could be given to the client or alternatively it could be incorporated in another document given to the next of kin or designee. Since with the information disclosure the public will be able to make better-informed decisions and the cost of providing the information is small, this proposed amendment to the regulations will produce a net benefit.

The board also proposes to require that if the preparation of human remains may require that the remains be transported between a main establishment, branch, or chapel and another such facility, that the branch or chapel maintain on file and make available for inspection a written plan detailing the method and approximate time required for transporting the body to another location for purposes of embalming or in the event there is a need for services for which a preparation room is necessary. Unembalmed dead human bodies can be significant vectors of disease, particularly when handled improperly and left in particular conditions (heat, for example) for too long. By requiring branches and chapels to detail the method they use and the approximate time they take transporting a dead human body to another location for purposes of embalming, etc., the board helps inspectors determine whether the branches and chapels can feasibly perform this function safely. The cost to branches and chapels of recording how they transport bodies is small. Thus the benefits of this proposal likely outweigh the costs.

In order to better reflect the department's costs in regulating and providing services for specific activities, the board proposes to: (i) lower the fee for a duplicate license, registration or courtesy card from \$25 to \$15, (ii) lower the fee for a duplicate wall certificate from \$50 to \$25, and (iii) establish a \$100 fee for a waiver of the full-time manager requirement. Changing fees to better reflect the department's costs is an improvement in equity. The lower fees for the duplicate license, certification, and wall certificate will of course be beneficial for those individuals obtaining those items, while the new fee for waiver of the full-time manager requirement (a service that already exists) adds costs to firms seeking the waiver.

The current regulations require that preparation rooms be equipped with a metal or porcelain morgue table. The proposed regulations permit a third option for morgue tables: fiberglass. The additional option is clearly beneficial in that it provides an additional option for funeral home owners.

Businesses and entities affected. The proposed regulations affect the 1,446 funeral service providers, 163 funeral directors, 8 embalmers, 88 courtesy card holders, 53 crematories, 495 funeral establishments, and potential funeral service clients (next of kin, etc.) in the Commonwealth.

Localities particularly affected. The proposed regulations affect all Virginia localities.

Projected impact on employment. The proposed amendments will not significantly affect employment levels.

Effects on the use and value of private property. Individuals who need to obtain a duplicate license, registration, or courtesy card will save \$10. Individuals that desire a duplicate wall certificate will save \$25. The wall certificates are decorative and are not required. The lower fee may encourage increased purchases of wall certificates. The new \$100 fee for the waiver of the full-time manager requirement will decrease the value of their employer by a commensurate amount. Branches and chapels that do not already make clear on their general price list, itemized statement, public information materials, and advertisements that they are affiliated with a main funeral service will incur costs in reproducing their materials (with the required information) sooner than they would have otherwise. Since these firms are being required to alter the timing of the expenditures from the timing they have determined to be ideal, they are incurring some cost.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The Board of Funeral Directors and Embalmers concurs with the analysis of the Department of Planning and Budget for amendments to 18 VAC 65-20, pursuant to a periodic review and clarification of its regulations.

Summary:

The proposed amendments establish criteria for locating a branch establishment, modify the requirements for a change of ownership, provide additional access to licensure by endorsement, clarify the scope of practice for courtesy card holders, and require persons who handle remains with a surface transportation and removal service registration to have OSHA training. In addition, proposed amendments update requirements for a preparation room and its equipment and for documentation of embalming.

18 VAC 65-20-10. Definitions.

Words and terms used in this chapter shall have the definitions ascribed in § 54.1-2800 of the Code of Virginia or in 16 CFR Part 453, Funeral Industry Practices, of the Federal Trade Commission, which is incorporated by reference in this chapter. In addition, the following words and terms when used in this chapter shall have the following meanings, unless the context clearly indicates otherwise:

"Branch" or "chapel" means a secondary location or other facility where the practice of funeral services occurs, which is owned and operated by a main funeral service establishment.

"Courtesy card" means the card issued by the board which grants limited and restricted funeral service privileges in the Commonwealth to out-of-state funeral service licensees, funeral directors, and embalmers.

"Cremation urn" means a wood, metal, stone, plastic, or composition container or a container of other material, which is designed for encasing cremated ashes.

"Cremation vault" or "cremation outer burial container" means any container ~~which~~ that is designed for encasement of an inner container or urn containing cremated ashes. Also known as a cremation box.

"Establishment manager" means a funeral service licensee or licensed funeral director designated as the manager of record who is responsible for the direct supervision and management of a funeral service establishment or branch facility.

"FTC" means the Federal Trade Commission.

18 VAC 65-20-50. Posting of license.

A. Each licensee shall post an original or photocopy of his license in a place conspicuous to ~~the public, such as the arrangement office,~~ consumers of funeral services in each establishment or branch where he is employed.

B. The establishment license shall be posted in a place conspicuous to ~~the public, such as the arrangement office~~ consumers of funeral services.

18 VAC 65-20-70. Required fees.

A. The following fees shall apply for initial licensure or registration and for renewal of licensure or registration:

- 1. License to practice funeral service or as a funeral director or an embalmer \$150
- 2. Funeral service establishment license \$225
- 3. Surface transportation and removal service registration \$250
- 4. Courtesy card \$100
- 5. Crematory \$100
- 6. Waiver of full-time manager requirement \$100

B. Other fees.

- 1. Reinstatement fee for each year of licensure or registration expiration \$50
- 2. Change of manager or establishment name \$50
- 3. Verification of license or registration to another state \$50
- 4. Duplicate license, registration, or courtesy card \$25 \$15
- 5. Duplicate wall certificates \$50 \$25
- 6. Change of ownership \$100
- 7. Reinspection for change of location or ownership \$100

18 VAC 65-20-170. Requirements for an establishment license.

A. No person shall maintain, manage, or operate a funeral service establishment in the Commonwealth, unless such establishment holds a license issued by the board. The name of the funeral service licensee or licensed funeral director designated by the ownership to be manager of the establishment shall be included on the license.

B. Except as provided in § 54.1-2810 of the Code of Virginia, every funeral service establishment and every branch or chapel of such establishment, regardless of how owned, shall

have a separate establishment manager who is employed full time by the establishment for at least 40 hours a week.

C. At least 45 days prior to opening an establishment, an owner or licensed manager seeking an establishment license shall submit simultaneously a completed application, any additional documentation as may be required by the board to determine eligibility, and the applicable fee. An incomplete package will be returned to the licensee. A license shall not be issued until an inspection of the establishment has been completed and approved.

D. Within 30 days following a change of ownership, the owner or licensed manager shall notify the board, request a reinspection of the establishment, submit an application for a new establishment license with documentation that identifies the new owner, and pay the licensure and reinspection fees as required by 18 VAC 65-20-70. Reinspection of the establishment may occur on a schedule determined by the board, but shall occur no later than one year from the date of the change.

E. Identification requirements for a branch or chapel.

- 1. The license of a branch or chapel shall clearly reflect the name of the main establishment.
- 2. The general price list and the itemized statement shall clearly state that the facility is a branch or chapel and identify the name of the main establishment.
- 3. All public informational materials or advertisements relating to services provided at or by the branch or chapel, either in print or electronic format, shall state that the facility is a branch or chapel and identify the name of the main establishment.

F. If the preparation of dead human bodies may require that a body be transported between a main establishment, branch, or chapel and another such facility, the following are also required:

- 1. A statement shall be given to the next of kin or designee, disclosing that the body may be transported for services for which a preparation room is necessary; and
- 2. The branch or chapel shall maintain on file and make available for inspection a written plan, detailing the method and approximate time required for transporting a dead human body to another location for purposes of embalming or in the event there is a need for services for which a preparation room is necessary.

18 VAC 65-20-350. Requirements for licensure by reciprocity or endorsement.

A. Licenses for the practice of funeral service or its equivalent issued by other states, territories, or the District of Columbia may be recognized by the board and the holder of such license or licenses may be granted a license to practice funeral service within the Commonwealth, as follows:

- 1. Reciprocity. Licenses may be granted by reciprocity provided that the same privileges are granted by the other jurisdiction to Virginia funeral service licensees by the establishment of substantially similar licensure requirements and reciprocity agreements between the two jurisdictions; or

Proposed Regulations

2. Endorsement. Licenses may be granted to applicants by the board on a case-by-case basis if the applicant holds a valid license for the practice of funeral service or its equivalent in another state, territory, or the District of Columbia and possesses credentials which are substantially similar to or more stringent than required by the Commonwealth for initial licensure and the examinations and passing grades received by the applicant are equivalent to those required by the board *at the time the applicant was initially licensed*.

B. An applicant for licensure by reciprocity or endorsement shall pass the Virginia State Board Examination.

18 VAC 65-20-400. Registration of surface transportation and removal services.

All persons applying to own or operate a surface transportation and removal service, according to requirements of § 54.1-2819 of the Code of Virginia, shall submit an application package for registration which shall include:

1. A completed and signed application;
2. The fee prescribed in 18 VAC 65-20-70 A 3; and
3. Additional documentation as may be required by the board to determine eligibility of the applicant, *including, but not limited to, evidence of training in the requirements of the Occupational Safety and Health Administration (OSHA)*.

18 VAC 65-20-440. Courtesy cards.

A. An out-of-state person applying for a courtesy card pursuant to § 54.1-2801 B of the Code of Virginia shall hold a valid license for funeral service, funeral directing, or embalming in another state, territory, or the District of Columbia.

B. An applicant for a courtesy card shall submit:

1. A completed application and prescribed fee; and
2. Verification of a current license in good standing from the applicant's licensing authority.

C. *The holder of a Virginia courtesy card shall only engage in the practice for which he is currently licensed in another jurisdiction.*

18 VAC 65-20-500. Disciplinary action.

In accordance with the provisions of § 54.1-2806 of the Code of Virginia, the following practices are considered unprofessional conduct and may subject the licensee to disciplinary action by the board:

1. Breach of confidence. The unnecessary or unwarranted disclosure of confidences by the funeral licensee.
2. Unfair competition.
 - a. Interference by a funeral service licensee, funeral director, or registered surface transportation and removal service when another has been called to take charge of a dead human body and the caller or agent of the caller has the legal right to the body's disposition.

b. Consent by a funeral service licensee or funeral director to take charge of a body unless authorized by the person or his agent having the legal right to disposition.

3. False advertising.

a. No licensee or registrant shall make, publish, disseminate, circulate or place before the public, or cause directly or indirectly to be made, an advertisement of any sort regarding services or anything so offered to the public which contains any promise, assertion, representation, or statement of fact which is untrue, deceptive, or misleading.

b. The following practices, both written and verbal, shall constitute false, deceptive, or misleading advertisement within the meaning of subdivision 4 of § 54.1-2806 of the Code of Virginia:

(1) Advertising containing inaccurate statements; and

(2) Advertisement which gives a false impression as to ability, care, and cost of conducting a funeral, or that creates an impression of things not likely to be true.

c. The following practices are among those which shall constitute an untrue, deceptive, and misleading representation or statement of fact:

(1) Representing that funeral goods or services will delay the natural decomposition of human remains for a long term or indefinite time; and

(2) Representing that funeral goods have protective features or will protect the body from gravesite substances over or beyond that offered by the written warranty of the manufacturer.

4. Inappropriate handling of dead human bodies. Transportation and removal vehicles shall be of such nature as to eliminate exposure of the deceased to the public during transportation. During the transporting of a human body, consideration shall be taken to avoid unnecessary delays or stops during travel.

5. Failure to furnish price information disclosing the cost to the purchaser for each of the specific funeral goods and funeral services used in connection with the disposition of deceased human bodies.

6. Conducting the practice of funeral services in such a manner as to constitute a danger to the health, safety, and well-being of the staff or the public.

7. Inability to practice with skill or safety because of physical, mental, or emotional illness, or substance abuse.

8. Failure to register as a supervisor for a resident trainee or failure to provide reports to the board as required by the Code of Virginia and 18 VAC 65-40-40 ~~et seq.~~

9. *Failure to comply with applicable federal and state laws and regulations.*

18 VAC 65-20-570. Condition of preparation room.

A. The preparation room or rooms shall be kept in a clean and sanitary condition at all times, subject to inspection.

B. Inventories of embalming and preparation materials shall not be stored on the floor in the preparation room in a container that is impervious to water or in a manner that protects them from contamination.

C. Any items or supplies not directly used in an embalming procedure shall not be stored in the preparation room.

18 VAC 65-20-580. Preparation room equipment.

The preparation room or rooms shall be equipped with:

1. A ventilation system which operates and is appropriate to the size and function of the room;
2. Running hot and cold water;
3. Flush or slop sink connected with public sewer or with septic tank where no public sewer is available;
4. Metal, fiberglass or porcelain morgue table;
5. Covered waste container;
6. Instruments and apparatus for the embalming process;
7. A means or method for the sterilization of reusable instruments by chemical bath or soak; autoclave (steam); or ultraviolet light;
8. Disinfectants and antiseptic solutions;
9. Clean gowns or aprons, preferably impervious to water;
10. Rubber gloves for each embalmer or trainee using the room;
11. ~~A hydroaspirator.~~ An electric aspirator or hydroaspirators hydroaspirator equipped with a vacuum breaker;
12. An eye wash station that is readily accessible; and
13. A standard first aid kit which is immediately accessible outside the door to the preparation room.

18 VAC 65-20-590. Disposal of waste materials.

Disposal of all waste materials shall be in conformity with local, state, and federal law to avoid contagion and the possible spread of disease. Upon inspection, the establishment shall provide evidence of compliance, such as a copy of a contract with a medical waste disposal company.

18 VAC 65-20-700. Retention of documents.

The following shall apply to retention of embalming reports, price lists, and itemized statements:

1. Price lists shall be retained for one year after the date on which they are no longer effective;
2. Itemized statements shall be retained for one year from the date on which the arrangements were made;
3. Embalming reports shall be retained at the location of the embalming for one year after the date of the embalming;
4. Documents shall be maintained on the premises of the funeral establishment and made available for inspection; and

5. In instances where the funeral establishment is sold, documents shall be transferred to the new owner, unless the existing firm is relocating to a new facility.

VA.R. Doc. No. R02-73; Filed December 11, 2002, 11:30 a.m.

* * * * *

Title of Regulation: **18 VAC 65-20. Regulations of the Board of Funeral Directors and Embalmers (amending 18 VAC 65-20-70, 18 VAC 65-20-130, 18 VAC 65-20-140, and 18 VAC 65-20-500; adding 18 VAC 65-20-151, 18 VAC 65-20-152, 18 VAC 65-20-153, and 18 VAC 65-20-154; repealing 18 VAC 65-20-150).**

Statutory Authority: §§ 54.1-2400 and 54.1-2816.1 of the Code of Virginia.

Public Hearing Date: January 21, 2003 - 9 a.m.

Public comments may be submitted until February 28, 2003. (See Calendar of Events section for additional information)

Agency Contact: Elaine J. Yeatts, Agency Regulatory Coordinator, Department of Health Professions, 6603 W. Broad Street, Richmond, VA 23230, telephone (804) 662-9918, FAX (804) 662-9114 or e-mail elaine.yeatts@dhp.state.va.us.

Basis: Section 54.1-2400 of the Code of Virginia establishes the general powers and duties of health regulatory boards including the responsibility to promulgate regulations, administer a licensure and renewal program, and discipline regulated professionals.

The legal mandate to promulgate regulations governing continuing education requirements for funeral services licensees, funeral directors and embalmers licensed by the board is found in § 54.1-2816.1 of the Code of Virginia.

Purpose: Chapter 270 of the 2002 Acts of Assembly amended the law by mandating that the board promulgate regulations for the establishment of continuing education requirements. To carry out that mandate, the board established an advisory group to meet with the Regulatory Committee to study the type and amount of continuing education to be required, review what other states require, and develop a recommendation for the adoption of proposed regulations.

The Board of Funeral Directors and Embalmers is concerned about the continued competency of some of its licensees, especially as it relates to their knowledge and understanding of the rules and ethics governing funeral practice, the standards related to the practice of funeral services and preneed contracts and funding. Laws and regulations governing the funeral industry are complex and varied – ranging from FTC rules to local ordinances on disposal of hazardous waste to specific rules for funding of preneed. Highly infectious diseases borne by decedents can expose licensees and members of the public to significant danger. The arranging and financing of preneed contracts requires continuous updating of knowledge. Therefore, the goal of the board was to develop requirements that would: (i) emphasize professional ethics and encourage licensees to become more knowledgeable about the laws and regulations governing the

Proposed Regulations

profession; (ii) offer a choice of content and form that is flexible enough to meet the needs of licensees in a variety of practice settings in any location in Virginia; and (iii) assure the public that funeral service licensees have maintained their skills and competencies in order to protect the public health, safety and welfare.

Substance: In compliance with the statute, the board adopted a requirement for continuing education for renewal of an active license, which consists of a total of five hours per year in courses that emphasize professional ethics, standards of practice or preneed and the laws and regulations governing the profession. There are also rules for maintaining documentation of continuing education, auditing, extensions and exemptions. Evidence of continuing competency hours would be required for reinstatement of a lapsed license or reactivation of an inactive license.

Regulations are established for the approval of continuing education providers with provisions for submission of background information and a review fee. Providers that are educational institutions, governmental agencies or nonprofit professional associations are set forth in regulation or may be approved by board action. All providers are required to maintain documentation of courses, monitor attendance and provide a certificate of completion to attendees.

Finally, an inactive license is established to allow persons who are retired or are no longer practicing in Virginia to retain a license without obtaining continuing education. An inactive license may be renewed for \$75 but does not entitle the licensee to engage in practice.

Issues: Advantages and disadvantages to the public: The continuing competency requirements are intended to provide some assurance to the public that licensees of the board are maintaining current knowledge and skills, while providing the maximum amount of flexibility and availability to licensees. Highly infectious diseases borne by decedents can expose licensees and members of the public to significant danger. The arranging and financing of preneed contracts requires continuous updating of knowledge, and a funeral service licensee lack of knowledge or ethical behavior can be costly and painful to consumers. In FY 2000, there were 20.95 complaints against funeral establishments and 28.61 complaints against funeral service providers per 1,000 licensees. Passage of a bill to require continuing education was strongly supported by all funeral-related groups or associations in an effort to improve the delivery of services and level of professionalism.

There are definite advantages of the proposed amended regulations to the public, which will have greater assurance that the licensees for the board are engaged in activities to maintain and improve their knowledge and skills in providing for dead human remains and in protecting the public from the risk of communicable diseases. The public is also better served by a continuing competency requirement for licensees who have allowed their license to expire or have been inactive.

Advantages and disadvantages to the licensees: For a minority of practitioners who do not currently engage in any continuing learning in their profession, these requirements will

represent an additional burden. However, it was determined by enactment of the statute and by the board's concurrence that those practitioners and the public they serve would greatly benefit from continuing learning requirements, and that the public is better protected if there is some assurance of that effort. The 5-hour requirement may necessitate attendance at a district meeting or participation in a community college course on topics such as preneed funding. Interaction with other funeral service providers who are practicing competently and ethically may help some licensees avoid the substandard practices that have led to disciplinary cases in the past. There was some discussion about exempting licensees over the age of 65, but the board decided that all active licensees should have continuing education. In fact, those who have been away from mortuary school the longest are sometimes in the greatest need of continuing education.

Advantages or disadvantages to governmental agencies: There are no advantages or disadvantages to any government agency, except the Board of Funeral Directors and Embalmers. The board has already incurred additional costs for meetings and hearings on continuing education and will continue to incur costs for monitoring compliance of licensees and for holding additional disciplinary hearings for individuals who do not comply with the requirement.

Fiscal Impact: Projected cost to the state to implement and enforce:

Fund source: As a special fund agency, the board must generate sufficient revenue to cover its expenditures from nongeneral funds, specifically the renewal and application fees it charges to practitioners for necessary functions of regulation.

Budget activity by program or subprogram: There is no change required in the budget of the Commonwealth as a result of this program.

One-time versus ongoing expenditures: The agency will incur some one-time costs (less than \$2,000) for meetings of the Regulatory committee and advisory group, mailings to the Public Participation Guidelines mailing lists, conducting a public hearing, and sending copies of final regulations to regulated entities. Every effort will be made to incorporate those into anticipated mailings and board meetings already scheduled.

Ongoing expenditures would include costs for approval of continuing education providers and costs related to an audit of licensees and disciplinary actions for noncompliance. Regulations will allow the board to approve professional funeral/mortuary associations that are nonprofit and have a history of providing quality continuing education. A listing of approved organizations will be maintained as a guidance document. In addition, the board may approve sponsors that provide continuing education, if the sponsor applies by submitting the required fee of \$200 and background documentation on courses and instructors. Consideration of individual sponsors will be handled by a continuing education committee, serving as an informal conference committee with the right of the applicant to appeal a negative decision for a hearing before the full board. Costs for the approval will relate to per diem and travel for committee members, copying and

mailing of background documentation, and staff time for preparation of materials for a meeting. Approval will be required on an annual basis with the courses to be presented in the coming year reviewed by the committee. If the courses and instructors have not changed from the previous year, approval may be continued without an additional fee.

Compliance costs were estimated by the Department of Planning and Budget in its fiscal impact statement of House Bill 837. The board is expected to audit of 1.0% to 2.0% each year by requiring licensees to submit documentation of continuing education. While staff time will be involved in the review of documentation, no additional personnel will be required to accomplish this activity. It could be expected that a small percentage of licensees would be noncompliant, resulting in disciplinary action. Most cases would be settled with a prehearing consent order (approximately \$100 per case), but approximately five per year may result in the convening of an informal conference at an expenditure of \$500 per case. The board can absorb these additional costs in its budget.

Projected cost to localities: There are no projected costs to localities.

Description of entities that are likely to be affected by regulation: The entities that are likely to be affected by these regulations would be licensed funeral service providers, licensed embalmers and licensed funeral directors.

Estimate of number of entities to be affected: Currently, there are 1,409 licensed funeral service providers, eight licensed embalmers and 156 licensed funeral directors who will be required to obtain five hours of continuing education in order to renew their active licenses.

Projected costs to the affected entities: Since providers have not yet been approved by the board, costs are unknown but can be expected to be minimal for only five hours of continuing education per year. The Virginia Funeral Directors Association reports that it offers classes at meetings throughout the state for approximately \$45 or \$50 for a full-day seminar. The Virginia Morticians' Association will also offer courses at district meetings with typical costs being \$50 to \$60 for a half-day seminar. Courses given in conjunction with the VMA convention would likely offer participants five hours of CE credit at a cost of \$65 for members and \$100 for nonmembers. The Independent Funeral Homes of Virginia offers five hours of continuing education at its convention at a cost of \$100 for a member or nonmember. Therefore, it is estimated that the five-hour requirement could be met for the basic cost of \$45 to \$100 per year, plus possible travel to a district meeting or state-wide convention. Courses are also available on-line through the community college system. For example, John Tyler Community College offers a three-semester hour course in funeral service law for \$116.

Department of Planning and Budget's Economic Impact Analysis: The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007 H of the Administrative Process Act and Executive Order Number 21 (02). Section 2.2-4007 H requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or

other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. The analysis presented below represents DPB's best estimate of these economic impacts.

Summary of the proposed regulation. The proposed regulation establishes continuing education requirements for licensed funeral service personnel, requirements for continuing education providers, and provisions for enforcement of the above requirements. The board has proposed requiring that each licensee take five hours of continuing education provided by a board-approved continuing education provider. The language of the proposal does not mandate specific content for the continuing education, only that the five hours emphasize ethics, standards of practice, preneed services, and laws and regulations governing the profession of funeral service in Virginia.

The procedures for approving continuing education providers depend on whether the provider is an existing provider of continuing education services or a new provider. All existing not-for-profits with an established record of offering continuing education in this field are automatically approved. New providers must obtain approval from the board each year. To obtain approval, the firm must pay an annual \$200 review fee and submit detailed information about courses and instructors, unless this information has not changed from the previous year. If nothing has changed, the new provider need only notify the board of this, in which case, approval for the next year is automatic and requires no fee. All providers must maintain records for three years and must provide this information to the board upon request.

Estimated economic impact. The Board of Funeral Directors and Embalmers is required to establish continuing education requirements for its licensees. The board is authorized to require up to five hours of continuing education per year. Staff at the Department of Health Professions reports that most complaints concerning licensed activities involve issues related to ethics, preneed contracts, and compliance with current federal and state laws regarding funeral practice. The board has elected to require of its licensees the maximum allowable five hours of continuing education. The proposed rule states that the hours must be taken from licensed providers and that the five hours must emphasize the ethics, standards of practice, preneed, and laws and regulations governing the profession of funeral service in Virginia.

The costs associated with this regulation include course fees, costs for travel and lodging, and lost work or leisure time. Measuring these costs is complicated by a number of factors, but some estimates are possible. This regulation affects 1,573 board licensees. Agency staff indicate that a majority of licensees already participate in some continuing education. Specific information about how many licensees do not currently take courses and how many hours are taken by those who do currently take some courses is not available. Documentation with the board's submission of this proposal indicate that course fees will range between \$45 and \$100 for

Proposed Regulations

the required five hours. Travel costs will vary widely. Some courses are associated with meetings that would be attended whether or not courses were available. In other cases, a few hours of travel and even an overnight stay may be required. It seems reasonable to assume two hours as the average time lost to travel.¹ The U.S. Bureau of Labor Statistics reports that average wages of licensed funeral personnel range between \$17 and \$24 per hour. Given these estimates, we can estimate an annual average cost on the order of \$200 for each person not previously taking these courses. Even if only 500 licensees fall into this category, the estimated total cost will be on the order of \$100,000 per year. Additional costs will be incurred by those already taking some continuing education hours but fewer than five and those licensees who are taking courses in other subject areas and who may need to add hours in the mandated subject areas. Thus, the \$100,000 should be taken as a lower bound on potential costs of compliance with this proposal. The increased cost of providing funeral services will be shared between three groups: consumers of the services, owners of funeral establishments, and licensees. Who actually pays the costs depends on the level of competition in local funeral service markets and the tightness of the local labor markets.

It is also possible that the increased cost of providing funeral services will result in a reduction in the supply of funeral services. This would happen if the increased costs imposed by this regulation resulted in a reduction in hours or the closing of a marginal funeral service establishment. While the \$200 annual cost per licensee may not appear to be enough to result in a reduction in supply, not enough is known about Virginia funeral service markets to draw a firm conclusion about this. In fact, at least one commentator on the funeral services industry actually points to the closing of financially marginal establishments as an advantage of continuing education regulations. (See Continuing Education: An Ethical Issue, Robert W. Ninker, CAE, available at http://www.fea.org/Funeral%20Ethics/continuing_education.htm.) This is precisely the sort of anti-competitive effect that should be avoided. Although surviving businesses in this industry would find it to their advantage if marginal firms were to close, this would result in less competition and, hence, probably a loss of economic value to consumers. Thus, it is important that the costs of continuing education regulations be kept to a minimum.

While it is possible that a continuing education requirement could provide some economic benefit, there are a number of possible arguments in favor of such requirements that are not credible. First, as noted above, driving economically marginal providers out of business is a cost, not a benefit, of continuing education. Second, it is often argued that continuing education requirements are actually beneficial for firms since the classes will improve the quality of services provided. This improved quality of service, the argument goes, will result in higher profits for the firm. The idea that the government could or should be in the business of forcing firms to make higher profits is difficult to accept. If an agency of government

¹ This cost will tend to fall as more people take on-line courses. On the other hand, the effectiveness of on-line courses relative to in person training is not known.

believes that firms are missing profit opportunities, then a friendly letter of advice, or maybe its electronic equivalent, is the most that is called for.

Finally, it has been argued² that continuing education (CE) requirements will improve the public perception of the profession as a whole. This, in turn, will improve the business climate for firms in this profession, raising all the boats. Assuming for a moment that public perceptions would be improved by a CE requirement, one may ask why the government should be involved. Quality certification of businesses and professionals in a variety of industries has been provided by private associations since the days of guilds. There is nothing to prevent funeral directors and embalmers from forming their own private certification agency. This agency could provide firms with plaques and certificates noting their good judgment in having taken five hours of continuing education.

One problem with having the government provide this service, even on a pay-as-you-go basis, is that there isn't any evidence that continuing education improves the quality of service from funeral professionals or that it protects the public health and safety. There is a fair amount of discussion on the value of CE from organizations that sell continuing education services, but no independent, scientifically credible evidence could be located for the preparation of this report. Thus, the government could be getting involved in a certification program that actually misinforms the public about the quality of service from a given professional group.

The argument put forth by the board is different from those already discussed. According to the board, the expected benefits from these regulations arise according to the following logical sequence.³ (i) Each year, approximately 65⁴ founded cases are brought by consumers concerning funeral service providers who failed to follow applicable ethical standards, violated applicable state or federal law, or did not follow applicable standards for arranging and financing preneed contracts. (ii) These violations impose costs on consumers and should be reduced or eliminated. (iii) At least a significant proportion of these violations are due to unfamiliarity with the applicable standards on the part of licensees. (iv) Five hours of classes per year that emphasize ethics, standards of practice, preneed, and laws and regulations will result in fewer violations.

Taking as given the number of founded complaints, the economic cost of these complaints depends on the costs

² See the article by Ninker cited previously in this paper.

³ One point not included in this list is that, as a whole, funeral directors as a group may benefit from the public perception that they are more professionally responsible because they are subject to continuing education requirements. (This argument is made explicitly in the article cited in the previous paragraph.) That there may be benefits to the licensees from a system of professional certification does not justify a regulatory response. Generally, professional certification may be handled by private membership organizations.

⁴ According to the board, in FY2000 there were under 35 complaints against funeral establishments and under 45 complaints against funeral directors. Since there may be some overlap in complaints, the total number of independent violations may be smaller than the total of under 90 complaints some 70% of these were found to have merit. Also, the board's documentation did not indicate the relative severity of complaints.

imposed on individuals by the violations. The standard measure of costs for an event is the amount consumers would be willing to pay to avoid that event. Little or no data is available to assess the willingness to pay to avoid the violations of funeral service standards that occur each year. We do know that the complaints vary significantly in the seriousness of the violation. The board applies a score between one and six as a measure of the seriousness of the violation; one being the most serious and six being the least serious. Assuming that the board's scoring is reasonably related to the legitimate damages imposed on consumers, then the most cost-effective rule would be one that had a greater likelihood of reducing the more serious violations rather than the least serious. Without more information, it is not possible to know whether this proposed rule is more likely to reduce one type of violation or another. Later in this analysis, an effort will be made to calculate what level of damages would be needed to justify these regulations on the basis of generating a gain that is greater than the cost of achieving it.

The board reports that a substantial portion of the founded cases are due to licensee unfamiliarity with the applicable standards rather than to an intentional violation. Knowing the proportion of unintentional violations is important because it would be reasonable to assume that five hours of continuing education would not be effective in preventing many of the intentional violations. No information was available on the distribution of complaints according to the level of intent or negligence displayed by the licensee. For some subset of complaints, where the board determines that the violation is primarily due to inadequate management attention to compliance issues, the board will require some continuing education hours as part of any disciplinary action it may impose. When violations result from gross mismanagement or even willful disregard of the standards of practice, one may question whether any amount of continuing education requirements can have much of an effect on whether additional violations of this type will occur in the future. Thus, even if we assume that continuing education requirements will prevent a subset of complaints, it almost certainly will not prevent others. In fact, given that a majority of licensees already take some continuing education, it would seem likely that some of the violations occurring now are by licensees already taking continuing education classes.

The expected benefits of this proposed rule depend directly on the number of cases that will be prevented by this rule. If it is true that there are about 65 founded cases per year, then we can assume that the number of cases that would be prevented by this rule would be somewhat fewer than 65 per year, possibly significantly fewer. Unfortunately, there is no data readily available to allow a good estimate of the expected reduction in founded cases that would occur due to a new continuing education requirement. Also, reductions in founded cases may not measure all of the benefits of continuing education. Some improvement may occur in professional practices that would not have been the subject of a complaint. Those licensees who take continuing education classes voluntarily presumably do so because they feel that it improves the quality (and hence market value) of the services they provide.

The final step in thinking about the benefits likely to result from this proposal involves an assessment of the type and amount of coursework required. As already noted, the department reports that most complaints concerning licensed activities involve issues related to ethics, preneed contracts, and compliance with current federal and state laws regarding funeral practice. The board's response is to require that its licensees take the maximum allowable five hours of continuing education, that the hours must be taken from licensed providers, and that the five hours must emphasize the ethics, standards of practice, preneed, and laws and regulations governing the profession of funeral service in Virginia.

Even assuming that well-targeted continuing education could prevent complaints in the areas of concern, it is simply not known whether the education requirements in the regulation effectively address the issues that give rise to consumer complaints. For example, how will the five hours of CE be divided between the required subjects?

This also raises the question of how often a given course should be required. How often do funeral providers need to be reminded about their ethical obligations? Every year? Every two years? Given that the ethical standards in the industry do not change significantly from year to year, then a short (say, two or three hours) course every two years would seem sufficient unless the board has evidence to the contrary. Any more frequent or more lengthy requirements would be unlikely to produce any additional economic benefit whatsoever. It could be that the laws and regulations in this area change so frequently that some annual coursework in this area is justified. However, that is not explicitly required in this regulation. It is not at all clear how much coverage of laws and regulations will occur in classes taken pursuant to this proposal. Again, the board has not justified either the frequency or length of training based on the expected gain to the public. These rules could produce a minimal amount of gain for the maximum cost allowed by statute.

Summary of analysis. We have argued above that even under the most favorable assumptions, these education requirements will affect only some fraction of the expected 65 or so annual founded cases against funeral homes and funeral service providers. In addition, the structure of the education requirements do not appear designed in a way that would maximize their effectiveness in reducing violations of funeral service rules. A fairly optimistic assumption would be that these rules will reduce founded cases by as much as half. In addition, our estimates indicate that complying with these rules will cost on the order of \$100,000 per year or more. With an assumed reduction of 33 founded cases per year, the average cost will be at least \$3,030 per case reduced. Under less optimistic assumptions, the cost per case could be much higher. Given the analysis here, there is no reasonable assurance that this proposal will provide any net benefit to Virginia and could easily result in a net economic cost.

Businesses and entities affected. The proposed rule affects approximately 1,573 licensees of the Board of Funeral Directors and Embalmers. In addition, the rules affect an unknown number of firms and associations that may provide continuing education services under this regulation.

Proposed Regulations

Localities particularly affected. This proposal applies statewide and is not expected to have a disproportionate impact on any particular localities.

Projected impact on employment. The proposed rule raises the cost of maintaining a license as a funeral service provider. However, the increased cost is not likely to be enough to cause a measurable reduction in the number of funeral service providers. Thus, no measurable effect on employment is anticipated.

Effects on the use and value of private property. The proposed regulation protects the interests of existing, not-for-profit continuing education providers at the expense of potential entry by competing firms. This increases costs to the licensees and their customers and reduced the ownership value of for-profit providers of continuing services.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The Board of Funeral Directors and Embalmers concurs with the analysis of the Department of Planning and Budget for amendments to 18 VAC 65-20, pursuant to statutory mandate to promulgate regulations for continuing education.

Summary:

The proposed amendments establish continuing education requirements for funeral service licensees, funeral directors and funeral embalmers in compliance with Chapter 270 of the 2002 Acts of Assembly. The proposed amendments (i) require each licensee to take a minimum of five hours of continuing education provided by a board-approved continuing education provider, (ii) set forth approved continuing education providers and criteria for approval of continuing education providers, and (iii) provide for extensions or waivers of the requirements.

18 VAC 65-20-70. Required fees.

A. The following fees shall apply for initial licensure or registration and for renewal of licensure or registration:

- | | |
|--|-------|
| 1. License to practice funeral service or as a funeral director or an embalmer | \$150 |
| 2. Funeral service establishment license | \$225 |
| 3. Surface transportation and removal service registration | \$250 |
| 4. Courtesy card | \$100 |
| 5. Crematory | \$100 |

B. Other fees.

- | | |
|--|-------|
| 1. Reinstatement fee for each year of licensure or registration expiration | \$50 |
| 2. Change of manager or establishment name | \$50 |
| 3. Verification of license or registration to another state | \$50 |
| 4. Duplicate license, registration, or courtesy card | \$25 |
| 5. Duplicate wall certificates | \$50 |
| 6. Change of ownership | \$100 |

- | | |
|---|-------|
| 7. Reinspection for change of location or ownership | \$100 |
| 8. Application or renewal for continuing education provider | \$200 |

18 VAC 65-20-130. Renewal of license; registration.

A. A person, establishment, crematory, courtesy card holder or surface transportation and removal service that desires to renew its license or registration for the next year shall, not later than the expiration date as provided in 18 VAC 65-20-120, submit the renewal application and applicable fee. *In order to renew an active funeral service, director or embalmer license, a licensee shall be required to comply with continuing competency requirements set forth in 18 VAC 65-20-151.*

B. A person who or entity which fails to renew a license, registration, or courtesy card by the expiration dates prescribed in 18 VAC 65-20-120 shall be deemed to have an invalid license, registration, or courtesy card and continued practice may subject the licensee to disciplinary action by the board.

18 VAC 65-20-140. Reinstatement of expired license or registration.

A. The board may consider reinstatement of an expired license or registration for up to three years following expiration. A written application request for reinstatement shall be submitted to the board and shall include payment of all applicable delinquent renewal fees and the additional reinstatement fee prescribed in 18 VAC 65-20-70.

B. If the Virginia license of a funeral service provider, funeral director and embalmer is lapsed three years or less and the applicant is seeking reinstatement, he shall provide evidence of having completing the number of continuing competency hours required for the period in which the license has been lapsed.

C. When a license is not reinstated within three years of its expiration date, an applicant shall reapply for licensure and pass the state examination.

18 VAC 65-20-150. Reapplication of license. (Repealed.)

~~When a license is not reinstated within three years of its expiration date, an applicant shall reapply for licensure and pass the state examination.~~

18 VAC 65-20-151. Continued competency requirements for renewal of an active license.

A. *After March 31, 2004, funeral service licensees, funeral directors or funeral embalmers shall be required to have completed a minimum of five hours of continuing education offered by a board-approved sponsor for each annual licensure renewal in courses that emphasize the ethics, standards of practice, preneed contracts and funding, or laws and regulations governing the profession of funeral service in Virginia.*

B. Courses must be directly related to the scope of practice of funeral service. Courses for which the principal purpose is to promote, sell or offer goods, products or services to funeral homes are not acceptable for the purpose of credit toward renewal.

C. The board may grant an extension for good cause of up to one year for the completion of continuing education requirements upon written request from the licensee prior to the renewal date. Such extension shall not relieve the licensee of the continuing education requirement.

D. The board may grant an exemption for all or part of the continuing education requirements for one renewal cycle due to circumstances determined by the board to be beyond the control of the licensee.

18 VAC 65-20-152. Continuing education providers.

A. Unless disqualified by action of the board, courses offered by the following providers are approved for continuing education credit:

1. Local, state or federal government agencies;
2. Regionally accredited colleges and universities; or
3. Board-recognized national, regional, state and local associations or organizations as follows:
 - a. National Funeral Directors Association and state chapters;
 - b. National Funeral Directors and Morticians Association and state chapters;
 - c. Independent Funeral Homes Association of Virginia;
 - d. Cremation Association of North America;
 - e. American Board of Funeral Service Education;
 - f. International Conference of Funeral Service Examining Boards; and
 - g. Other similar associations or organizations as approved by action of the board.

B. Course providers not listed in subsection A of this section may apply for approval by the board as continuing education providers.

1. To be considered for board approval, a continuing education provider shall submit 60 days prior to offering a continuing education course:
 - a. Documentation of an instructional plan and course objectives for continuing education courses that meet the criteria set forth in 18 VAC 65-20-151 B;
 - b. A syllabus of the course or courses to be offered with the credentials of the course instructors, a description of each session, including number of continuing education hours; and
 - c. The continuing education provider fee set forth under 18 VAC 65-20-70.
2. Board approval of continuing education providers under this subsection shall expire on July 1 of each year and may be renewed upon resubmission of documentation on courses and instructors and the provider fee as required by the board.
3. Continued approval of a continuing education provider may be granted without submission of the provider fee if the

provider submits a statement that courses and instructors offered for the coming year will not change from the previous year. If there will be additions or alterations to the continuing education offerings of a provider, resubmission of documentation and a provider fee is required.

C. Continuing education providers approved under subsection A or B or this section shall:

1. Maintain and provide to the board upon request documentation of the course titles and objectives and of licensee attendance and completion of courses for a period of three years;
2. Monitor attendance at classroom or similar educational experiences for compliance with law and regulations; and
3. Provide a certificate of completion for licensees who successfully complete a course.

18 VAC 65-20-153. Documenting compliance with continuing education requirements.

A. All licensees with active status are required to maintain original documentation for a period of two years after renewal.

B. After the end of each renewal period, the board may conduct a random audit of licensees to verify compliance with the requirement for that renewal period.

C. Upon request, a licensee shall provide documentation within 14 days as follows:

1. Official transcripts showing credit hours earned from an accredited institution; or
2. Certificates of completion from approved providers.

D. Compliance with continuing education requirements, including the maintenance of records and the relevance of the courses to the category of licensure is the responsibility of the licensee. The board may request additional information if such compliance is not clear from the transcripts or certificates.

E. Continuing education hours required by disciplinary order shall not be used to satisfy renewal requirements.

18 VAC 65-20-154. Inactive license.

A. A funeral service licensee, funeral director or embalmer who holds a current, unrestricted license in Virginia shall, upon a request for inactive status on the renewal application and submission of the required renewal fee of \$75, be issued an inactive license.

1. An inactive licensee shall not be entitled to perform any act requiring a license to practice funeral service in Virginia.
2. The holder of an inactive license shall not be required to meet continuing education requirements, except as may be required for reactivation in subsection B of this section.

B. A funeral service licensee, funeral director or embalmer who holds an inactive license may reactivate his license by:

1. Paying the difference between the renewal fee for an inactive license and that of an active license for the year in which the license is being reactivated; and

Proposed Regulations

2. *Providing proof of completion of the number of continuing competency hours required for the period in which the license has been inactive, not to exceed three years.*

18 VAC 65-20-500. Disciplinary action.

In accordance with the provisions of § 54.1-2806 of the Code of Virginia, the following practices are considered unprofessional conduct and may subject the licensee to disciplinary action by the board:

1. Breach of confidence. The unnecessary or unwarranted disclosure of confidences by the funeral licensee.

2. Unfair competition.

a. Interference by a funeral service licensee, funeral director, or registered surface transportation and removal service when another has been called to take charge of a dead human body and the caller or agent of the caller has the legal right to the body's disposition.

b. Consent by a funeral service licensee or funeral director to take charge of a body unless authorized by the person or his agent having the legal right to disposition.

3. False advertising.

a. No licensee or registrant shall make, publish, disseminate, circulate or place before the public, or cause directly or indirectly to be made, an advertisement of any sort regarding services or anything so offered to the public which contains any promise, assertion, representation, or statement of fact which is untrue, deceptive, or misleading.

b. The following practices, both written and verbal, shall constitute false, deceptive, or misleading advertisement within the meaning of subdivision 4 of § 54.1-2806 of the Code of Virginia:

(1) Advertising containing inaccurate statements; and

(2) Advertisement which gives a false impression as to ability, care, and cost of conducting a funeral, or that creates an impression of things not likely to be true.

c. The following practices are among those which shall constitute an untrue, deceptive, and misleading representation or statement of fact:

(1) Representing that funeral goods or services will delay the natural decomposition of human remains for a long term or indefinite time; and

(2) Representing that funeral goods have protective features or will protect the body from gravesite substances over or beyond that offered by the written warranty of the manufacturer.

4. Inappropriate handling of dead human bodies. Transportation and removal vehicles shall be of such nature as to eliminate exposure of the deceased to the public during transportation. During the transporting of a human body, consideration shall be taken to avoid unnecessary delays or stops during travel.

5. Failure to furnish price information disclosing the cost to the purchaser for each of the specific funeral goods and funeral services used in connection with the disposition of deceased human bodies.

6. Conducting the practice of funeral services in such a manner as to constitute a danger to the health, safety, and well-being of the staff or the public.

7. Inability to practice with skill or safety because of physical, mental, or emotional illness, or substance abuse.

8. Failure to register as a supervisor for a resident trainee or failure to provide reports to the board as required by the Code of Virginia and 18 VAC 65-40-10 ~~et seq.~~

9. *Failure to comply with applicable federal and state laws and regulations, including requirements for continuing education.*

NOTICE: The forms used in administering 18 VAC 65-20, Regulations of the Board of Funeral Directors and Embalmers, are not being published due to the large number; however, the name of each form is listed below. The forms are available for public inspection at the Board of Funeral Directors and Embalmers, 6603 W. Broad Street, Richmond, Virginia, or at the office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia.

FORMS

Application for a *License to Practice* Funeral Service ~~Licensure~~ (rev. ~~7/1/98~~ 12/02).

Application for Courtesy Card (rev. ~~7/1/98~~ 12/02).

Application for *New Establishment Licensure/Change of Address, Branch Establishment, Change of Location, Change of Ownership, Change of Trade Name, Change of Manager* (rev. ~~7/1/98~~ 12/02).

Application for Waiver of Full-time Manager ~~Requirements~~ *Requirement* (rev. ~~7/1/98~~ 12/02).

Application for ~~Cremator~~ *Crematory* Registration (rev. ~~2/1/99~~ 12/02).

~~Renewal~~ Application for *Renewal for Waiver of Full-time Manager Requirements Requirement* (rev. ~~12/1/98~~ 12/02).

~~Licensure~~ Verification ~~Form~~ of *State Licensure* (rev. ~~7/97~~ 12/02).

Application for Surface Transportation and Removal Service Registration (rev. ~~7/1/98~~ 12/02).

License Renewal Notice and Application, C-45128 0502, Funeral Service Providers (rev. ~~7/97~~ 12/02).

License Renewal Notice and Application, 0501, Funeral Establishments (rev. 12/02).

License Renewal Notice and Application, 0506, Courtesy Card (rev. 12/02).

License Renewal Notice and Application, 0509, Surface Transportation (rev. 12/02).

License Renewal Notice and Application, 0510, Crematories (rev. 12/02).

Appendix I: General Price List (rev. 44/17/98 12/02).

Appendix II: Casket Price List; Outer Burial Container Price List (rev. 44/17/98 12/02).

Appendix III: Itemized Statement of Funeral Goods and Services Selected (rev. 44/17/98 12/02).

Appendix IV: Embalming Record (rev. 44/17/98 12/02).

VA.R. Doc. No. R02-73; Filed December 11, 2002, 11:30 a.m.

DEPARTMENT OF HEALTH PROFESSIONS

Title of Regulation: 18 VAC 76-30. Public Participation Guidelines (adding 18 VAC 76-30-10 through 18 VAC 76-30-120).

Statutory Authority: § 2.2-4007 of the Code of Virginia.

Public Hearing Date: January 7, 2003 - 8:30 a.m.

Public comments may be submitted until February 28, 2003.
(See Calendar of Events section
for additional information)

Agency Contact: Elaine J. Yeatts, Agency Regulatory Coordinator, Department of Health Professions, 6603 W. Broad Street, Richmond, VA 23230, telephone (804) 662-9918, FAX (804) 662-9114 or e-mail elaine.yeatts@dhp.state.va.us.

Basis: The statutory authority for this regulation is the Administrative Process Act. Section 2.2-4007 of the Code of Virginia specifically mandates the adoption of public participation guidelines pursuant to the provisions of the Act. Regulations so adopted do not exceed the mandate of the Act but do provide additional clarity to the public for their participation in the regulatory process.

Purpose: In accordance with provisions of the Administrative Process Act, the department is developing regulations for public participation in the development and promulgation of regulations. Regulations require notices to be sent to the public for any meeting at which a regulatory action is to be considered, for an intended regulatory action, for comment on a proposed regulation, and for adoption of a final regulation. Opportunities for written and oral comment are provided at each stage of the regulatory process, including holding a public hearing on any regulatory action. Regulations have allowed for individuals and organizations to petition the department for rulemaking on an issue of interest and have also provided for the appointment of advisory committees on issues related to rulemaking. Regulations are also proposed as necessary to provide for electronic submissions by the agency and the affected parties.

The guidelines are identical to those set by all 14 boards within the department with the exception of the regulation for responding to a petition for rulemaking. In accordance with amendments to the APA by the 2002 General Assembly, the time limit for an agency response to a petition is set at 90 days following a 21-day comment period. During a recent periodic review of regulations, it was determined that public

participation guidelines adopted by all boards are reasonable, clearly stated and adequate to protect the public interest in the development and promulgation of regulations. These regulations are intended to ensure participation in the process of developing and promulgating regulations for the health professions, which are essential for public health, safety and welfare.

Substance: The department has adopted a new set of regulations for public participation guidelines in the process of rulemaking. Regulations set requirements for notification lists and documents to be sent during the promulgation of regulations. There are provisions for petitions for rulemaking, notices, public hearings and periodic review of all regulations. Rules establish the appointment of ad hoc advisory committees and set a limitation on service for those committees.

Issues: For the most part, regulations providing public participation guidelines are requirements on the department in compliance with the Administrative Process Act. The primary issue identified during the promulgation of these regulations was the need to incorporate electronic forms of regulatory submission, notification and communication that are currently available or may become available in the near future. Therefore, language that would permit notification and comment by facsimile, e-mail or other electronic means was incorporated in the proposal. Regulations will also ensure that an electronic mailing list may be maintained on a state website in addition to the traditional list for mailings by the department.

While requirements for public participation in the regulatory process should be electronically inclusive, the department continues to be obligated to notify by regular mail if an entity chooses that form of notification. The regulation must continue to provide for notification and comment in that fashion.

There are no disadvantages of the proposed regulations to members of the public who may choose to remain on the regular mailing list, be notified of regulatory actions electronically or both. Public comment on Notices of Intended Regulatory Action or proposed regulations is currently permitted and being received by facsimile or e-mail, so these regulations will ensure that type of transmission is acceptable.

There are no disadvantages to the department, which is currently posting meeting notices affecting regulations and all regulatory submissions on the Internet via the Virginia Regulatory Townhall. If electronic notification and comment becomes more prevalent, there may be a modest reduction in the department's cost of mailings.

Fiscal Impact: Projected cost to the state to implement and enforce:

Fund source. As a special fund agency, the department must generate sufficient revenue to cover its expenditures from nongeneral funds, specifically the renewal and application fees it charges to practitioners for necessary functions of regulation.

Budget activity by program or subprogram. There is no change required in the budget of the Commonwealth as a result of this program.

Proposed Regulations

One-time versus ongoing expenditures. The agency will incur some costs (less than \$1,000) for mailings to the Public Participation Guidelines (PPG) mailing list, conducting a public hearing, and sending copies of final regulations to regulated entities.

Projected cost to localities. There are no projected costs to localities.

Description of entities that are likely to be affected by regulation. The entities that are likely to be affected by these regulations would be persons or organizations that request notices of any meeting at which a regulatory action is being taken by the department or required notices during the promulgation of regulations.

Estimate of number of entities to be affected. There are currently three entities listed on the mailing list created by the Department of Health Professions to receive comment on the NOIRA for establishment of regulations for a prescription monitoring program. Depending on the issue, PPG mailing lists from the individual boards are also utilized by the department. For example, the NOIRA on prescription monitoring was also sent to PPG notification list for the Boards of Medicine, Dentistry and Pharmacy.

Projected costs to the affected entities. There are no costs for the affected entities to comply with these regulations.

Department of Planning and Budget's Economic Impact Analysis: The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007 H of the Administrative Process Act and Executive Order Number 21 (02). Section 2.2-4007 H requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. The analysis presented below represents DPB's best estimate of these economic impacts.

Summary of the proposed regulation. The Department of Health Professions (department) proposes to promulgate regulations to provide guidelines for public participation in the regulatory process of the department.

Estimated economic impact. The department administers the regulations of 14 boards, as well as its own regulations. All 14 boards have existing Public Participation Guidelines (PPGs), which are identical to each other. The department proposes to promulgate PPGs for the agency's own regulations that are identical to the existing 14 board PPGs, with the exception of language on the response to petitions for rulemaking. In accordance with amendments to the Administrative Process Act by the 2002 General Assembly, the department proposes to set the time limit for response to a petition for rulemaking at 90 days following a 21-day comment period. The other 14 PPGs administered by the department state that the response to a petition for rulemaking be made within 180 days, which is in accordance with the APA prior to the 2002 General

Assembly. All boards with PPGs must abide by the language of the 2002 APA.

Currently, the department has one regulation in effect, "Regulations Governing the Health Practitioners' Intervention Program for the Department of Health Professions." This regulation is exempt from the Administrative Process Act (APA) and thus has not been subject to public participation rules. The department is now proposing a second regulation, "Regulations Governing the Prescription Monitoring Program," which is subject to the APA. The department is concurrently proposing these public participation guidelines, as required by the APA.

PPGs define how boards maintain lists of parties interested in specific regulations and how and when those interested individuals are notified of proposed amendments to the regulations. PPGs also specify requirements for public hearings and petitions for rulemaking. The introduction of the proposed regulations will have no economic impact.

Businesses and entities affected. The proposed amendments affect all individuals interested in being notified of action promulgated by the department. There are currently three entities listed on the mailing list created by the department to receive comment on the Notice of Intent for Regulatory Action for the establishment of the "Regulations Governing the Prescription Monitoring Program."

Localities particularly affected. The proposed regulations affect all Virginia localities.

Projected impact on employment. The proposed amendments will not affect employment levels.

Effects on the use and value of private property. The proposed amendments will not effect the use and value of private property.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The Department of Health Professions concurs with the analysis of the Department of Planning and Budget for 18 VAC 76-30, pursuant to statutory requirements to adopt Public Participation Guidelines.

Summary:

The proposed regulations provide guidelines for public participation in the regulatory process of the department and are intended to enable electronic communication, notification and comment in the development of regulations. The regulations provide for notification lists, documents required to be sent to those on the lists, requirements for petitioning the department to begin rulemaking, notices and hearings required for each stage of the process, and the appointment and duration of advisory committees formed to address a specific regulatory issue.

CHAPTER 30.
PUBLIC PARTICIPATION GUIDELINES.

PART I.
GENERAL PROVISIONS.

18 VAC 76-30-10. Purpose.

The purpose of this chapter is to provide guidelines for the involvement of the public in the development and promulgation of regulations of the Department of Health Professions. The guidelines do not apply to regulations exempted or excluded from the provisions of the Administrative Process Act. These rules seek to expand participation by providing for electronic exchange with the public and thereby increasing participation, reducing costs, and improving the speed of communication.

18 VAC 76-30-20. Definitions.

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

"Administrative Process Act" means Chapter 40 (§ 2.2-4000 et seq.) of Title 2.2 of the Code of Virginia.

"Department" means the Department of Health Professions.

"Notification lists" means lists used by the department to notify persons pursuant to these rules. Such lists may include electronic mailing lists maintained through a state website or regular mailing lists maintained by the department.

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

PART II.
NOTIFICATION LISTS.

18 VAC 76-30-30. Composition of lists.

A. The department shall maintain lists of persons who have requested to be notified of the formation and promulgation of regulations.

B. Any person may request to be placed on a notification list by indicating so electronically or in writing to the department. The department may add to a list any person it believes will serve the purpose of enhancing participation in the regulatory process.

C. The department may maintain additional lists for persons who have requested to be informed of specific regulatory issues, proposals, or actions.

D. The department shall periodically request those persons on the notification lists to indicate their desire to either continue to receive documents by regular mail, be notified electronically or be deleted from the lists. Persons who elect to be included on an electronic mailing list may also request that all notices and mailings be sent in hard copy. When either regular or electronic mail is returned as undeliverable or there has been no response to the request from the department, such persons shall be deleted from the list.

18 VAC 76-30-40. Documents to be sent to persons on the lists.

Persons on the notification lists, as described in 18 VAC 76-30-30, shall be mailed or have electronically transmitted the following documents related to the promulgation of regulations:

1. A notice of intended regulatory action.
2. A notice of the comment period on a proposed regulation and instructions as to how to obtain a copy of the regulation and any supporting documents, either electronically or from the department office.
3. A notification of the adoption of a final regulation and instructions as to how to obtain a copy of the regulation and any supporting documents, either electronically or from the department office.
4. A notice soliciting comment on a final regulation when the regulatory process has been extended.

PART III.
PUBLIC PARTICIPATION PROCEDURES.

18 VAC 76-30-50. Petition for rulemaking.

A. As provided in § 2.2-4007 of the Code of Virginia, any person may petition the department to develop a new regulation or amend an existing regulation.

B. A petition shall include but need not be limited to the following:

1. The petitioner's name, mailing address, telephone number, and, if applicable, the organization represented in the petition.
2. The number and title of the regulation to be addressed.
3. A description of the regulatory problem or need to be addressed.
4. A recommended addition, deletion, or amendment to the regulation.

C. The department shall respond to a petition within 90 days after the 21-day comment period following publication in the Virginia Register.

D. Nothing herein shall prohibit the department from receiving information from the public and proceeding on its own motion for rulemaking.

18 VAC 76-30-60. Notice of Intended Regulatory Action.

A. The Notice of Intended Regulatory Action (NOIRA) shall state the purpose of the action and a brief statement of the need or problem the proposed action will address.

B. The NOIRA shall indicate whether the department intends to hold a public hearing on the proposed regulation after it is published. If the department does not intend to hold a public hearing, it shall state the reason in the NOIRA.

C. If prior to the close of the 30-day comment period on the NOIRA, the department receives a request for a public hearing on the proposed regulation from at least 25 persons, such a hearing shall be scheduled.

Proposed Regulations

18 VAC 76-30-70. Notice of Comment Period.

A. The Notice of Comment Period (NOCP) shall indicate that copies of the proposed regulation are available electronically or from the department and may be requested in writing from the contact person specified in the NOCP.

B. The NOCP shall indicate that copies of the statement of substance, issues, basis, purpose, and estimated impact of the proposed regulation may also be requested in writing.

C. The NOCP shall make provision for comments pertaining to the proposed regulation by regular mail, Internet, facsimile or electronic means. With the exception of comment received at a scheduled public hearing, oral comment may not be accepted.

18 VAC 76-30-80. Notice of meeting.

A. At any meeting of the department or advisory committee, at which the formation or adoption of regulation is anticipated, the subject shall be described in a notice of meeting, which has been posted electronically on the Internet and transmitted to the Registrar for inclusion in The Virginia Register.

B. If the department anticipates action on a regulation for which an exemption to the Administrative Process Act is claimed, the notice of meeting shall indicate that a copy of the proposed regulation is available on a state website or upon request to the department at least two days prior to the meeting. A copy of the regulation shall be made available to the public attending such meeting.

18 VAC 76-30-90. Public hearings on regulations.

The department shall conduct a public hearing during the 60-day comment period following the publication of a proposed regulation or amendment to an existing regulation unless, at a noticed meeting, the department determines that a hearing is not required.

18 VAC 76-30-100. Periodic review of regulations.

A. Unless otherwise directed by executive order, the department shall conduct an informational proceeding at least every two years to receive comment on all existing regulations as to their effectiveness, efficiency, necessity, clarity, and cost of compliance.

B. Such proceeding may be conducted separately or in conjunction with other informational proceedings or hearings.

C. Notice of the proceeding shall be transmitted to the Registrar for inclusion in the Virginia Register and shall be sent to the mailing list identified in 18 VAC 76-30-30.

PART IV. ADVISORY COMMITTEES.

18 VAC 76-30-110. Appointment of committees.

A. The department may appoint an ad hoc advisory committee whose responsibility shall be to assist in the review and development of regulations for the department.

B. The department may appoint an ad hoc advisory committee to provide professional specialization or technical assistance when the department determines that such expertise is

necessary to address a specific regulatory issue or need or when groups of individuals register an interest in working with the agency.

18 VAC 76-30-120. Limitation of service.

A. An advisory committee that has been appointed by the department may be dissolved by the department when:

1. There is no response to the Notice of Intended Regulatory Action; or
2. The department determines that the promulgation of the regulation is either exempt or excluded from the requirements of the Administrative Process Act.

B. An advisory committee shall remain in existence no longer than 12 months from its initial appointment.

If the department determines that the specific regulatory need continues to exist beyond that time, it shall set a specific term for the committee of not more than six additional months.

At the end of that extended term, the department shall evaluate the continued need and may continue the committee for additional six-month terms.

VA.R. Doc. No. R02-261; Filed December 11, 2002, 11:36 a.m.

BOARD OF MEDICINE

Title of Regulations: **Voluntary Practice by Out-of-State Licensees.**

18 VAC 85-20. Regulations Governing the Practice of Medicine, Osteopathy, Podiatry, and Chiropractic (adding 18 VAC 85-20-225).

18 VAC 85-40. Regulations Governing the Practice of Respiratory Care Practitioners (adding 18 VAC 85-40-55).

18 VAC 85-80. Regulations Governing the Licensure of Occupational Therapists (adding 18 VAC 85-80-65).

18 VAC 85-101. Regulations Governing the Licensure of Radiologic Technologists and Radiologic Technologists-Limited (adding 18 VAC 85-101-145).

18 VAC 85-110. Regulations Governing the Practice of Licensed Acupuncturists (adding 18 VAC 85-110-145).

18 VAC 85-120. Regulations Governing the Certification of Athletic Trainers (adding 18 VAC 85-120-85).

Statutory Authority: §§ 54.1-2400 and 54.1-2901 of the Code of Virginia.

Public Hearing Date: February 6, 2003 - 8:15 a.m.

Public comments may be submitted until February 28, 2003.
(See Calendar of Events section for additional information)

Agency Contact: Elaine J. Yeatts, Agency Regulatory Coordinator, 6603 West Broad Street, Richmond, VA 23230, telephone (804) 662-9918, FAX (804) 662-9114, or e-mail elaine.yeatts@dhp.state.va.us.

Basis: Regulations are promulgated under the general authority of Chapter 24 of Title 54.1 of the Code of Virginia.

Section 54.1-2400 of the Code of Virginia provides the board the authority to promulgate regulations to administer the regulatory system.

The specific legal mandate to promulgate the regulation for the provision of voluntary health care services by out-of-state practitioners in clinics in underserved areas sponsored by nonprofit organizations is found in Chapter 740 of the 2002 Acts of Assembly.

Purpose: The purpose of the amended regulation is to ensure that out-of-state practitioners who are registered and authorized to provide treatment to patients have provided sufficient information to determine their eligibility and their standing with the licensing board of their state. While the treatment is being provided free of charge to underserved populations in the state, the board needs to carry out its statutory mandate to protect the public health, safety and welfare. Therefore, basic information on licensure must be verified by the board of the licensing state to ensure that a practitioner whose license has been previously suspended or revoked, who has been convicted of a felony or who is otherwise found to be in violation of applicable laws or regulations does not come into Virginia to practice, even on a voluntary basis.

Substance: Chapter 740 of the 2002 Acts of Assembly provides specific conditions under which a health care practitioner who is licensed in another state can provide free care in underserved areas of Virginia. Statutory requirements include that: (i) they do not regularly practice in Virginia; (ii) they hold a current valid license or certificate in another U. S. jurisdiction; (iii) they volunteer to provide free care; (iv) they file copies of their licenses or certificates in advance with the board; (v) they notify the board of the dates and location of services; and (vi) they acknowledge in writing that they will only provide services within the parameters stated in the application. The statute also provides specific requirements for the nonprofit organization sponsoring provision of health care and allows the board to charge a fee for each practitioner.

As also provided by the statute, the board has the right to deny practice to any person whose license or certificate has been previously revoked or suspended, who has been convicted of a felony, or who is otherwise found to be in violation of applicable laws or regulations. In order to protect the health, safety and welfare of the consuming public and to ensure that the care provided by out-of-state practitioners will be minimally competent, the board will use the information garnered from the application and verification from other states to determine whether the practitioner meets the criteria set forth in the law.

Issues: The primary advantages to the public of implementing the amended regulations are as follows: (i) additional practitioners may be available to staff voluntary clinics, especially in the southwestern part of the state with proximity to several other states; (ii) a requirement for licensure in another state to be verified will ensure that the practitioner holds a current, unrestricted license; and (iii) the requirement for a notarized statement from a representative of the nonprofit organization will ensure compliance with provisions of law for voluntary practice.

There are no disadvantages to the public as all amendments are intended to provide better access to qualified practitioners who are duly licensed in another state.

There are no advantages or disadvantages to the agency; the amended regulation does not impose a new responsibility on the board. Since the number of practitioners seeking registration is expected to remain very small, it does not involve additional cost or staff time.

Fiscal Impact: Projected cost to the state to implement and enforce:

Fund source: As a special fund agency, the board must generate sufficient revenue to cover its expenditures from nongeneral funds, specifically the renewal and application fees it charges to practitioners for necessary functions of regulation.

Budget activity by program or subprogram: There is no change required in the budget of the Commonwealth as a result of this program.

One-time versus ongoing expenditures: The agency will incur some one-time costs (less than \$2,000) for mailings to the Public Participation Guidelines mailing lists, conducting a public hearing, and sending copies of final regulations to regulated entities. Every effort will be made to incorporate those into anticipated mailings and board meetings already scheduled.

Projected cost to localities: There are no projected costs to localities.

Description of entities that are likely to be affected by regulation: The entities that are likely to be affected by these regulations would be licensed practitioners in other states.

Estimate of number of entities to be affected: There is no way to predict the number who may be affected, but, given the limited scope of the law, the number is expected to be very small. To day, no out-of-state practitioners have been authorized to practice under the emergency regulations.

Projected costs to the affected entities: The cost for compliance is \$10 to apply for authorization to practice at a specific location for a limited period of time.

Department of Planning and Budget's Economic Impact Analysis: The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007 H of the Administrative Process Act and Executive Order Number 21 (02). Section 2.2-4007 H requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. The analysis presented below represents DPB's best estimate of these economic impacts.

Summary of the proposed regulation. Pursuant to a legislative mandate, the Board of Medicine (board) proposes to establish

Proposed Regulations

registration for voluntary practice by out-of-state licensees for the following professions: medicine, osteopathic medicine, podiatry, chiropractic, respiratory care practitioner, occupational therapist, radiologic technologist, and radiologic technologist-limited.

Estimated economic impact. Chapter 740 of the 2002 Acts of Assembly mandates that the board promulgate regulations to permit individuals licensed in one of the healing arts (or other profession regulated by the board) by another state to volunteer their health care services in Virginia without needing to obtain a Virginia license. The legislation sets very narrow criteria for who may qualify. Only individuals who are licensed in other states, but not in Virginia, and who volunteer "to provide free health care in an underserved area of the Commonwealth under the auspices of a publicly supported, nonprofit organization with no paid employees that sponsors the provision of health care to populations of underserved people throughout the world"¹ may register to perform volunteer health care work in the Commonwealth without a Virginia license.

The board's proposed regulatory language essentially reiterates the requirements listed in § 54.1-2901 of the Code of Virginia with details on how the applicant is to present their qualifications, as well as establishes a \$10 processing fee for the Department of Health Professions' administrative costs.

The requirement that not only must the volunteer not receive remuneration, but that the nonprofit organization have no paid employees is very restrictive. Many, if not most, charitable organizations would not meet this criterion. For example, the Red Cross has paid employees and an out-of-state practitioner could not volunteer to provide health care services through the Red Cross in Virginia under this provision. The requirement that the nonprofit organization sponsors the provision of health care to populations of underserved people throughout the world is vague and potentially extremely restrictive. It seems to exclude all noninternational organizations. Read literally, it also seems to exclude international organizations that do not provide health care to populations of underserved people in all areas of the world. The proposed regulatory language was adopted as emergency regulations on July 19, 2002. As of late November 2002, no one has applied to the board for voluntary practice in Virginia. Given how highly restrictive the qualification criteria are, it is unlikely that more than a very small number of individuals, if any at all, will apply to the board for voluntary practice registration in the future. Since registration for volunteer services is expected to happen very infrequently, the proposed regulatory amendment will have little effect.

Businesses and entities affected. The proposed amendments will likely affect very few Virginians. Given the highly restrictive nature of the registration qualifications, very few out-of-state health care practitioners are expected to register and provide volunteer health care services for underserved Virginians.

Localities particularly affected. The proposed regulations, if used at all, will mostly affect rural areas of the Commonwealth, particularly in southwestern Virginia.

Projected impact on employment. The proposed amendments will not significantly affect employment levels.

Effects on the use and value of private property. The proposed amendments will not have a large impact on the use and value of private property.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The Board of Medicine concurs with the analysis of the Department of Planning and Budget for amendments to regulations, pursuant to statutory requirements for voluntary practice by out-of-state practitioners.

Summary:

The proposed amendments establish registration requirements for voluntary practice by out-of-state doctors of medicine, osteopathic medicine, podiatry or chiropractic; respiratory care practitioners; occupational therapists; radiologic technologists and radiologic technologists-limited; acupuncturists; and athletic trainers.

18 VAC 85-20-225. Registration for voluntary practice by out-of-state licenses.

Any doctor of medicine, osteopathic medicine, podiatry or chiropractic who does not hold a license to practice in Virginia and who seeks registration to practice under subdivision 27 of § 54.1-2901 of the Code of Virginia on a voluntary basis under the auspices of a publicly supported, all volunteer, nonprofit organization with no paid employees that sponsors the provision of health care to populations of underserved people throughout the world shall:

- 1. File a complete application for registration on a form provided by the board at least 15 days prior to engaging in such practice. An incomplete application will not be considered;*
- 2. Provide a complete record of professional licensure in each state in which he has held a license and a copy of any current license;*
- 3. Provide the name of the nonprofit organization, the dates and location of the voluntary provision of services;*
- 4. Pay a registration fee of \$10; and*
- 5. Provide a notarized statement from a representative of the nonprofit organization attesting to its compliance with provisions of subdivision 27 of § 54.1-2901 of the Code of Virginia.*

18 VAC 85-40-55. Registration for voluntary practice by out-of-state licensees.

Any respiratory care practitioner who does not hold a license to practice in Virginia and who seeks registration to practice under subdivision 27 of § 54.1-2901 of the Code of Virginia on a voluntary basis under the auspices of a publicly supported, all volunteer, nonprofit organization with no paid employees that sponsors the provision of health care to populations of underserved people throughout the world shall:

- 1. File a complete application for registration on a form provided by the board at least 15 days prior to engaging in*

¹ Source: Section 54.1-2901 of the Code of Virginia.

such practice. An incomplete application will not be considered;

2. Provide a complete record of professional licensure in each state in which he has held a license and a copy of any current license;

3. Provide the name of the nonprofit organization, the dates and location of the voluntary provision of services;

4. Pay a registration fee of \$10; and

5. Provide a notarized statement from a representative of the nonprofit organization attesting to its compliance with provisions of subdivision 27 of § 54.1-2901 of the Code of Virginia.

18 VAC 85-80-65. Registration for voluntary practice by out-of-state licensees.

Any occupational therapist who does not hold a license to practice in Virginia and who seeks registration to practice under subdivision 27 of § 54.1-2901 of the Code of Virginia on a voluntary basis under the auspices of a publicly supported, all volunteer, nonprofit organization with no paid employees that sponsors the provision of health care to populations of underserved people throughout the world shall:

1. File a complete application for registration on a form provided by the board at least 15 days prior to engaging in such practice. An incomplete application will not be considered;

2. Provide a complete record of professional licensure in each state in which he has held a license and a copy of any current license;

3. Provide the name of the nonprofit organization, the dates and location of the voluntary provision of services;

4. Pay a registration fee of \$10; and

5. Provide a notarized statement from a representative of the nonprofit organization attesting to its compliance with provisions of subdivision 27 of § 54.1-2901 of the Code of Virginia.

18 VAC 85-101-145. Registration for voluntary practice by out-of-state licensees.

Any radiologic technologist or radiologic technologist-limited who does not hold a license to practice in Virginia and who seeks registration to practice under subdivision 27 of § 54.1-2901 of the Code of Virginia on a voluntary basis under the auspices of a publicly supported, all volunteer, nonprofit organization with no paid employees that sponsors the provision of health care to populations of underserved people throughout the world shall:

1. File a complete application for registration on a form provided by the board at least 15 days prior to engaging in such practice. An incomplete application will not be considered;

2. Provide a complete record of professional licensure in each state in which he has held a license and a copy of any current license;

3. Provide the name of the nonprofit organization, the dates and location of the voluntary provision of services;

4. Pay a registration fee of \$10; and

5. Provide a notarized statement from a representative of the nonprofit organization attesting to its compliance with provisions of subdivision 27 of § 54.1-2901 of the Code of Virginia.

18 VAC 85-110-145. Registration for voluntary practice by out-of-state licensees.

Any licensed acupuncturist who does not hold a license to practice in Virginia and who seeks registration to practice under subdivision 27 of § 54.1-2901 of the Code of Virginia on a voluntary basis under the auspices of a publicly supported, all volunteer, nonprofit organization with no paid employees that sponsors the provision of health care to populations of underserved people throughout the world shall:

1. File an application for registration on a form provided by the board at least 15 days prior to engaging in such practice;

2. Provide a complete record of professional licensure in each state in which he has held a license and a copy of any current license;

3. Provide the name of the nonprofit organization, the dates and location of the voluntary provision of services;

4. Pay a registration fee of \$10; and

5. Provide a notarized statement from a representative of the nonprofit organization attesting to its compliance with provisions of subdivision 27 of § 54.1-2901 of the Code of Virginia.

18 VAC 85-120-85. Registration for voluntary practice by out-of-state trainers.

Any athletic trainer who does not hold a certificate to practice in Virginia and who seeks registration to practice on a voluntary basis under the auspices of a publicly supported, all volunteer, nonprofit organization with no paid employees that sponsors the provision of health care to populations of underserved people throughout the world shall:

1. File an application for registration on a form provided by the board at least 15 days prior to engaging in such practice;

2. Provide a complete record of professional certification or licensure in each state in which he has held a certificate or license and a copy of any current certificate or license;

3. Provide the name of the nonprofit organization, the dates and location of the voluntary provision of services;

4. Pay a registration fee of \$10; and

5. Provide a notarized statement from a representative of the nonprofit organization attesting to its compliance with provisions of subdivision 27 of § 54.1-2901 of the Code of Virginia.

V.A.R. Doc. Nos. R02-282, R02-283, R02-285, R02-286, R02-287, and R02-288; Filed December 11, 2002, 11:37 a.m.

Proposed Regulations

BOARD OF NURSING

Title of Regulation: 18 VAC 90-20. Regulations Governing the Practice of Nursing (adding 18 VAC 90-20-271).

Statutory Authority: § 54.1-2400 of the Code of Virginia.

Public Hearing Date: January 28, 2003 - 1:30 p.m.

Public comments may be submitted until February 28, 2003.
(See Calendar of Events section for additional information)

Agency Contact: Elaine J. Yeatts, Agency Regulatory Coordinator, Department of Health Professions, 6603 W. Broad Street, Richmond, VA 23230, telephone (804) 662-9918, FAX (804) 662-9114 or e-mail elaine.yeatts@dhp.state.va.us.

Basis: Regulations are promulgated under the general authority of Chapter 24 of Title 54.1 of the Code of Virginia. Section 54.1-2400 of the Code of Virginia provides the board the authority to promulgate regulations to administer the regulatory system.

The specific legal mandate to promulgate the regulation for the provision of voluntary health care services by out-of-state practitioners in clinics in underserved areas sponsored by nonprofit organizations is found in Chapter 740 of the 2002 Acts of Assembly.

Purpose: The purpose of the amended regulation is to ensure that out-of-state practitioners who are registered and authorized to provide treatment to patients have provided sufficient information to determine their eligibility and their standing with the licensing board of their state. While the treatment is being provided free of charge to underserved populations in the state, the board needs to carry out its statutory mandate to protect the public health, safety and welfare. Therefore, basic information on licensure must be verified by the board of the licensing state to ensure that a practitioner whose license has been previously suspended or revoked, who has been convicted of a felony or who is otherwise found to be in violation of applicable laws or regulations does not come into Virginia to practice, even on a voluntary basis.

Substance: Chapter 740 of the 2002 Acts of Assembly provides specific conditions under which a health care practitioner who is licensed in another state can provide free care in underserved areas of Virginia. Statutory requirements include that: (i) they do not regularly practice in Virginia; (ii) they hold a current valid license or certificate in another U. S. jurisdiction; (iii) they volunteer to provide free care; (iv) they file copies of their licenses or certificates in advance with the board; (v) they notify the board of the dates and location of services; and (vi) they acknowledge in writing that they will only provide services within the parameters stated in the application. The statute also provides specific requirements for the nonprofit organization sponsoring provision of health care and allows the board to charge a fee for each practitioner.

As also provided by the statute, the board has the right to deny practice to any person whose license or certificate has been previously revoked or suspended, who has been convicted of a felony, or who is otherwise found to be in

violation of applicable laws or regulations. In order to protect the health, safety and welfare of the consuming public and to ensure that the care provided by out-of-state practitioners will be minimally competent, the board will use the information garnered from the application and verification from other states to determine whether the practitioner meets the criteria set forth in the law.

Issues: The primary advantages to the public of implementing the amended regulations are as follows: (i) additional practitioners may be available to staff voluntary clinics, especially in the southwestern part of the state with proximity to several other states; (ii) a requirement for licensure in another state to be verified will ensure that the practitioner holds a current, unrestricted license; and (iii) the requirement for a notarized statement from a representative of the nonprofit organization will ensure compliance with provisions of law for voluntary practice.

There are no disadvantages to the public as all amendments are intended to provide better access to qualified practitioners who are duly licensed in another state.

There are no advantages or disadvantages to the agency; the amended regulation does not impose a new responsibility on the board. Since the number of practitioners seeking registration is expected to remain very small, it does not involve additional cost or staff time.

Fiscal Impact: Projected cost to the state to implement and enforce:

Fund source: As a special fund agency, the board must generate sufficient revenue to cover its expenditures from nongeneral funds, specifically the renewal and application fees it charges to practitioners for necessary functions of regulation.

Budget activity by program or subprogram: There is no change required in the budget of the Commonwealth as a result of this program.

One-time versus ongoing expenditures: The agency will incur some one-time costs (less than \$3,000) for mailings to the Public Participation Guidelines mailing lists, conducting a public hearing, and sending copies of final regulations to regulated entities. Every effort will be made to incorporate those into anticipated mailings and board meetings already scheduled.

Projected cost to localities: There are no projected costs to localities.

Description of entities that are likely to be affected by regulation: The entities that are likely to be affected by these regulations would be licensed nurses in other states.

Estimate of number of entities to be affected: There is no way to predict the number who may be affected, but, given the limited scope of the law, the number is expected to be very small. To day, no out-of-state nurses have been authorized to practice under the emergency regulations.

Projected costs to the affected entities: The cost for compliance is \$10 to apply for authorization to practice at a specific location for a limited period of time.

Department of Planning and Budget's Economic Impact Analysis: The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007 H of the Administrative Process Act and Executive Order Number 21 (02). Section 2.2-4007 H requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. The analysis presented below represents DPB's best estimate of these economic impacts.

Summary of the proposed regulation. Pursuant to a legislative mandate, the Board of Nursing (board) proposes to establish registration for voluntary nursing practice by out-of-state licensees.

Estimated economic impact. Chapter 740 of the 2002 Acts of Assembly mandates that the board promulgate regulations to permit individuals licensed as nurses in other states to volunteer their nursing services in Virginia without needing to obtain a Virginia license. The legislation sets very narrow criteria for who may qualify. Only individuals who are licensed in other states, but not in Virginia, and who volunteer "to provide free health care in an underserved area of the Commonwealth under the auspices of a publicly supported, nonprofit organization with no paid employees that sponsors the provision of health care to populations of underserved people throughout the world"¹ may register to perform volunteer nursing work in the Commonwealth without a Virginia nursing license.

The board's proposed regulatory language essentially reiterates the requirements listed in § 54.1-3001 of the Code of Virginia with details on how the applicant is to present their qualifications, as well as establishes a \$10 processing fee for the Department of Health Professions' administrative costs.

The requirement that not only must the volunteer not receive remuneration, but that the nonprofit organization have no paid employees is very restrictive. Many, if not most, charitable organizations would not meet this criterion. For example, the Red Cross has paid employees and an out-of-state nurse could not volunteer to provide nursing services through the Red Cross in Virginia under this provision. The requirement that the nonprofit organization sponsors the provision of health care to populations of underserved people throughout the world is vague and potentially extremely restrictive. It seems to exclude all noninternational organizations. Read literally, it also seems to exclude international organizations that do not provide health care to populations of underserved people in all areas of the world. The proposed regulatory language was adopted as emergency regulations on July 19, 2002. As of now, mid-November 2002, no one has applied to register for voluntary nursing practice in Virginia. Given how highly restrictive the qualification criteria are, it is unlikely that more

than a very small number of individuals will apply for voluntary nursing practice registration in the future.

For the small population of individuals who could potentially meet the qualification criteria and wish to perform volunteer work in Virginia and are licensed in another state but not in Virginia, the registration for voluntary practice would be beneficial. Otherwise such individuals would need to obtain a Virginia license by endorsement, which has a \$105 fee (versus the \$10 registration fee) plus would take considerably longer to obtain than the registration.² When an out-of-state nurse applies for and qualifies for the registration and performs their volunteer work, citizens in Virginia will benefit by receiving nursing care that they may not have otherwise received. The Code of Virginia (§ 54.1-3001) stipulates that the voluntary services must be for an underserved population and thus will most likely not provide competition for existing services. Since registration for volunteer services is expected to happen very infrequently, the proposed regulatory amendment will have little effect.

Businesses and entities affected. The proposed amendments will likely affect very few Virginians. Given the highly restrictive nature of the registration qualifications, very few out-of-state nurses are expected to register and provide volunteer nursing services for underserved Virginians.

Localities particularly affected. The proposed regulations, if used at all, will mostly affect rural areas of the Commonwealth, particularly in southwestern Virginia.

Projected impact on employment. The proposed amendments will not significantly affect employment levels.

Effects on the use and value of private property. The proposed amendments will not have a large impact on the use and value of private property.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The Board of Nursing concurs with the analysis of the Department of Planning and Budget for amendments to 18 VAC 90-20, pursuant to statutory requirements for voluntary practice by out-of-state practitioners.

Summary:

The proposed amendments establish registration requirements for voluntary nurse practice by out-of-state licensees.

18 VAC 90-20-271. Registration for voluntary practice by out-of-state licensees.

Any licensed nurse who does not hold a license to practice in Virginia and who seeks registration to practice on a voluntary basis under the auspices of a publicly supported, all volunteer, nonprofit organization with no paid employees that sponsors the provision of health care to populations of underserved people throughout the world shall:

- 1. File a complete application for registration on a form provided by the board at least 15 days prior to engaging in*

¹ Source: Section 54.1-3001 of the Code of Virginia.

² Source: Department of Health Professions.

Proposed Regulations

such practice. An incomplete application will not be considered;

2. Provide a complete record of professional licensure in each state in which he has held a license and a copy of every current license;

3. Provide the name of the nonprofit organization, the dates and location of the voluntary provision of services;

4. Pay a registration fee of \$10; and

5. Provide a notarized statement from a representative of the nonprofit organization attesting to its compliance with provisions of subdivision 11 of § 54.1-3001 of the Code of Virginia.

NOTICE: The forms used in administering 18 VAC 90-20, Regulations Governing the Practice of Nursing, are not being published due to the large number; however, the name of each form is listed below. The forms are available for public inspection at the Board of Nursing, 6603 W. Broad Street, Richmond, Virginia, or at the office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia.

FORMS

Application for Licensure by Endorsement--Registered Nurse (rev. ~~5/02~~ 10/02).

Instructions for Licensure by Endorsement--Registered Nurse (rev. ~~5/02~~ 10/02).

Application for Licensure by Endorsement--Licensed Practical Nurse (rev. ~~5/02~~ 10/02).

Instructions for Licensure by Endorsement--Licensed Practical Nurse (rev. 10/02).

Instructions for Filing Application for Licensure by Examination for Registered Nurses (rev. ~~4/00~~ 10/02).

Application for Licensure by Examination--Registered Nurse (rev. ~~4/04~~ 10/02).

Instructions for Filing Application for Licensure by Examination for Practical Nurses (rev. ~~4/09~~ 10/02).

Application for Licensure by Examination--Licensed Practical Nurses (rev. ~~4/04~~ 10/02).

Instructions for Filing Application for Licensure by Repeat Examination for Registered Nurses (rev. ~~8/97~~ 10/02).

Application for Licensure by Repeat Examination for Registered Nurse (rev. ~~8/99~~ 10/02).

Instructions for Filing Application for Licensure by Repeat Examination for Practical Nurses (rev. ~~4/99~~ 10/02).

Application for Licensure by Repeat Examination for Licensed Practical Nurse (rev. ~~8/99~~ 10/02).

Instructions for Filing Application for Licensure by Examination for Licensed Practical Nurses Educated in Other Countries (rev. ~~4/04~~ 10/02).

Application for Licensure by Examination for Registered Nurses Educated in Other Countries (rev. ~~4/04~~ 10/02).

Temporary Exemption To Licensure (eff. ~~5/04~~ 10/02).

~~Instructions for Filing Application for Licensure by Examination by Practical Nurses from Other Countries (rev. 4/00).~~

Application for Licensure by Examination for Licensed Practical Nurses Educated in Other Countries (rev. ~~4/04~~ 10/02).

Application for Reinstatement of License as a Registered Nurse (rev. ~~2/00~~ 10/02).

Application for Reinstatement of License as a Licensed Practical Nurse (rev. ~~4/04~~ 10/02).

~~License Verification of Licensure or Registration Form (rev. 4/95 10/02).~~

Renewal Notice and Application, 0001, RN (rev. ~~2/00~~ 12/02).

Renewal Notice and Application, 0002, LPN (rev. 12/02).

Renewal Notice and Application, 0015, Clinical Nurse Specialist (rev. 12/02).

Application for Registration as a Clinical Nurse Specialist (rev. ~~4/04~~ 12/02).

Survey Visit Report (rev. 12/02).

Annual Report for Registered Nursing Programs (rev. 12/02).

Annual Report for Practical Nursing Programs (rev. 12/02).

~~Certified Nurse Aide Renewal Notice and Application, 1401, Certified Nurse Aide (rev. 2/00 12/02).~~

Application for Reinstatement of Nurse Aide Certification (rev. ~~8/99~~ 12/02).

Instructions for Application for Reinstatement of Nurse Aide Certification (rev. 12/02).

Application for Nurse Aide Certification by Endorsement (rev. 12/02).

Instructions for Application for Nurse Aide Certification by Endorsement (rev. 12/02).

Nurse Aide Certification Verification Form (rev. 12/02).

Application to Establish Nurse Aide Education Program (rev. ~~5/99~~ 12/02).

Nurse Aide Education Program Evaluation Report (rev. 5/99 12/02).

Nurse Aide Education Program On-Site Review Report (rev. 5/99 12/02).

Evaluation of On-Site Visitor (rev. 12/02).

Request for Statistical Information (rev. 12/02).

Application for Registration for Volunteer Practice (eff. 12/02).

Sponsor Certification for Volunteer Registration (eff. 12/02).

VA.R. Doc. No. R02-289; Filed December 11, 2002, 11:44 a.m.

BOARD OF OPTOMETRY

Title of Regulation: 18 VAC 105-20. Regulations Governing the Practice of Optometry (adding 18 VAC 105-20-75).

Statutory Authority: §§ 54.1-2400 and 54.1-3202 of the Code of Virginia.

Public Hearing Date: January 24, 2003 - noon.

Public comments may be submitted until February 28, 2003.
(See Calendar of Events section for additional information)

Agency Contact: Elaine J. Yeatts, Agency Regulatory Coordinator, Department of Health Professions, 6603 W. Broad Street, Richmond, VA 23230, telephone (804) 662-9918, FAX (804) 662-9114 or e-mail elaine.yeatts@dhp.state.va.us.

Basis: Regulations are promulgated under the general authority of Chapter 24 of Title 54.1 of the Code of Virginia. Section 54.1-2400 (6) provides the board the authority to promulgate regulations to administer the regulatory system.

The specific legal mandate to promulgate the regulation for the provision of voluntary health care services by out-of-state practitioners in clinics in underserved areas sponsored by nonprofit organizations is found in § 54.1-3202 of the Code of Virginia.

Purpose: The purpose of the amended regulation is to ensure that out-of-state practitioners who are registered and authorized to provide treatment to patients have provided sufficient information to determine their eligibility and their standing with the licensing board of their state. While the treatment is being provided free of charge to underserved populations in the state, the board needs to carry out its statutory mandate to protect the public health, safety and welfare. Therefore, basic information on licensure must be verified by the board of the licensing state to ensure that a practitioner whose license has been previously suspended or revoked, who has been convicted of a felony or who is otherwise found to be in violation of applicable laws or regulations does not come into Virginia to practice, even on a voluntary basis.

Substance: Chapter 740 of the 2002 Acts of Assembly provides specific conditions under which a health care practitioner who is licensed in another state can provide free care in underserved areas of Virginia. Statutory requirements include: (i) that they do not regularly practice in Virginia; (ii) that they hold a current valid license or certificate in another U. S. jurisdiction; (iii) that they volunteer to provide free care; (iv) that they file copies of their licenses or certificates in advance with the board; (v) that they notify the board of the dates and location of services; and (vi) that they acknowledge in writing that they will only provide services within the parameters stated in the application. The statute also provides specific requirements for the nonprofit organization sponsoring provision of health care and allows the board to charge a fee for each practitioner.

As also provided by the statute, the board has the right to deny practice to any person whose license or certificate has been previously revoked or suspended, who has been

convicted of a felony, or who is otherwise found to be in violation of applicable laws or regulations. In order to protect the health, safety and welfare of the consuming public and to ensure that the care provided by out-of-state practitioners will be minimally competent, the board will use the information garnered from the application and verification from other states to determine whether the practitioner meets the criteria set forth in the law.

Issues: The primary advantages to the public of implementing the amended regulations are as follows: (i) additional practitioners may be available to staff voluntary clinics, especially in the Southwestern part of the state with proximity to several other states; (ii) a requirement for licensure in another state to be verified will ensure that the practitioner holds a current, unrestricted license; and (iii) the requirement for a notarized statement from a representative of the nonprofit organization will ensure compliance with provisions of law for voluntary practice.

There are no disadvantages to the public as all amendments are intended to provide better access to qualified practitioners who are duly licensed in another state.

There are no advantages or disadvantages to the agency; the amended regulation does not impose a new responsibility on the board. Since the number of practitioners seeking registration is expected to remain very small, it does not involve additional cost or staff time.

Fiscal Impact: Projected cost to the state to implement and enforce:

Fund source: As a special fund agency, the board must generate sufficient revenue to cover its expenditures from nongeneral funds, specifically the renewal and application fees it charges to practitioners for necessary functions of regulation.

Budget activity by program or subprogram: There is no change required in the budget of the Commonwealth as a result of this program.

One-time versus ongoing expenditures: The agency will incur some one-time costs (less than \$1,000) for mailings to the Public Participation Guidelines mailing lists, conducting a public hearing, and sending copies of final regulations to regulated entities. Every effort will be made to incorporate those into anticipated mailings and board meetings already scheduled.

Projected cost to localities. There are no projected costs to localities.

Description of entities that are likely to be affected by regulation. The entities that are likely to be affected by these regulations would be licensed optometrists in other states.

Estimate of number of entities to be affected. There is no way to predict the number who may be affected, but, given the limited scope of the law, the number is expected to be very small. To day, no out-of-state optometrists have been authorized to practice under the emergency regulations.

Proposed Regulations

Projected costs to the affected entities. The cost for compliance is \$10 to apply for authorization to practice at a specific location for a limited period of time.

Department of Planning and Budget's Economic Impact Analysis: The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007 H of the Administrative Process Act and Executive Order Number 21 (02). Section 2.2-4007 H requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. The analysis presented below represents DPB's best estimate of these economic impacts.

Summary of the proposed regulation. Pursuant to a legislative mandate, the Board of Optometry (board) proposes to establish registration for voluntary optometric practice by out-of-state licensees.

Estimated economic impact. Chapter 740 of the 2002 Acts of Assembly mandates that the board promulgate regulations to permit individuals licensed as optometrists in other states to volunteer their optometric services in Virginia without needing to obtain a Virginia license. The legislation sets very narrow criteria for who may qualify. Only individuals who are licensed in other states, but not in Virginia, and who volunteer "to provide free health care in an underserved area of the Commonwealth under the auspices of a publicly supported, nonprofit organization with no paid employees that sponsors the provision of health care to populations of underserved people throughout the world"¹ may register to perform volunteer optometric work in the Commonwealth without a Virginia optometric license.

The board's proposed regulatory language essentially reiterates the requirements listed in § 54.1-3202 of the Code of Virginia with details on how the applicant is to present their qualifications, as well as establishes a \$10 processing fee for the Department of Health Professions' administrative costs.

The requirement that not only must the volunteer not receive remuneration, but that the nonprofit organization have no paid employees is very restrictive. Many, if not most, charitable organizations would not meet this criterion. For example, the Red Cross has paid employees and an out-of-state optometrist could not volunteer to provide optometric services through the Red Cross in Virginia under this provision. The requirement that the nonprofit organization sponsors the provision of health care to populations of underserved people throughout the world is vague and potentially extremely restrictive. It seems to exclude all noninternational organizations. Read literally, it also seems to exclude international organizations that do not provide health care to populations of underserved people in all areas of the world. The proposed regulatory language was adopted as

emergency regulations on July 19, 2002. As of now, mid-November 2002, no one has applied to register for voluntary optometric practice in Virginia. Given how highly restrictive the qualification criteria are, it is unlikely that more than a very small number of individuals will apply for voluntary optometric practice registration in the future.

For the small population of individuals who could potentially meet the qualification criteria and wish to perform volunteer work in Virginia and are licensed in another state but not in Virginia, the registration for voluntary practice would be beneficial. Otherwise such individuals would need to obtain a Virginia license by endorsement, which has a \$245 fee (versus the \$10 registration fee) plus would take considerably longer to obtain than the registration.² When an out-of-state optometrist applies for and qualifies for the registration and performs their volunteer work, citizens in Virginia will benefit by receiving optometric care that they may not have otherwise received. The Code of Virginia (§ 54.1-3202) stipulates that the voluntary services must be for an underserved population and thus will most likely not provide competition for existing services. Since registration for volunteer services is expected to happen very infrequently, the proposed regulatory amendment will have little effect.

Businesses and entities affected. The proposed amendments will likely affect very few Virginians. Given the highly restrictive nature of the registration qualifications, very few out-of-state optometrists are expected to register and provide volunteer optometric services for underserved Virginians.

Localities particularly affected. The proposed regulations, if used at all, will mostly affect rural areas of the Commonwealth, particularly in southwestern Virginia.

Projected impact on employment. The proposed amendments will not significantly affect employment levels.

Effects on the use and value of private property. The proposed amendments will not have a large impact on the use and value of private property.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The Board of Optometry concurs with the analysis of the Department of Planning and Budget for amendments to 18 VAC 105-20, pursuant to statutory requirements for voluntary practice by out-of-state practitioners.

Summary:

The amendment complies with Chapter 740 of the 2002 Acts of Assembly, which mandates that the board promulgate regulations for an out-of-state practitioner to be licensed to volunteer his services to a nonprofit organization that has no paid employees and offers health care to underprivileged populations throughout the world. The enactment clause requires the board to adopt emergency regulations, and the proposed regulations are identical to and must replace those regulations prior to their expiration on July 18, 2003. The added section sets forth the

¹ Source: Section § 54.1-3202 of the Code of Virginia.

² Source: Department of Health Professions.

information and documentation that must be provided prior to such service to ensure compliance with the statute.

CHAPTER 20.
REGULATIONS OF THE VIRGINIA BOARD GOVERNING
THE PRACTICE OF OPTOMETRY.

18 VAC 105-20-75. Registration for voluntary practice by out-of-state licensees.

Any optometrist who does not hold a license to practice in Virginia and who seeks registration to practice on a voluntary basis under the auspices of a publicly supported, all volunteer, nonprofit organization with no paid employees that sponsors the provision of health care to populations of underserved people throughout the world shall:

1. File a complete application for registration on a form provided by the board at least 15 days prior to engaging in such practice. An incomplete application will not be considered;
2. Provide a complete list of professional licensure in each state in which he has held a license and a copy of any current license;
3. Provide the name of the nonprofit organization, the dates and location of the voluntary provision of services;
4. Pay a registration fee of \$10; and
5. Provide a notarized statement from a representative of the nonprofit organization attesting to its compliance with provisions of subdivision 2 of § 54.1-3202 of the Code of Virginia.

NOTICE: The forms used in administering 18 VAC 105-20, Regulations of the Virginia Board of Optometry, are not being published due to the large number; however, the name of each form is listed below. The forms are available for public inspection at the Board of Optometry, 6603 W. Broad Street, Richmond, Virginia, or at the office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia.

FORMS

- Optometry Licensure Applicant Instructions (rev. 11/02).
- Form A, Application for a License to Practice Optometry (rev. 11/02).
- ~~Form B, Licensure Verification (rev. 11/02).~~
- Diagnostic Pharmaceutical Agents Endorsement Application (rev. 11/02).
- Professional Designation Application (rev. 11/02).
- Professional Designation Application Letter (rev. ~~7/04~~ 12/02).
- Application for Reinstatement (rev. 11/02).
- License Renewal Notice and Application, 0601, Optometrist (rev. ~~5/02~~ 12/02).
- License Renewal Notice and Application, 0603, Professional Designation (rev. 12/02).
- Clearance from Other State Boards (eff. 11/02).

Application for Registration for Volunteer Practice (eff. 12/02).

Sponsor Certification for Volunteer Registration (eff. 12/02).

VA.R. Doc. No. R02-290; Filed December 11, 2002, 11:34 a.m.

BOARD OF PHARMACY

Title of Regulation: 18 VAC 110-20. Regulations Governing the Practice of Pharmacy (adding 18 VAC 110-20-75).

Statutory Authority: § 54.1-2400 of the Code of Virginia.

Public Hearing Date: February 10, 2003 - 9 a.m.

Public comments may be submitted until February 28, 2003.
(See Calendar of Events section for additional information)

Agency Contact: Elaine J. Yeatts, Agency Regulatory Coordinator, Department of Health Professions, 6603 W. Broad Street, Richmond, VA 23230, telephone (804) 662-9918, FAX (804) 662-9114 or e-mail elaine.yeatts@dhp.state.va.us.

Basis: Regulations are promulgated under the general authority of Chapter 24 of Title 54.1 of the Code of Virginia. Section 54.1-2400 of the Code of Virginia provides the board the authority to promulgate regulations to administer the regulatory system.

The specific legal mandate to promulgate the regulation for the provision of voluntary health care services by out-of-state practitioners in clinics in underserved areas sponsored by nonprofit organizations is found in Chapter 740 of the 2002 Acts of Assembly.

Purpose: The purpose of the amended regulation is to ensure that out-of-state practitioners who are registered and authorized to provide treatment to patients have provided sufficient information to determine their eligibility and their standing with the licensing board of their state. While the treatment is being provided free of charge to underserved populations in the state, the board needs to carry out its statutory mandate to protect the public health, safety and welfare. Therefore, basic information on licensure must be verified by the board of the licensing state to ensure that a practitioner whose license has been previously suspended or revoked, who has been convicted of a felony or who is otherwise found to be in violation of applicable laws or regulations does not come into Virginia to practice, even on a voluntary basis.

Substance: Chapter 740 of the 2002 Acts of Assembly provides specific conditions under which a health care practitioner who is licensed in another state can provide free care in underserved areas of Virginia. Statutory requirements include that: (i) they do not regularly practice in Virginia; (ii) they hold a current valid license or certificate in another U.S. jurisdiction; (iii) they volunteer to provide free care; (iv) they file copies of their licenses or certificates in advance with the board; (v) they notify the board of the dates and location of services; and (vi) they acknowledge in writing that they will only provide services within the parameters stated in the application. The statute also provides specific requirements for the nonprofit organization sponsoring provision of health

Proposed Regulations

care and allows the board to charge a fee for each practitioner.

As also provided by the statute, the board has the right to deny practice to any person whose license or certificate has been previously revoked or suspended, who has been convicted of a felony, or who is otherwise found to be in violation of applicable laws or regulations. In order to protect the health, safety and welfare of the consuming public and to ensure that the care provided by out-of-state practitioners will be minimally competent, the board will use the information garnered from the application and verification from other states to determine whether the practitioner meets the criteria set forth in the law.

Issues: The primary advantages to the public of implementing the amended regulations are as follows: (i) additional practitioners may be available to staff voluntary clinics, especially in the southwestern part of the state with proximity to several other states; (ii) a requirement for licensure in another state to be verified will ensure that the practitioner holds a current, unrestricted license; and (iii) the requirement for a notarized statement from a representative of the nonprofit organization will ensure compliance with provisions of law for voluntary practice.

There are no disadvantages to the public as all amendments are intended to provide better access to qualified practitioners who are duly licensed in another state.

There are no advantages or disadvantages to the agency; the amended regulation does not impose a new responsibility on the board. Since the number of practitioners seeking registration is expected to remain very small, it does not involve additional cost or staff time.

Fiscal Impact: Projected cost to the state to implement and enforce:

Fund source: As a special fund agency, the board must generate sufficient revenue to cover its expenditures from nongeneral funds, specifically the renewal and application fees it charges to practitioners for necessary functions of regulation.

Budget activity by program or subprogram: There is no change required in the budget of the Commonwealth as a result of this program.

One-time versus ongoing expenditures: The agency will incur some one-time costs (less than \$1,000) for mailings to the Public Participation Guidelines mailing lists, conducting a public hearing, and sending copies of final regulations to regulated entities. Every effort will be made to incorporate those into anticipated mailings and board meetings already scheduled.

Projected cost to localities: There are no projected costs to localities.

Description of entities that are likely to be affected by regulation: The entities that are likely to be affected by these regulations would be licensed pharmacists in other states.

Estimate of number of entities to be affected: There is no way to predict the number who may be affected, but, given the

limited scope of the law, the number is expected to be very small. To day, no out-of-state pharmacists have been authorized to practice under the emergency regulations.

Projected costs to the affected entities: The cost for compliance is \$10 to apply for authorization to practice at a specific location for a limited period of time.

Department of Planning and Budget's Economic Impact Analysis: The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007 H of the Administrative Process Act and Executive Order Number 21 (02). Section 2.2-4007 H requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. The analysis presented below represents DPB's best estimate of these economic impacts.

Summary of the proposed regulation. Pursuant to a legislative mandate, the Board of Pharmacy (board) proposes to establish registration for voluntary pharmacist practice by out-of-state licensees.

Estimated economic impact. Chapter 740 of the 2002 Acts of Assembly mandates that the board promulgate regulations to permit individuals licensed as pharmacists in other states to volunteer their pharmacist services in Virginia without needing to obtain a Virginia license. The legislation sets very narrow criteria for who may qualify. Only individuals who are licensed in other states, but not in Virginia, and who volunteer "to provide free health care in an underserved area of the Commonwealth under the auspices of a publicly supported, nonprofit organization with no paid employees that sponsors the provision of health care to populations of underserved people throughout the world"¹ may register to perform volunteer pharmacist work in the Commonwealth without a Virginia pharmacist license.

The board's proposed regulatory language essentially reiterates the requirements listed in § 54.1-3301 of the Code of Virginia with details on how the applicant is to present their qualifications, as well as establishes a \$10 processing fee for the Department of Health Professions' administrative costs.

The requirement that not only must the volunteer not receive remuneration, but that the nonprofit organization have no paid employees is very restrictive. Many, if not most, charitable organizations would not meet this criterion. For example, the Red Cross has paid employees and an out-of-state pharmacist could not volunteer to provide pharmacist services through the Red Cross in Virginia under this provision. The requirement that the nonprofit organization sponsors the provision of health care to populations of underserved people throughout the world is vague and potentially extremely restrictive. It seems to exclude all noninternational

¹ Source: Section 54.1-3301 of the Code of Virginia.

organizations. Read literally, it also seems to exclude international organizations that do not provide health care to populations of underserved people in all areas of the world. The proposed regulatory language was adopted as emergency regulations on July 19, 2002. As of now, mid-November 2002, no one has applied to register for voluntary pharmacist practice in Virginia. Given how highly restrictive the qualification criteria are, it is unlikely that more than a very small number of individuals will apply for voluntary pharmacist practice registration in the future.

For the small population of individuals who could potentially meet the qualification criteria and wish to perform volunteer work in Virginia and are licensed in another state but not in Virginia, the registration for voluntary practice would be beneficial. Otherwise such individuals would need to obtain a Virginia license by endorsement, which has a \$180² fee (versus the \$10 registration fee) plus would take considerably longer to obtain than the registration.³ When an out-of-state pharmacist applies for and qualifies for the registration and performs their volunteer work, citizens in Virginia will benefit by receiving pharmacist services that they may not have otherwise received. The Code of Virginia (§ 54.1-3301) stipulates that the voluntary services must be for an underserved population and thus will most likely not provide competition for existing services. Since registration for volunteer services is expected to happen very infrequently, the proposed regulatory amendment will have little effect.

Businesses and entities affected. The proposed amendments will likely affect very few Virginians. Given the highly restrictive nature of the registration qualifications, very few out-of-state pharmacists are expected to register and provide volunteer pharmacist services for underserved Virginians.

Localities particularly affected. The proposed regulations, if used at all, will mostly affect rural areas of the Commonwealth, particularly in southwestern Virginia.

Projected impact on employment. The proposed amendments will not significantly affect employment levels.

Effects on the use and value of private property. The proposed amendments will not have a large impact on the use and value of private property.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The Board of Pharmacy concurs with the analysis of the Department of Planning and Budget for amendments to 18 VAC 110-20, pursuant to statutory requirements for voluntary practice by out-of-state practitioners.

Summary:

The proposed amendments establish registration requirements for voluntary pharmacist practice by out-of-state licensees.

² The license fee will be \$180 starting on December 4, 2002. Until then, the fee will continue to be \$50. Source: Department of Health Professions.

³ Source: Department of Health Professions.

18 VAC 110-20-75. Registration for voluntary practice by out-of-state licensees.

Any pharmacist who seeks registration to practice on a voluntary basis pursuant to subdivision 12 of § 54.1-3301 of the Code of Virginia under the auspices of a publicly supported, all volunteer, nonprofit organization with no paid employees that sponsors the provision of health care to populations of underserved people throughout the world shall:

- 1. File a complete application for registration on a form provided by the board at least 15 days prior to engaging in such practice;*
- 2. Provide a complete list of each state in which he has held a pharmacist license and a copy of any current license;*
- 3. Provide the name of the nonprofit organization and the dates and location of the voluntary provision of services;*
- 4. Pay a registration fee of \$10; and*
- 5. Provide a notarized statement from a representative of the nonprofit organization attesting to its compliance with the provisions of subdivision 12 of § 54.1-3301 of the Code of Virginia.*

NOTICE: The forms used in administering 18 VAC 110-20, Regulations Governing the Practice of Pharmacy, are not being published due to the large number; however, the name of each form is listed below. The forms are available for public inspection at the Board of Pharmacy, 6603 W. Broad Street, Richmond, Virginia, or at the office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia.

FORMS

- Application for Registration as a Pharmacy Intern (rev. 12/98).
- Affidavit of Practical Experience, Pharmacy Intern (rev. 12/98).
- Application for Licensure as a Pharmacist by Examination (rev. 10/02).
- Application to Reactivate Pharmacist License (rev. 10/02).
- Application for Approval of a Continuing Education Program (rev. 3/99).
- Application for Approval of ACPE Pharmacy School Course(s) for Continuing Education Credit (rev. 10/00).
- Application for License to Dispense Drugs (permitted physician) (rev. 10/02).
- Application for a Pharmacy Permit (rev. 10/02).
- Application for a Nonresident Pharmacy Registration (rev. 10/02).
- Application for a Permit as a Medical Equipment Supplier (rev. 10/02).
- Application for a Permit as a Restricted Manufacturer (rev. 10/02).
- Application for a Permit as a Nonrestricted Manufacturer (rev. 10/02).

Proposed Regulations

Application for a Permit as a Warehouser (rev. 10/02).

Application for a License as a Wholesale Distributor (rev. 10/02).

Application for a Nonresident Wholesale Distributor Registration (rev. 10/02).

Application for a Controlled Substances Registration Certificate (rev. 10/02).

License Renewal Notice and Application for Pharmacists (rev. 11/00).

License Renewal Notice and Application for Facilities (rev. 11/00).

Application to Reinstate a Pharmacist License (rev. 10/02).

Application for a Permit as a Humane Society (rev. 10/02).

Application for Registration as a Pharmacy Intern for Graduates of a Foreign College of Pharmacy (rev. 12/98).

Closing of a Pharmacy (rev. 3/99).

Application for Approval of a Robotic Pharmacy System (8/00).

Notice of Inspection Fee Due for Approval of Robotic Pharmacy System (8/00).

Application for Approval of an Innovative (Pilot) Program (eff. 1/01).

Application for Registration for Volunteer Practice (eff. 12/02).

Sponsor Certification for Volunteer Registration (eff. 12/02).

VA.R. Doc. No. R02-291; Filed December 11, 2002, 11:36 a.m.



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

REGISTRAR'S NOTICE: The following regulation filed by the Marine Resources Commission is exempt from the Administrative Process Act in accordance with § 2.2-4006 A 12 of the Code of Virginia; however, the commission is required to publish the full text of final regulations.

Title of Regulation: 4 VAC 20-754. **Pertaining to Importation of Fish, Shellfish or Crustacea (amending 4 VAC 20-754-30).**

Statutory Authority: §§ 28.2-201 and 28.2-825 of the Code of Virginia.

Effective Date: November 27, 2002.

Summary:

The amendments specify the conditions under which hard clam seed may be imported to Virginia from facilities in South Carolina and Florida.

Agency Contact: Deborah Cawthon, Regulatory Coordinator, Marine Resources Commission, 2600 Washington Avenue, 3rd Floor, Newport News, VA 23607, telephone (757) 247-2248, FAX (757) 247-2202, or e-mail dcawthon@mrc.state.va.us.

4 VAC 20-754-30. Approved species and criteria for importation.

A. Pursuant to the provisions of § 28.2-825 of the Code of Virginia and under the following conditions, it shall be lawful to import into the Commonwealth, with the intent of placing such animals into the waters of the Commonwealth, any species listed below, except as prohibited in the exception contained in subdivision 1 of this subsection:

1. Any hard clam of the species *Mercenaria mercenaria* from the waters of any coastal area or state within the continental United States and that is absent of any known shellfish pathogen, as specified in subsection B of this section, except that any importation of hatchery-produced seed of the genus *Mercenaria* from Pacific coastal states within the continental United States, ~~South Carolina or Florida~~ shall be prohibited for a period of 180 days, starting August 28, 2002, and any importation of hatchery produced seed of the genus *Mercenaria* from South Carolina or Florida shall meet all requirements established by subdivision 1 a through d of this subsection. Importation requirements established by subdivision 1 a through d of this subsection shall be in addition to those importation requirements established by subsection B of this section.

a. *The South Carolina or Florida hatchery or facility shall certify that only northern broodstock clams of the genus *Mercenaria*, absent of shellfish pathogens, were used to produce hard clam seed that is to be exported to Virginia. The certification shall be accompanied by evidence that the facility took possession of the northern broodstock hard clams within the previous 12 months.*

b. *The South Carolina or Florida hatchery or facility shall certify that any clam seed scheduled for importation into Virginia was produced from broodstock that satisfies the requirements specified by subdivision 1 a of this subsection.*

c. *The South Carolina or Florida hatchery or facility shall certify that only hard clams of northern broodstock were held in the facility used for spawning purposes throughout the time period, within a calendar year, corresponding to all shipments of hard clam seed to Virginia, and all shipments of clam seed shall be accompanied by a tag indicating the name of the hatchery or facility and the quantity on a per bag or container basis.*

d. *Any certification requirements described in subdivisions 1 a and b of this subsection shall accompany the certified statement from an approved shellfish pathologist as to the complete absence of known shellfish pathogens in a random sample of hard clam seed of the genus *Mercenaria* scheduled for importation into Virginia, as described in subsection B of this section. All certified statements required for importation of hard clam seed of genus *Mercenaria* as specified by subdivisions 1 a and b of this subsection and subsection B of this section shall be provided to the Virginia Marine Resources Commission, Fisheries Management Division, at least 10 days prior to the shipment of any hard clam seed of genus *Mercenaria*.*

2. Any American oyster shellstock of the species *Crassostrea virginica* greater than 25mm in shell height from the waters of New England, Mid-Atlantic, or South Atlantic coastal areas or states and that is absent of any known shellfish pathogen, as specified in subsection B of this section.

3. Any American oyster hatchery-produced seed of the species *Crassostrea virginica* less than 25mm in shell height from the waters of any coastal area or state within the Continental United States and that is absent of any known shellfish pathogen, as specified in subsection B of this section.

4. Any bay scallop hatchery-produced seed of the species *Argopecten irradians* less than 25mm in shell height from the waters of any coastal area or state within the continental United States and that is absent of any known shellfish pathogen, as specified in subsection B of this section.

Final Regulations

5. Any surf clam hatchery-produced seed of the species *Spisula solidissima* less than 25mm in shell length from the waters of any coastal area or state within the continental United States and that is absent of any known shellfish pathogen, as specified in subsection B of this section.
6. Any soft shell clam-hatchery-produced-seed of the species *Mya arenaria* less than 25mm in shell length from the waters of any coastal area or state within the United States and that is absent of any known shellfish pathogen.
7. Any pre-molt (peeler) blue crab of the species *Callinectes sapidus* from the waters of the states of New Jersey, Delaware, Maryland, North Carolina, South Carolina, or Georgia.

B. In order to import any species described in subsection A of this section, a certified statement from an approved shellfish pathologist as to the complete absence of known shellfish pathogens in a random sample shall be provided. That certified statement shall be provided to the Virginia Marine Resources Commission, Fisheries Management Division, at least 10 days prior to the shipment of any molluscan shellfish specified above for introduction into the waters of the Commonwealth. The test for shellfish pathogens in all shellfish species except oysters shall be from a random sample of 60 individuals from the shipment or population in question that was examined by histological and fluid thioglycollate methods within 60 days of each importation. For oysters, samples shall be tested within 30 days of each importation.

C. Shipments of any molluscan shellfish specified above, upon entry into the Commonwealth for introduction into the waters of the Commonwealth, shall be accompanied by a certified statement from an approved shellfish pathologist as to the complete absence of known shellfish pathogens in a random sample of 60 individuals from the shipment or population in question and written acknowledgement from the Virginia Marine Resources Commission on the receipt of such statement.

D. Shipments of any species under the provisions of this chapter shall be accompanied by documentation of the quantity imported.

E. The provisions of the chapter shall not apply to the importation of any molluscan shellfish from the waters of the Delaware Bay or the Maryland portion of the Chesapeake Bay and its tributaries.

VA.R. Doc. No. R03-82; Filed November 27, 2002, 11:26 a.m.

TITLE 9. ENVIRONMENT

CHESAPEAKE BAY LOCAL ASSISTANCE DEPARTMENT

REGISTRAR'S NOTICE: The following regulatory action is exempt from the Administrative Process Act in accordance with § 2.2-4006 A 4 a of the Code of Virginia, which excludes regulations that are necessary to conform to changes in Virginia statutory law where no agency discretion is involved.

Title of Regulation: 9 VAC 10-10. Public Participation Guidelines (amending 9 VAC 10-10-10, 9 VAC 10-10-20 and 9 VAC 10-10-30; repealing 9 VAC 10-10-40).

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

Effective Date: January 29, 2003.

Summary:

Pursuant to Chapters 241 and 391 of the 2002 Session of the General Assembly, the amendments conform language to current Administrative Process Act (APA) requirements. The amendments pertain to the handling and decision making associated with petitions filed by the public for the adoption, amendment or repeal of a regulation and to an additional 30-day public comment period when an agency intends to change a proposed regulation.

Agency Contact: David J. Kovacs, Regulatory Coordinator, Chesapeake Bay Local Assistance Department, James Monroe Building, 101 North 14th Street, 17th Floor, Richmond, VA 23219, telephone (804) 786-1518, FAX (804) 225-3447, toll free 1-800-chesbay, or e-mail dkovacs@clbad.state.va.us.

9 VAC 10-10-10. Definitions.

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

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

"Administrative Process Act" means Chapter ~~4.1-4 40~~ (§ ~~9-6.14-4 2.2-4000~~ et seq.) of Title ~~9 2.2~~ of the Code of Virginia.

"Agency" means the Chesapeake Bay Local Assistance Department established pursuant to the Chesapeake Bay Preservation Act.

"Board" means the Chesapeake Bay Local Assistance Board established pursuant to the Chesapeake Bay Preservation Act.

"Director" means the executive director of the Chesapeake Bay Local Assistance Department or his designee.

"Formal hearing" means agency processes other than those informational or factual inquiries of an informal nature provided for in § ~~9-6.14-7.4 2.2-4007~~ of the Administrative Process Act, and includes *the* only opportunity for private parties to submit factual proofs in evidential hearings as

provided in § ~~9-6.14:8~~ 2.2-4009 of the Administrative Process Act.

"Locality particularly affected" means any locality ~~which~~ that bears any identified disproportionate material impact ~~which~~ that would not be experienced by other localities.

"Participatory approach" means a method for the use of (i) standing advisory committees, (ii) ad hoc advisory groups or panels, (iii) consultation with other groups or individuals registering interest in working with the agency, or (iv) any combination thereof in the formation and development of regulations for agency consideration. When an ad hoc advisory group is formed, the group shall include representatives of the regulated community and the general public. The decisions as to the membership of the group shall be at the discretion of the director.

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

"Public hearing" means an informal proceeding held in conjunction with the Notice of Public Comment and similar to that provided for in § ~~9-6.14:7.4~~ 2.2-4007 of the Administrative Process Act, held to afford persons an opportunity to submit views and data relative to regulations on which a decision of the board is pending.

"Public meeting" means an informal proceeding conducted by the agency in conjunction with the Notice of Intended Regulatory Action to afford persons an opportunity to submit comments relative to intended regulatory actions.

Unless specifically defined in the Chesapeake Bay Preservation Act or in this chapter, terms used shall have the meanings commonly ascribed to them.

9 VAC 10-10-20. General.

A. The procedures in 9 VAC 10-10-30 shall be used for soliciting the input of interested persons in the initial formation and development, amendment or repeal of regulations in accordance with the Administrative Process Act. This chapter does not apply to regulations exempted from the provisions of the Administrative Process Act (~~pursuant to § 9-6.14:4.1-A and B~~ 2.2-4002 of the Code of Virginia) or excluded from the operation of Article 2 of the Administrative Process Act (~~pursuant to § 9-6.14:4.1-C~~ 2.2-4006 of the Code of Virginia).

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.

C. Any person may petition the board for the adoption, amendment or repeal of a regulation. The petition, at a minimum, shall contain the following information:

1. Name of petitioner;
2. Petitioner's mailing address and telephone number;
3. Petitioner's interest in the proposed action;
4. ~~Recommended regulation or addition, deletion or amendment to a specific regulation or regulations; The substance and purpose of the rulemaking that is requested,~~

including reference to any applicable Virginia Administrative Code sections;

5. Reference to the legal authority of the agency to take the action requested;

~~5-~~ *6. Statement of need and justification for the proposed action;*

~~6-~~ *7. Statement of impact on the petitioner and other affected persons; and*

~~7-~~ *8. Supporting documents, as applicable.*

~~The board shall provide a written response to such a petition within 180 days from the date the petition was received.~~

Within 14 days of receiving a petition, the agency shall send a notice identifying the petitioner, the nature of the petitioner's request and the agency's plan for disposition of the petition to the Registrar of Regulations for publication in the Virginia Register of Regulations. On the date of publication in the Virginia Register of Regulations, the agency shall commence a 21-day period for acceptance of written public comment on the petition. The agency shall issue a written decision to grant or deny the petitioner's request within 90 days following the close of the comment period. The written decision issued by the agency shall include a statement of its reasons and shall be submitted to the Registrar for publication in the Virginia Register of Regulations.

9 VAC 10-10-30. Public participation procedures.

A. The agency 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 agency. In addition, the agency, at its discretion, may add to any list any person, organization or publication it believes will be interested in participating in the promulgation of regulations. Individuals and organizations may be requested periodically to indicate their desire to continue to receive documents or be deleted from a list. When mail is returned as undeliverable, individuals and organizations may be deleted from any list at the discretion of the agency.

B. Whenever the board so directs or upon its own initiative, the agency may commence the regulation adoption process and proceed to draft a proposal according to these procedures.

C. The agency shall use the participatory approach to assist in the development of the proposal or use one of the following alternatives:

1. Proceed without using the participatory approach if the board specifically authorizes the agency to proceed without using the participatory approach.

2. Include in the Notice of Intended Regulatory Action (NOIRA) a statement inviting comment on whether the agency should use the participatory approach to assist the agency in the development of the proposal. If the agency receives written responses from at least five persons during the associated comment period indicating that the agency should use the participatory approach, the agency will use the participatory approach requested. Should different

Final Regulations

approaches be requested, the director will determine the specific approach to be used.

D. The agency shall issue a NOIRA whenever it considers the adoption, amendment or repeal of any regulation.

1. The NOIRA shall include at least the following:
 - a. A description of the subject matter of the planned regulation.
 - b. A description of the intent of the planned regulation.
 - c. A brief statement as to the need for regulatory action.
 - d. A brief description of alternatives available, if any, to meet the need.
 - e. A request for comments on the intended regulatory action, to include any ideas to assist the agency in the development of any proposal.
 - f. A request for comments on the costs and benefits of the stated alternatives or other alternatives.
 - g. A statement of the agency's intent to hold at least one public hearing on the proposed regulation after it is published in the Virginia Register of Regulations.
 - h. A statement inviting comment on whether the agency should use the participatory approach to assist the agency in the development of any proposal. Including this statement shall only be required when the agency makes a decision to pursue the alternative provided in subdivision C 2 of this section.

2. The agency shall hold at least one public meeting whenever it considers the adoption, amendment or repeal of any regulation unless the board specifically authorizes the agency to proceed without holding a public meeting.

In those cases where a public meeting or meetings will be held, the NOIRA shall also include the date, not to be less than 30 days after publication in the Virginia Register of Regulations, time and place of the public meeting or meetings.

3. The public comment period for NOIRAs under this section shall be no less than 30 days after publication of the NOIRA in the Virginia Register of Regulations.

E. The agency shall disseminate the NOIRA to the public via the following:

1. Distribution to the Registrar of Regulations for publication in the Virginia Register of Regulations.
2. Distribution by mail to persons on the list or lists established under subsection A of this section.

F. After consideration of public input, the agency may complete the draft proposed regulation and any supporting documentation required for review. If the participatory approach is being used, the draft regulation shall be developed in consultation with the participants. A summary or copies of the comments received in response to the NOIRA shall be distributed to the participants during the development of the draft regulation. This summary or copies of the

comments received in response to the NOIRA shall also be distributed to the board.

G. Upon approval of the draft proposed regulation by the board, the agency shall publish a Notice of Public Comment (NOPC) and the proposal for public comment.

H. The NOPC shall include at least the following:

1. The notice of the opportunity to comment on the proposed regulation, location where copies of the draft may be obtained and name, address and telephone number of the individual to contact for further information about the proposed regulation.
2. A request for comments on the costs and benefits of the proposal.
3. The identity of any locality particularly affected by the proposed regulation.
4. A statement that an analysis of the following has been conducted by the agency and is available to the public upon request:
 - a. A statement of purpose: the rationale or justification for the new provisions of the regulation, from the standpoint of the public's health, safety or welfare.
 - b. A statement of estimated impact:
 - (1) Projected number and types of regulated entities or persons affected.
 - (2) Projected cost, expressed as a dollar figure or range, to regulated entities (and to the public, if applicable) for implementation and compliance. In those instances where the agency is unable to quantify projected costs, it shall offer qualitative data, if possible, to help define the impact of the regulation. Such qualitative data shall include, if possible, an example or examples of the impact of the proposed regulation on a typical member or members of the regulated community.
 - (3) Projected cost to the agency for implementation and enforcement.
 - (4) The beneficial impact the regulation is designed to produce.
 - c. An explanation of need for the proposed regulation and potential consequences that may result in the absence of the regulation.
 - d. An estimate of the impact of the proposed regulation upon small businesses as defined in § ~~9-199~~ 2.2-2279 B of the Code of Virginia or organizations in Virginia.
 - e. A description of provisions of the proposed regulation ~~which~~ *that* are more restrictive than applicable federal requirements, together with the reason why the more restrictive provisions are needed.
 - f. A discussion of alternative approaches that were considered to meet the need the proposed regulation addresses, and a statement as to whether the agency believes that the proposed regulation is the least

burdensome alternative to the regulated community that fully meets the stated purpose of the proposed regulation.

g. A schedule setting forth when, after the effective date of the regulation, the agency will evaluate it for effectiveness and continued need.

5. The date, time and place of at least one public hearing held in accordance with § 9-6-14:7.1 2.2-4007 of the Code of Virginia to receive comments on the proposed regulation. The public hearing or hearings may be held at any time during the public comment period and, whenever practicable, no less than 15 days prior to the close of the public comment period. The public hearing or hearings may be held in such location or locations as the agency determines will best facilitate input from interested persons. In those cases where the agency elects to conduct a formal hearing, the notice shall indicate that the formal hearing will be held in accordance with § 9-6-14:8 2.2-4009 of the Code of Virginia.

I. The public comment period shall close no less than 60 days after publication of the NOPC in the Virginia Register of Regulations.

J. The agency shall disseminate the NOPC to the public via the following:

1. Distribution to the Registrar of Regulations for:—a. publication in the Virginia Register of Regulations.

~~b. Publication in a newspaper of general circulation published at the state capital and such other newspapers as the agency may deem appropriate.~~

2. Distribution by mail to persons on the list(s) established under subsection A of this section.

K. The agency shall prepare a summary of comments received in response to the NOPC and the agency's response to the comments received. The agency shall send a draft of the summary of comments to all public commenters on the proposed regulation at least five days before final adoption of the regulation. The agency shall submit the summary and agency response and, if requested, submit the full comments to the board. The summary, the agency response, and the comments shall become a part of the agency file and, after final action on the regulation by the board, made available, upon request, to interested persons.

L. If the agency wishes to change a proposed regulation before adopting it as a final regulation, it may choose to publish a revised proposed regulation provided the latter is subject to a public comment period of at least 30 additional days and the agency complies in all other respects with § 2.2-4007 of the Code of Virginia.

~~M. If the agency determines that the process to adopt, amend or repeal any regulation should be terminated after approval of the draft proposed regulation by the board, the agency shall present to the board for their consideration a recommendation and rationale for the withdrawal of the proposed regulation.~~

~~M. N. Completion of the remaining steps in the adoption process shall be carried out in accordance with the Administrative Process Act.~~

9 VAC 10-10-40. Transition. (Repealed.)

~~A. All regulatory actions for which a NOIRA has been published in The Virginia Register of Regulations prior to May 20, 1994, shall be processed in accordance with the emergency amendments to Public Participation Guidelines (9 VAC 10-10-10 et seq.) which are effective from June 30, 1993, until June 29, 1994, unless sooner modified or vacated or superseded by permanent regulations.~~

~~B. This chapter shall supersede and repeal emergency amendments to Public Participation Guidelines (9 VAC 10-10-10 et seq.) which became effective on June 30, 1993. All regulatory actions for which a NOIRA has not been published in The Virginia Register of Regulations prior to May 20, 1994, shall be processed in accordance with this chapter (9 VAC 10-10-10 et seq.).~~

VA.R. Doc. No. R03-83; Filed December 9, 2002, 2:28 p.m.

TITLE. 12. HEALTH

STATE BOARD OF HEALTH

Withdrawal

Title of Regulation: 12 VAC 5-31. Virginia Emergency Medical Services Regulations (withdrawing 12 VAC 5-31-1050).

The State Board of Health has withdrawn 12 VAC 5-31-1050, Scope of practice, that was published in 19:3 VA.R. 504 October 21, 2002. The agency has withdrawn this section to allow further review by and comment from interested and affected persons. A revised proposed regulation, addressing the subject of the withdrawn section, will be promulgated as soon as administratively practical.

The remainder of 12 VAC 5-31 which was published in 19:3 VA.R. 478-529 October 21, 2002, will become effective January 1, 2003.

VA.R. Doc. No. R01-71; Filed December 10, 2002, 2:07 p.m.

Title of Regulation: 12 VAC 5-220. 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. State Medical Facilities Plan (amending 12 VAC 5-230-10 and 12 VAC 5-230-20).

Final Regulations

12 VAC 5-240. 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. State Medical Facilities Plan: Perinatal Services (amending 12 VAC 5-250-30).

12 VAC 5-260. 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. State Medical Facilities Plan: General Surgical Services (amending 12 VAC 5-270-30 and 12 VAC 5-270-40).

12 VAC 5-280. State Medical Facilities Plan: Organ Transplantation Services (amending 12 VAC 5-280-10, 12 VAC 5-280-30, and 12 VAC 5-280-70).

12 VAC 5-290. 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. State Medical Facilities Plan: Mental Retardation Services (amending 12 VAC 5-300-30).

12 VAC 5-310. State Medical Facilities Plan: Medical Rehabilitation Services (amending 12 VAC 5-310-30).

12 VAC 5-320. 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. State Medical Facilities Plan: Radiation Therapy Services (amending 12 VAC 5-340-30).

12 VAC 5-360. 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 Date: February 3, 2003.

Summary:

The amendments (i) increase fees for Certificate of Public Need (COPN) applications, (ii) require registration for the replacement of medical equipment and eliminate the requirement that a COPN be obtained for the replacement of medical equipment, (iii) eliminate the requirement that nuclear cardiac imaging equipment be subject to the COPN, (iv) add the needs of rural populations as a factor for consideration in granting a COPN, (v) increase the department's review period for COPN applications from 120 days to 190 days, (vi) provide that COPN applications are approved by default if the department does not meet set deadlines, (viii) allows earlier scheduling of informal fact-finding conferences, and (ix) increases the minimum number of liver transplants per year required for program approval.

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

Agency Contact: Carrie Eddy, Senior Policy Analyst, Center for Quality Health Care Services and Consumer Protection, Department of Health, 3600 W. Broad Street, Suite 216, Richmond, VA 23230, telephone (804) 367-2157, FAX (804) 367-2149, or e-mail ceddy@vdh.state.va.us.

<p>REGISTRAR'S NOTICE: The proposed regulation was adopted as published in 18:18 VA.R. 2220-2247 May 20, 2002, with the additional changes shown below. Therefore, pursuant to § 2.2-4031 of the Code of Virginia, the adopted regulation is not published at length; however, the changes from the proposed regulation are printed below.</p>

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 that~~] 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 that~~] 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 that~~], 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 that~~] 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~~ Virginia] 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 that~~] 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~~ 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 that~~] 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 § ~~9-6.14:14~~ 2.2-4019 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 tomographic (PET) scanning, radiation therapy, nuclear medicine imaging [*except for the purpose of nuclear cardiac imaging*], or such other specialty services as may be designated by the board by regulation.
10. Rehabilitation hospitals.

Final Regulations

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 [7,] " [*excluding that portion dedicated to providing nuclear cardiac imaging.*]

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~~ *that* is located in the health planning region in which the project is proposed and ~~which~~ *that* 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 the 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~~ *that*] 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 [*except for the purpose of nuclear cardiac 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 that*] 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~~ *that performs* 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 the*] timetable [~~which that~~] 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 that*] 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 that includes, but is not 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.

Final Regulations

~~"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:

- 1. A summary of the commissioner's actions during the previous fiscal year pursuant to Virginia's certificate of public need law;*
- 2. A five-year schedule for analysis of all project categories, which provides for the analysis of at least three project categories per year;*
- 3. 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;*
- 4. 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~~ of the Code of Virginia that] 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;*
- 5. 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;*
- 6. 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;*
- 7. 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*
- 8. 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 through 12 VAC 5-220-180. [No change from proposed.]

12 VAC 5-220-200. One hundred ~~twenty-day~~ ninety-day review cycle.

The department shall review the following groups of completed applications in accordance with the following ~~120-day~~ 190-day scheduled review cycles and the following descriptions of projects within each group, except as provided for in 12 VAC 5-220-220.

BATCH GROUP	GENERAL DESCRIPTION	REVIEW CYCLE	
		Begins	Ends
A	General Hospitals/ Obstetrical Services/ Neonatal Special Care Services	Feb. 10 Aug. 10	June 10 Aug. 18 Dec. 8 Feb. 16
B	Open Heart Surgery/Cardiac Catheterization/ Catheterization/ Ambulatory Surgery Centers/ Operating Room Additions/ Transplant Services	Mar. 10 Sep. 10	Jul. 8 Sep. 16 Jan. 8 Mar. 19
C	Psychiatric Facilities/ Substance Abuse Treatment/ Mental Retardation Facilities	Apr. 10 Oct. 10	Aug. 8 Oct. 17 Feb. 7 Apr. 18
D	Diagnostic Imaging Facilities/ Services	May 10 Nov. 10	Sep. 7 Nov. 16 Mar. 10 May 19
E	Medical Rehabilitation Beds/Services	June 10 Dec. 10	Oct. 8 Dec. 17 Apr. 9 Jun. 18
F	Selected Therapeutic Facilities/ Services	July 10 Jan. 10	Nov. 7 Jan. 16 May 10 Jul. 18
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 Jul. 18 July 8 Sep. 16 Sep. 7 Nov. 16 Nov. 7 Jan. 16 Jan. 8 Mar. 19 Mar. 10 May 19

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 that~~] 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 that~~] the facility has not provided in the previous 12 months.
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 that~~] 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 that~~] 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, *except for the purpose of nuclear cardiac 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~~, *except for the purpose of nuclear cardiac imaging that* 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),

Final Regulations

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, *except that portion of a physician's office dedicated to providing nuclear cardiac 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, *except for the purpose of nuclear cardiac 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 that~~] is not a dedicated medical rehabilitation hospital.
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 that~~] 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 that~~] 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 that~~] 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 that~~] 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 that~~] 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 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 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 to be made a party to the case for]* good cause. Any person seeking ~~[to demonstrate to be made a party to the case for]~~ 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, 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 [2.2-4019 32.1-102.6]~~ 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 40 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 10 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 that shall not be more than [45 30] 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 [45 45] calendar days of the closing of the record, the commissioner shall notify the [~~attorney general applicant or applicants and any persons seeking to show good cause~~], in writing, that the application [or the applications of each] shall be deemed approved [~~unless the determination shall be made within 40 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. 25 calendar days after the expiration of such 45-calendar-day period, unless the receipt of recommendations from the person~~

Final Regulations

performing as hearing officer permits the commissioner to issue his case decision within that 25-calendar-day period. The validity or timeliness of the aforementioned notice shall not, in any event, prevent, delay or otherwise impact the effectiveness of this section.]

In any case when a determination whether a public need exists for a project is not made by the commissioner within [40 70] calendar days after closing of the record, [~~the department shall immediately refund 50% 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 [45 45] 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 petition for immediate injunctive relief pursuant to § 2.2-4030 of the Code of Virginia, naming as respondents the commissioner and all parties to the case. During the pendency of proceeding, no applications shall be deemed to be approved. In such a proceeding, the provisions of § 2.2-4030 of the Code of Virginia shall apply~~].

[~~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 (§ 2.2-4000 et seq. of the Code of Virginia) 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 such attempt to show~~] 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.

[In any appeal of the commissioner's case decision granting a certificate of public need pursuant to a Request for Applications issued pursuant to § 32.1-102.3:2 of the Code of Virginia, the court may require the appellant to file a bond pursuant to § 8.01-676.1 of the Code of Virginia, in such sum as shall be fixed by the court for protection of all parties interested in the case decision, conditioned on the payment of all damages and costs incurred in consequence of such appeal.]

The [~~applicant~~ applicants] , and only the [~~applicant~~ applicants] , 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. [~~If all applicants consent to extending any time period in this section, the commissioner, with the concurrence of the applicants, shall establish a new schedule for the remaining time periods.~~]

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 ~~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 within the time frames specified in 12 VAC 5-220-230 B unless authorization is given by the [applicant or] applicants 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 5-220-280. [No change from proposed.]

12 VAC 5-220-355. [No change from proposed.]

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 applicants 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~~ *32.1-102.6* 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 40 calendar~~

Final Regulations

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 30 calendar days after the date for holding the informal fact-finding conference.

C. Determination by the commissioner. If a determination whether a public need exists for a project is not made by the commissioner within 45 calendar days of the closing of the record, the commissioner shall notify the applicant or applicants and any person seeking to show good cause, in writing, that the application or the applications of each shall be deemed approved 25 calendar days after the expiration of such 45-calendar-day period, unless the receipt of recommendations from the person performing the hearing officer functions permits the commissioner to issue his case decision within that 25-calendar-day period. The validity or timeliness of the aforementioned notice shall not, in any event, prevent, delay or otherwise impact the effectiveness of this section.

In any case when a determination whether a public need exists for a project is not made by the commissioner within 70 calendar days after closing of the record, 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 45 calendar days of the closing of the record, any [~~application~~ applicant] 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 petition for immediate injunctive relief pursuant to § 2.2-4030 of the Code of Virginia, naming as respondents the commissioner and all parties to the case. During the pendency of proceeding, no applications shall be deemed to be approved. In such a proceeding, the provisions of § 2.2-4030 of the Code of Virginia shall apply.

Deemed approvals shall be construed as the commissioner's case decision on the application pursuant to the Administrative Process Act (§ 2.2-4000 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 such attempt to show 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.

In any appeal of the commissioner's case decision granting a certificate of public need pursuant to a Request for Applications issued pursuant to § 32.1-102.3:2 of the Code of Virginia, the court may require the appellant to file a bond pursuant to § 8.01-676.1 of the Code of Virginia, in such sum as shall be fixed by the court for protection of all parties interested in the case decision, conditioned on the payment of all damages and costs incurred in consequence of such appeal.

The applicants, and only the applicants, 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. If all applicants consent to extending any time period in this section, the commissioner, with the concurrence of the applicants, shall establish a new schedule for the remaining time periods.

~~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. [No change from proposed.]

12 VAC 5-220-470. [~~Court Judicial~~ review.

~~[A.] Appeal to circuit court. Appeals to a circuit court shall be governed by [applicable provisions of Virginia's the Virginia] Administrative Process Act, § 9-6.14:15 2.2-4000 et seq. of the Code of Virginia [, and Part Two A of the Rules of the Supreme Court of Virginia].~~

~~Any applicant aggrieved by a final administrative decision on its application for a certificate, any third party payer 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 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. [No change from proposed.]

12 VAC 5-230-20. [No change from proposed.]

12 VAC 5-240-10. [No change from proposed.]

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. [No change from proposed.]

12 VAC 5-250-30. [No change from proposed.]

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. [No change from proposed.]

12 VAC 5-260-80. [No change from proposed.]

12 VAC 5-260-100. [No change from proposed.]

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. [No change from proposed.]

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

Final Regulations

administrative requirements and standards set by the [~~HCFA~~ *Centers for Medicare and Medicaid Services (CMS)*] 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- [~~or~~ and] post-transplant patients, or both, conducted at a site remote from the facility in which the organ transplant surgical services are provided that allows patients to obtain outpatient services associated with organ transplantation closer to their city or county of residence.

12 VAC 5-280-30. [No change from proposed.]

12 VAC 5-280-70. Quality; minimum utilization; minimum survival rate; service proficiency; staffing; systems operations; support services.

A. 1. Proposals to establish, expand or replace organ transplantation services should demonstrate that a minimum number of transplants will be performed annually. The minimum number required by organ system is:

Kidney	25
Heart	12
Heart/Lung	12
Liver	20
Pancreas	12

2. Successful transplantation programs are expected to perform substantially larger numbers of transplants annually. Performance of minimum transplantation volumes does not necessarily indicate a need for additional transplantation capacity or programs.

3. Preference will be given to expansion of successful existing services, either by enabling necessary increases in the number of organ systems being transplanted or by adding transplantation capability for additional organ systems, rather than developing other programs that could reduce average program volume.

B. 1. Facilities should demonstrate that they will achieve and maintain minimum transplant patient survival rates.

Minimum one year survival rates, listed by organ system, are:

Kidney	90-95%
Heart	70-80%
Heart/Lung	(none set)
Liver	50-60%
Pancreas	80-90%

2. Survival rates beyond one year should be consistent with the [~~Health Care Financing Administration (HCFA)~~] Medicare program requirements, or with applicable professional society recommended standards acceptable to the department where there are no [~~HCFA Medicare~~] criteria.

C. Proposals to add additional organ transplantation services should demonstrate at least two years successful experience with all existing organ transplantation systems.

D. 1. All physicians that perform transplants should be board certified by the appropriate professional examining board, and should have a minimum of one year of formal training and two years of experience in transplant surgery and post-operative care.

2. Organ transplantation services should have a complete team of surgical, medical and other specialists, with at least two years experience in the proposed organ transplantation system.

E. 1. Providers of organ transplantation services should document that they participate in a regional and national organ donor network. The facility should have written policies and procedures governing organ and tissue procurement.

2. Providers of organ transplantation services should have an ongoing approved medical education program.

3. Providers of organ transplantation services should collect and submit to the department transplantation program operating statistics, including patient and procedure volumes, mortality data and program cost and charges.

F. Providers of organ transplantation services should demonstrate that they have direct and immediate access to a histocompatibility testing laboratory that meets the American Society for Histocompatibility and Immunogenetics (ASHI) standards.

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 that~~] 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 that allows patients to obtain needed outpatient services for their psychiatric illness or substance abuse, or both, 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 that~~] may include attendant medical and psychiatric complications of chemical dependency.

12 VAC 5-290-30. [No change from proposed.]

12 VAC 5-300-30. [No change from proposed.]

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 or rural areas, directly or through the establishment of referral

[~~linkages links~~] with general hospitals or other appropriate organizations.

12 VAC 5-320-50. [No change from proposed.]

12 VAC 5-320-150. Need for new service.

A. Preference will be given to applications [~~which that~~] intend to provide hospital-based MRI services.

B. No MRI service should be approved at a site [~~which that~~] 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. [No change from proposed.]

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.~~

Final Regulations

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 that~~] correct any maldistribution of beds within a planning district.

12 VAC 5-360-40. [No change from proposed.]

VA.R. Doc. No. R01-1; Filed December 10, 2002, 2:07 p.m.

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Title of Regulation: 12 VAC 30-120. Waivered Services (amending 12 VAC 30-120-10 through 12 VAC 30-120-60; adding 12 VAC 30-120-55).

Statutory Authority: §§ 32.1-324 and 32.1-325 of the Code of Virginia.

Effective Date: February 1, 2003.

Summary:

The amendments (i) make personal emergency response system (PERS) services available to eligible recipients in lieu of supervision services provided under personal care; (ii) require the department to perform annual desk reviews to assess waiver recipients' ongoing need for Medicaid-funded long-term care; (iii) decrease the minimum frequency of supervisory visits conducted by a registered nurse supervisor for recipients without a cognitive impairment from every 30 days to every 60 days with the consent of the recipient; (iv) allow family members of the recipient other than the parents of minor children receiving services, the recipient's spouse, or the legal guardian to provide care for the recipient under the waiver program; and (v) make clarifying changes.

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: Vivian Horn, Long-Term Care Policy Analyst, Division of Long-Term Care and Quality Assurance, Department of Medical Assistance Services, 600 E. Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 786-0527, FAX (804) 371-4986 or e-mail vhorn@dmass.state.va.us.

12 VAC 30-120-10. Definitions.

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

"Activities of daily living" [or "ADL"] means [~~assistance with~~] personal care tasks ([~~i.e.~~ e.g.], bathing, dressing, toileting,

[~~etc.~~ transferring, and eating/feeding]). [*An individual's degree of independence in performing these activities is part of determining the appropriate level of care and service needs.*]

"Adult day health care ~~centers~~ center" means a participating provider [~~which that~~] offers a community-based day program providing a variety of health, therapeutic, and social services designed to meet the specialized needs of those elderly and physically disabled individuals at risk of placement in a nursing facility.

"Adult day health care services" means services designed to prevent institutionalization by providing participants with health, maintenance, and *coordination* of rehabilitation services in a congregate daytime setting.

["*Appeal*" means the process used to challenge adverse actions regarding services, benefits, and reimbursement provided by Medicaid pursuant to 12 VAC 30-110 and 12 VAC 30-20-500 through 12 VAC 30-20-560.]

["*Cognitive impairment*" means a severe deficit in mental capability that affects areas such as thought processes, problem solving, judgment, memory, or comprehension and that interferes with such things as reality orientation, ability to care for self, ability to recognize danger to self or others, or impulse control.]

"Current functional status" means the individual's degree of dependency in performing activities of daily living.

"Designated preauthorization contractor" means the entity that has been contracted by DMAS to perform preauthorization of services.

"Direct marketing" means either (i) directly or indirectly conducting door-to-door, telephonic, or other "cold call" marketing of services at residences and provider sites; (ii) mailing directly; (iii) paying "finders fees"; (iv) offering financial incentives, rewards, gifts, or special opportunities to eligible recipients as inducements to use their services; (v) continuous, periodic marketing activities to the same prospective recipient, e.g., monthly, quarterly, or annual giveaways, as inducements to use their services; or (vi) engaging in marketing activities that offer potential customers rebates or discounts in conjunction with the use of their services or other benefits as a means of influencing recipients' use of providers' services.

"DMAS" means the Department of Medical Assistance Services.

"DSS" means the Department of Social Services.

"Episodic respite care" means [~~relief of~~ services specifically designed to provide relief to] the *primary unpaid* caregiver for a nonroutine, short-term period of time for a specified reason ([~~i.e.~~ e.g.], respite care offered for seven days, 24 hours a day while the caregiver takes a vacation).

"Home and community-based care" means a variety of in-home and community-based services reimbursed by DMAS (personal care, adult day health care ~~and~~, respite care, and personal emergency response systems (PERS)) authorized under a [*Social Security Act*] § 1915(c) [*Elderly and*

Disabled] waiver designed to offer individuals an alternative to [~~institutionalization nursing facility placement~~]. Individuals may be preauthorized to receive one or more of these services either solely or in combination, based on the documented need for the service or services [*in order*] to avoid nursing facility placement. (*PERS may only be provided in conjunction with personal care, respite care, or adult day health care services.*) The Nursing Home Preadmission Screening Team [~~or Department of Medical Assistance Services, DMAS or the designated preauthorized contractor~~] shall give prior authorization for any Medicaid-reimbursed home and community-based care.

["*Instrumental activities of daily living*" or "*IADLs*" means tasks such as meal preparation, shopping, housekeeping, laundry, and money management.]

"*Medication monitoring*" means an electronic device that enables certain recipients at high risk of institutionalization to be reminded to take their medications at the correct dosages and times.

"*Nursing home preadmission screening*" means the process to: (i) evaluate the ~~medical functional~~, nursing, and social ~~needs supports~~ of individuals referred for preadmission screening;; (ii) analyze what specific services the individuals need;; (iii) evaluate whether a service or a combination of existing community services are available to meet the individuals' needs;; and (iv) authorize Medicaid funded nursing home or community-based care for those individuals who meet nursing facility level of care ~~and require that level of care.~~

"*Nursing Home Preadmission Screening Committee/Team*" means the entity contracted with the DMAS ~~which that~~ is responsible for performing nursing home preadmission screening. For individuals in the community, this entity is a committee comprised of ~~staff a nurse~~ from the local health department and a ~~social worker~~ from the local ~~DSS department of social services~~. For individuals in an acute care facility who require screening, the entity is a team of nursing and social work staff. A physician must be a member of both the local committee ~~or and~~ an acute care team.

"*Participating provider*" means an institution, facility, agency, partnership, corporation, or association that meets the standards and requirements set forth by DMAS, and has a current, signed contract with DMAS.

"*Personal care agency*" means a participating provider [~~which that~~] renders services designed to prevent or reduce inappropriate institutional care by providing eligible individuals with personal care aides who provide personal care services.

"*Personal care services*" means long-term maintenance or support services necessary to enable the individual to remain at or return home rather than enter a nursing care facility. Personal care services [~~include assistance with personal hygiene, nutritional support, and the environmental maintenance necessary for recipients to remain in their homes~~] are provided to individuals in the areas of activities of daily living, instrumental activities of daily living, access to the community, monitoring of self-administered medications or other medical needs, and the monitoring of health status and physical condition. It may be provided in home and community

settings to enable an individual to maintain the health status and functional skills necessary to live in the community or participate in community activities].

"*Personal emergency response system (PERS)*" means an electronic device that enables certain recipients at high risk of institutionalization to secure help in an emergency.

"*PERS provider*" means a certified home health or personal care agency, a durable medical equipment provider, a hospital, or a PERS manufacturer that has the ability to provide PERS equipment, direct services (i.e., installation, equipment maintenance, and service calls), and PERS monitoring. PERS providers may also provide medication monitoring.

"*Plan of Care*" means the [written] ~~plan of services certified by the screening team physician as needed by the individual developed by the provider related solely to the specific services required by the recipient to ensure optimal health and safety for the delivery of home and community-based care.~~

~~"Professional staff" means the director, activities director, registered nurse, or therapist of an adult day health care center.~~

["*Reconsideration*" means the supervisory review of information submitted to DMAS in the event that a decision to deny the reimbursement of services is made at an analyst's level.]

"*Respite care*" means services specifically designed to provide a temporary, but periodic or routine, relief to the primary unpaid caregiver of an individual who is incapacitated or dependent due to frailty or physical disability. Respite care services include assistance with personal hygiene, nutritional support, and environmental maintenance authorized as either episodic, temporary relief, or as a routine periodic relief of the caregiver.

"*Respite care agency*" means a participating provider [~~which that~~] renders services designed to prevent or reduce inappropriate institutional care by providing eligible individuals with respite care aides who provide respite care services.

"*Routine respite care*" means [*services specifically designed to provide*] relief [~~of to~~] the primary unpaid caregiver on a periodic basis over an extended period of time to allow the caregiver a routine break from continuous care ([~~i.e.~~ e.g.], respite care offered one day a week for six hours).

"*Service plan*" means the written plan certified by the screening team as needed by the individual to ensure optimal health and safety for the delivery of home and community-based care.

~~"Staff" means professional and aide staff of an adult day health care center.~~

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

["*Uniform Assessment Instrument*" or "*UAI*" means the standardized multidimensional questionnaire that assesses an

Final Regulations

individual's social, physical health, mental health, and functional abilities.]

12 VAC 30-120-20. General coverage and requirements for all home and community-based care waiver services.

A. Coverage statement.

1. Coverage shall be provided under the administration of ~~the~~ DMAS for elderly and disabled individuals who would otherwise require the level of care provided in a nursing facility.
2. These services shall be medically appropriate and necessary to maintain these individuals in the community.
3. Under this § 1915(c) waiver, DMAS waives §§ 1902(a)(10)(B) and 1902(a)(10)(C)(4)(iii) of the Social Security Act related to comparability ~~and statewide~~ of services.

B. Patient [~~qualification and~~] eligibility requirements.

1. ~~Virginia will apply the financial eligibility criteria contained in the State Plan for the categorically needy and the medically needy. Virginia has elected to cover the optional categorically needy group under 42 CFR 435.211, 435.231 and 435.217. The income level used for 435.211, 435.231 and 435.217 is 300% of the current Supplemental Security Income payment standard for one person low income families with children as described in § 1931 of the Social Security Act; aged, blind, or disabled individuals who are eligible under 42 CFR [§-] 435.121; optional categorically needy individuals who are aged and disabled who have incomes at 80% of the federal poverty level; the special home and community-based waiver groups under 42 CFR [§-] 435.217; and the medically needy under 42 CFR [§§-] 435.320, 435.322, 435.324, and 435.330.~~

a. Under this waiver, the coverage groups authorized under § 1902(a)(10)(A)(ii)(VI) of the Social Security Act will be considered as if they were institutionalized for the purpose of applying institutional deeming rules. All recipients under the waiver must meet the financial and nonfinancial Medicaid eligibility criteria and be Medicaid eligible in an institution. The deeming rules are applied to waiver eligible individuals as if the individual were residing in an institution or would require that level of care.

b. Virginia shall reduce its payment for home and community-based services provided to an individual who is eligible for Medicaid services under 42 CFR 435.217 by that amount of the individual's total income (including amounts disregarded in determining eligibility) that remains after allowable deductions for personal maintenance needs, deductions for other dependents, and medical needs have been made, according to the guidelines in 42 CFR 435.735 and § 1915(c)(3) of the Social Security Act as amended by the Consolidated Omnibus Budget Reconciliation Act of 1986. DMAS will reduce its payment for home and community-based waiver services by the amount that remains after the deductions listed below:

(1) For individuals to whom § 1924(d) applies (Virginia waives the requirement for comparability pursuant to § 1902(a)(10)(B)), deduct the following in the respective order:

- (a) An amount for the maintenance needs of the individual which is equal to the categorically needy income standard for a noninstitutionalized individual-;
- (b) For an individual with only a spouse at home, the community spousal income allowance determined in accordance with § 1924(d) of the Social Security Act-;
- (c) For an individual with a family at home, an additional amount for the maintenance needs of the family determined in accordance with § 1924(d) of the Social Security Act-; *and*
- (d) Amounts for incurred expenses for medical or remedial care that are not subject to payment by a third party including Medicare and other health insurance premiums, deductibles, or coinsurance charges and necessary medical or remedial care recognized under state law but covered under the Plan.

(2) For individuals to whom § 1924(d) does not apply, deduct the following in the following order:

- (a) An amount for the maintenance needs of the individual which is equal to the categorically needy income standards for a noninstitutionalized individual-;
- (b) For an individual with a family at home, an additional amount for the maintenance needs of the family which shall be equal to the medically needy income standard for a family of the same size-; *and*
- (c) Amounts for incurred expenses for medical or remedial care that are not subject to payment by a third party including Medicare and other health insurance premiums, deductibles, or coinsurance charges and necessary medical or remedial care recognized under state law but covered under the state Medical Assistance Plan.

2. *Reserved.*

C. Assessment and authorization of home and community-based care services.

1. To ensure that Virginia's home and community-based care waiver programs serve only individuals who would otherwise be placed in a nursing facility, home and community-based care services shall be considered only for individuals who are seeking nursing facility admission or for individuals who are at imminent risk of nursing facility admission. [*"Imminent risk" is defined as within one month.*] Home and community-based care services shall be the critical service that enables the individual to remain at home rather than being placed in a nursing facility.

2. The individual's ~~status as an individual in need of eligibility~~ for home and community-based care services shall be determined by the Nursing Home Preadmission

Screening Team after completion of a thorough assessment of the individual's needs and available support. ~~Screening and preauthorization of home and community-based care services by the Nursing Home Preadmission Screening Committee/Team or DMAS staff is mandatory before Medicaid will assume payment responsibility of home and community-based care services.~~

~~3. Before Medicaid will assume payment responsibility of home and community [-] based care services, preauthorization must be obtained from the designated preauthorization contractor.~~

~~3- 4. An essential part of the Nursing Home Preadmission Screening Team's assessment process is determining the required level of care required by applying existing criteria for nursing facility care according to the established Nursing Home Preadmission Screening process.~~

~~4- 5. The team shall explore alternative settings and/or services to provide the care needed by the individual. If nursing facility placement or a combination of other services is determined to be appropriate, the screening team shall initiate referrals for service. If Medicaid-funded home and community-based care services are determined to be the critical service to delay or avoid nursing facility placement, the screening team shall develop an appropriate service plan of care and initiate referrals for service.~~

~~5. Reserved.~~

~~6. Home and community-based care services shall not be offered [or provided] to any individual who resides in a nursing facility, an intermediate [care] facility for the mentally retarded, a hospital, or an [adult home assisted living facility] licensed or certified by [the] DSS. [Additionally, home and community-based care services shall not be provided to any individual who resides outside of the physical boundaries of the Commonwealth, with the exception of brief periods of time as approved by DMAS or the designated preauthorization contractor. Brief periods of time may include, but are not necessarily restricted to, vacation or illness.]~~

~~7. Medicaid will not pay for any home and community-based care services delivered prior to the authorization date approved by the Nursing Home Preadmission Screening Committee/Team and the physician signature on the Medicaid Funded Long-Term Care Service Authorization Form (DMAS-96). [If services have not begun within 180 days of the preadmission screening, a new preadmission screening must be completed or an update to the original preadmission screening must be completed prior to the beginning of services. Preadmission screenings are valid for the following periods of time: (i) month 0-6 - no updates needed; (ii) month 6-12 - update needed (do not submit for reimbursement); and (iii) over 12 months - new screening must be completed (submit for reimbursement).]~~

~~8. Any authorization and Plan of Care for home and community-based care services will be subject to the approval of the DMAS prior to Medicaid reimbursement for waiver services.~~

[D. Appeals. Recipient appeals shall be considered pursuant to 12 VAC 30-110-10 through 12 VAC 30-110-380. Provider appeals shall be considered pursuant to 12 VAC 30-10-1000 and 12 VAC 30-20-500 through 12 VAC 30-20-560.]

12 VAC 30-120-30. General conditions and requirements for all home and community-based care participating providers.

[A. All providers must meet the general requirements and conditions for provider participation. In addition, there are specific requirements for each of the service providers (personal care, respite care, adult day health care, and PERS) that are set forth in 12 VAC 30-120-40 through 12 VAC 30-120-60.]

[A- B.] General requirements. Providers approved for participation shall, at a minimum, perform the following activities:

1. Immediately notify DMAS, in writing, of any change in the information which the provider previously submitted to DMAS, to include the provider's physical and mailing addresses, executive staff and officers, and contact person's name, telephone number, and fax number.

2. Assure freedom of choice to recipients in seeking medical care from any institution, pharmacy, practitioner, or other provider qualified to perform the service or services required and participating in the Medicaid Program at the time the service or services were performed.

3. Assure the recipient's freedom to reject medical care and treatment.

4. Accept referrals for services only when staff is available to initiate services.

5. Provide services and supplies to recipients in full compliance with [(i)] Title VI of the Civil Rights Act of 1964 [(42 USC § 2000 et seq.),] which prohibits discrimination on the grounds of race, color, religion, or national origin [and of Section ; (ii) §] 504 of the Rehabilitation Act of 1973 [(29 USC § 70 et seq.), which prohibits discrimination on the basis of disability;] and [(iii) Title II of] the Americans with Disabilities Act [, which prohibits prohibit discrimination on the basis of a handicap of 1990 (42 USC § 126 et seq.), which provides comprehensive civil rights protections to individuals with disabilities in the areas of employment, public accommodations, state and local government services, and telecommunications] .

6. Provide services and supplies to recipients in the same quality and mode of delivery as provided to the general public.

7. Charge DMAS for the provision of services and supplies to recipients in amounts not to exceed the provider's usual and customary charges to the general public.

8. Accept Medicaid payment from the first day of eligibility.

9. Accept as payment in full the amount established by the DMAS.

10. Use Program-designated billing forms for submission of charges.

Final Regulations

11. Maintain and retain business and professional records sufficient to document fully and accurately the nature, scope and details of the health care provided.

a. Such records shall be retained for at least five years from the last date of service or as provided by applicable [*federal or*] state laws, whichever period is longer. If an audit is initiated within the required retention period, the records shall be retained until the audit is completed and every exception resolved. Records of minors shall be kept for at least five years after such minor has reached the age of 18 years.

b. Policies regarding retention of records shall apply even if the [*agency provider*] discontinues operation. DMAS shall be notified in writing of storage, location, and procedures for obtaining records for review should the need arise. The location, agent, or trustee shall be within the Commonwealth of Virginia.

12. Furnish to authorized state and federal personnel, in the form and manner requested, access to records and facilities.

13. Disclose, as requested by DMAS, all financial, beneficial, ownership, equity, surety, or other interests in any and all firms, corporations, partnerships, associations, business enterprises, joint ventures, agencies, institutions, or other legal entities providing any form of health care services to recipients of Medicaid.

14. Hold confidential and use [*only*] for authorized DMAS purposes [*only*] all medical assistance information regarding recipients.

15. Change of ownership. When ownership of the provider agency changes, DMAS shall be notified within 15 calendar days.

[~~B. C.~~] Requests for participation. Requests will be screened to determine whether the provider applicant meets the basic requirements for participation.

[~~C. D.~~] Provider participation standards. For DMAS to approve contracts with home and community-based care providers ~~the following standards shall be met, providers must meet staffing, financial solvency, disclosure of ownership and assurance of comparability of services requirements as specified in DMAS' Elderly and Disabled Waiver Services Manual published July 1, 2002.~~

- ~~1. Staffing requirements,~~
- ~~2. Financial solvency,~~
- ~~3. Disclosure of ownership, and~~
- ~~4. Assurance of comparability of services.~~

[~~D. E.~~] Adherence to provider contract and special participation conditions. In addition to compliance with the general conditions and requirements, all providers enrolled by the Department of Medical Assistance Services shall adhere to the conditions of participation outlined in their individual provider contracts.

[~~E. F.~~] Recipient choice of provider agencies. If there is more than one approved provider agency *offering services* in the

community, the individual will have the option of selecting the provider agency of ~~their~~ *his choice from among those agencies that can appropriately meet the individual's needs.*

[~~F. G.~~] Termination of provider participation. DMAS may administratively terminate a provider from participation upon ~~60 days~~ *30 days* ['] written notification. DMAS may also cancel a contract immediately or may give notification in the event of a breach of the contract by the provider as specified in the DMAS contract. ~~Subsection precludes further~~ *Payment by DMAS is prohibited* for services provided to recipients subsequent to the date specified in the termination notice.

[~~G. H.~~] Reconsideration of adverse actions. Adverse actions may include, but shall not be limited to: disallowed payment of claims for services rendered which are not in accordance with DMAS policies and procedures, caseload restrictions, and contract limitations or termination. The following procedures will be available to all providers when DMAS takes adverse action:

1. The reconsideration process shall consist of three phases:
 - a. A written response and reconsideration to the preliminary findings,;
 - b. The informal conference,; and
 - c. The formal evidentiary hearing.

2. The provider shall have 30 days to submit information for written reconsideration, ~~45~~ *30* days from the date of the notice to request the informal conference, and ~~45~~ *30* days to request the formal evidentiary hearing.

3. An appeal of adverse actions shall be heard in accordance with ~~the Administrative Process Act (§ 9-6-14:1 et seq. of the Code of Virginia) and the State Plan for Medical Assistance provided for in § 32.1-325 of the Code of Virginia. Court review of the final agency determination shall be made in accordance with the Administrative Process Act 12 VAC 30-10-1000 and Part XII (12 VAC 30-20-500 et seq.) of 12 VAC 30-20.~~

[~~H. I.~~] Participating provider agency's responsibility for the recipient Patient Information Form (DMAS-122). It is the responsibility of the provider agency to notify DMAS, *or the designated preauthorization contractor*, and the DSS, in writing, when any of the following circumstances occur:

1. Home and community-based care services are implemented,;
2. A recipient dies,;
3. A recipient is discharged or terminated from services,; or
4. Any other circumstances (including hospitalization) [~~which that~~] cause home and community-based care services to cease or be interrupted for more than 30 days.

[~~I. J.~~] Changes or termination of care.

1. Decreases in *the* amount of authorized care by the provider agency.

a. The provider agency may decrease the amount of authorized care ~~only if the recipient and the participating provider both agree that a decrease in care is needed and that~~ the amount of care in the revised plan of care is appropriate, *based on the needs of the individual. If the recipient disagrees with the proposed decrease, [DMAS, or the designated preauthorization contractor, shall conduct a review of the recipient's service needs as part of the reconsideration process the recipient has the right to reconsideration by DMAS or the designated preauthorization contractor]*.

b. The participating provider is responsible for devising the new plan of care and calculating the new hours of service delivery.

c. The individual responsible for supervising the recipient's care shall discuss the decrease in care with the recipient or family, ~~or both,~~ document the conversation in the recipient's record, and shall notify the recipient or family of the change by letter. *This letter shall give the right to reconsideration.*

~~d. If the recipient disagrees with the decrease proposed, the DMAS shall be notified to conduct a special review of the recipient's service needs.~~

2. Increases in *the* amount of authorized care. If a change in the recipient's condition (~~physical, mental, or social~~) necessitates an increase in care, the participating provider shall assess the need for increase and, if appropriate, develop a plan of care for services to meet the changed needs. The provider may implement the increase in hours without approval from DMAS ~~as long as, or the designated preauthorization contractor, if~~ the amount of service does not exceed the amount established by DMAS, ~~or the designated preauthorization contractor,~~ as the maximum for the level of care designated for that recipient. Any increase to a recipient's plan of care which exceeds the number of hours allowed for that recipient's level of care or any change in the recipient's level of care must be preapproved by the DMAS utilization review analyst assigned to the provider, ~~or the designated preauthorization contractor.~~

3. Nonemergency termination of home and community-based care services by the participating provider. The participating [*ADHC, personal care and respite care*] provider shall give the recipient or family, or both, five days written notification of the intent to terminate services. The letter shall provide the reasons for and *the* effective date of the termination. The effective date of ~~services~~ the termination of services shall be at least five days from the date of the termination notification letter. [*The PERS provider shall give the recipient or family, or both, 14 days' written notification of the intent to terminate services. The letter shall provide the reasons for and the effective date of the termination. The effective date of the termination of services shall be at least 14 days from the date of the termination notification letter.*]

4. Emergency termination of home and community-based care services by the participating provider. In an emergency situation when the health and safety of the recipient or provider agency personnel is endangered ~~the~~, DMAS, ~~or the~~

designated preauthorization contractor, must be notified prior to termination. The five-day written notification period shall not be required.

5. DMAS, ~~or the designated preauthorization contractor,~~ termination of home and community-based care services. The effective date of termination will be at least 10 days from the date of the termination notification letter. DMAS, ~~or the designated preauthorization contractor,~~ has the responsibility and the authority to terminate home and community-based care services to the recipient for any of these reasons:

a. The home and community-based care service is not the critical alternative to prevent or delay institutional placement-;

b. The recipient no longer meets the level-of-care criteria-;

c. The recipient's environment does not provide for his health, safety, and welfare-; *or*

d. An appropriate and cost- effective plan of care cannot be developed.

[*If the recipient disagrees with the service termination decision, DMAS or the designated preauthorization contractor shall conduct a review of the recipient's service needs as part of the reconsideration process.*]

[~~J. K.~~] Suspected abuse or neglect. Pursuant to § ~~63.1-55.3~~ 63.2-1606 of the Code of Virginia, if a participating provider agency knows or suspects that a home and community-based care recipient is being abused, neglected, or exploited, the party having knowledge or suspicion of the [~~abuse/neglect/exploitation~~] *abuse, neglect, or exploitation* shall report this to the local DSS.

[~~K. L.~~] DMAS is responsible for assuring continued adherence to provider participation standards. DMAS shall conduct ongoing monitoring ~~or~~ *and* compliance with provider participation standards and DMAS policies ~~and annually recertify each provider for contract renewal with DMAS to provide home and community-based services.~~ A provider's noncompliance with DMAS policies and procedures, as required in the provider's contract, may result in a ~~written request from DMAS for a corrective action plan which details the steps the provider will take and the length of time required to achieve full compliance with deficiencies which have been cited retraction of Medicaid payment or termination of the provider agreement.~~

[~~L. M.~~] Waiver desk reviews. DMAS will request, on an annual basis, information on every recipient, which is used to assess the recipient's ongoing need for Medicaid funded long-term care. With this request, the provider will receive a list that specifies the information that is being requested.

12 VAC 30-120-40. Adult day health care services.

The following are specific requirements governing the provision of adult day health care [*(ADHC)*]:

A. General. Adult day health care services may be offered to individuals in a congregate daytime setting as an alternative to [~~more costly~~] institutional care. Adult day health care may be offered either as the sole home and community-based care

Final Regulations

service that avoids institutionalization or in conjunction with personal care or, respite care, or both *PERS*. ~~When the individual referred for adult day health care is already receiving another home and community based care service, the DMAS utilization review staff shall assess the need for the additional home and community based care service and authorize the service if it is deemed necessary to avoid institutionalization.~~

B. Special provider participation conditions. In order to be a participating provider, the adult day health care center shall:

1. Be an adult day care center licensed by DSS. A copy of the current license shall be available to the DMAS for verification purposes prior to the applicant's enrollment as a Medicaid provider and shall be available for DMAS review ~~prior to yearly contract renewal;~~
2. Adhere to the DSS adult day care center standards. The DMAS special participation conditions included here are standards imposed in addition to DSS standards which shall be met in order to provide Medicaid adult day health care services-;
3. The center shall ~~be able to~~ provide a separate room or an area equipped with one bed or, cot, or *recliner* for every ~~six~~ 12 Medicaid adult day health care participants-; and
4. Employ sufficient interdisciplinary staff to adequately meet the health, maintenance, and safety needs of each participant.

The following staff are required by DMAS:

- a. The ~~adult day health care~~ center shall maintain a minimum ~~staff-to-participant~~ ratio of one staff member to every six participants ~~{. This includes Medicaid and other participants};~~
- b. There shall be at least two staff ~~persons~~ *members* at the center at all times when there are Medicaid participants in attendance-;
- c. In the absence of the director, ~~a professional staff member~~ *the Activities Director, Registered Nurse or therapist* shall be designated to supervise the program-;
- d. Volunteers ~~shall~~ *can* be included in the ~~staff-to-participant~~ ratio ~~only when they conform to the same standards and requirements as paid staff and meet the job description standards of the organization. if these volunteers meet the qualifications and training requirements for compensated employees; and, for each volunteer, there shall be at least one compensated employee included in the staff-to-participant ratio;~~
- e. Any center that is collocated with another facility shall count only its own separate identifiable staff in the center's ~~staff/participant~~ *staff-to-participant* ratio.
- f. The adult day health care center shall employ the following:

- (1) A director who shall be responsible for overall management of the center's programs. This individual shall be the provider contact person for DMAS ~~staff~~ *and the designated preauthorization contractor*, and shall

~~be responsible for contracting, and receipt and response~~ *responding* to communication from DMAS ~~and the designated preauthorization contractor~~. The director shall be responsible for assuring the ~~initial~~ development of the plan of care for adult day health care participants. The director has ultimate responsibility for directing the center program and supervision of its employees. The director can ~~also~~ *also* serve as ~~the~~ *the* activities director ~~also~~ if those qualifications are met.

- (2) An activities director who shall be responsible for directing recreational and social activities for the adult day health care participants.

- (3) Program aides who shall be responsible for overall assistance with care and maintenance of the participant (assistance with activities of daily living, recreational activities, and other health and therapeutic related activities).

g. The ~~adult day health care~~ center shall employ or subcontract with a registered nurse who shall be responsible for administering and monitoring the health needs of the ~~adult day health care~~ participants. The nurse shall be responsible for the planning, organization, and management of ~~a treatment~~ *the plan of care* involving multiple services where specialized health care knowledge ~~shall be applied~~ *is needed*. The nurse shall be present a minimum of ~~one day~~ *eight hours* each month at the ~~adult day health care center to render direct services to Medicaid adult day health care participants~~. The DMAS may require the nurse's presence at the adult day health care center for more than this minimum standard depending on the number of participants in attendance and according to the medical and nursing needs of the participants. Although the DMAS does not require that the nurse be a full-time staff position, there shall be a nurse available, either in person or by telephone ~~at a minimum~~, to the center's participants ~~[and staff]~~ during all times ~~that~~ the center is in operation.

h. The director shall assign ~~a professional staff member himself, the activities director, registered nurse or therapist~~ to act as adult day health care coordinator for each participant and shall document in the participant's file the identity of the care coordinator. The adult day health care coordinator shall be responsible for management of the participant's plan of care and for its review with the program aides.

C. Minimum qualifications of adult day health care staff. Documentation of all staffs' credentials shall be maintained in the provider agency's personnel ~~file files~~ for review by DMAS ~~staff who are authorized by the agency to review these files~~.

1. Program aide. Each program aide hired by the provider agency shall be screened to ensure compliance with ~~minimum~~ qualifications as required by DMAS. The aide shall, at a minimum, have the following qualifications:

- a. Be able to read and write- *in English to the degree necessary to perform the tasks expected;*

- b. Be physically able to do the work-;

- c. Have a satisfactory work record, as evidenced by references from prior job experience, including no evidence of possible abuse, neglect, or exploitation of incapacitated or older adults and children. *Providers are responsible for complying with § 32.1-162.9:1 of the Code of Virginia regarding criminal record checks. The criminal record check shall be available for review by DMAS staff who are authorized by the agency to review these files.*
- d. Have satisfactorily completed an educational curriculum related to the needs of the elderly and disabled. Acceptable curriculum are offered by educational institutions, nursing facilities, and hospitals. *Training consistent with DMAS training guidelines may also be given by the center's professional staff. Curriculum titles include: Nurses Aide, Geriatric Nursing Assistant, and Home Health Aide. Documentation of successful completion shall be maintained in the aide's personnel file and be available for review by the DMAS staff who are authorized by the agency to review these files. Training consistent with DMAS training guidelines may also be given by the center's professional staff. The content of the training shall be approved by DMAS prior to assignment of the aide to a Medicaid participant. Prior to assigning a program aide to a participant, the center shall ensure that the aide has satisfactorily completed a training program consistent with DMAS' Elderly and Disabled Waiver Services Manual published July 1, 2002.*
2. Registered nurse. The registered nurse shall:
- Be registered and licensed to practice nursing in the Commonwealth of Virginia;
 - Have two years of related clinical experience (which may include work in an acute care hospital, *public health clinic, home health agency, rehabilitation hospital, or nursing facility, or as an LPN*); and
 - Have a satisfactory work record, as evidenced by references from prior job experience, including no evidence of possible abuse or, neglect, or exploitation of incompetent or incapacitated individuals or older adults and children. *Providers are responsible for complying with § 32.1-162.9:1 of the Code of Virginia regarding criminal record checks. The criminal record check shall be available for review by DMAS staff who are authorized by the agency to review these files.*
3. Activities director. The activities director shall:
- Have a minimum of 48 semester hours or 72 quarter hours of post secondary education from an accredited college or university with a major in recreational therapy, occupational therapy, or a related field such as art, music, or physical education;
 - Have one year of related experience which may include work in an acute care hospital, rehabilitation hospital, nursing facility, or have completed a course of study including any prescribed internship in occupational, physical, and recreational therapy or music, dance, art therapy, or physical education; and
 - Have a satisfactory work record, as evidenced by references from prior job experience, including no evidence of possible abuse, neglect, or exploitation of incapacitated or older adults and children. *Providers are responsible for complying with § 32.1-162.9:1 of the Code of Virginia regarding criminal record checks. The criminal record check shall be available for review by DMAS staff who are authorized by the agency to review these files.*
4. Director. The director shall meet the qualifications specified in the DSS standards for adult day care for directors. *Providers are responsible for complying with § 32.1-162.9:1 of the Code of Virginia regarding criminal record checks. The criminal record check shall be available for review by DMAS staff who are authorized by the agency to review these files.*
- D. Service responsibilities of the adult day health care center and staff duties are:
- Aide responsibilities. The aide shall be responsible for assisting with activities of daily living, supervising the participant, and assisting with the management of the participant's plan of care.
 - Nursing responsibilities. These services shall include:
 - Periodic evaluation of the nursing needs of each participant;
 - Provision of the indicated nursing care and treatment; and
 - Monitoring, recording, and administering of prescribed medications, if no other individual is designated by the individual's physician to administer medications in the adult day care center, or supervising the individual in self-administered medication.
 - Rehabilitation services coordination responsibilities. These services are designed to ensure the participant receives all rehabilitative services deemed necessary to improve or maintain independent functioning, to include the coordination and implementation of physical therapy, occupational therapy, and speech-language therapy. Rendering of the specific Rehabilitative Therapy is not included in the ADHC center's fee for service but must be rendered as a separate service by a DMAS approved rehabilitative provider.
 - Transportation responsibilities. ~~Every DMAS approved adult day health care center shall provide transportation when needed in emergency situations (i.e., primary caregiver has an accident and cannot transport the participant home) for all Medicaid participants to and from their homes. Any adult day health care center which is able to provide participants with transportation routinely to and from the center can be reimbursed by DMAS based on a per trip (to and from the participant's residence) fee. This reimbursement for transportation shall be preauthorized by either the Nursing Home Preadmission Screening Team or DMAS utilization review staff.~~
 4. Nutrition responsibilities. The adult day health care center shall provide one meal per day, which supplies one-third of the daily nutritional requirements. Special diets and counseling shall be provided to Medicaid participants as necessary.

Final Regulations

~~6- 5. Adult day health care coordination. The designated adult day health care coordinator shall coordinate the delivery of the activities as prescribed in the participants' *Plans plan* of care and keep it updated, record 30-day progress notes, and review the participants' daily *logs records* each week.~~

~~7- 6. Recreation and social activities responsibilities. The *adult day health care* center shall provide planned recreational and social activities suited to the participants' needs and designed to encourage physical exercise, prevent deterioration, and stimulate social interaction.~~

E. Documentation required. The ~~adult day health care~~ center shall maintain all records of each Medicaid participant. These records shall be reviewed periodically by DMAS staff *who are authorized by the agency to review these files*. At a minimum, these records shall contain:

1. ~~The Long-Term Care *Information Uniform* Assessment Instrument, the *Nursing Home Preadmission Screening Medicaid Long-Term Care Service Authorization form (DMAS-96)*, and the *Screening Team Service Plan of for Medicaid-Funded Long-term Care*;~~

2. Interdisciplinary ~~Plan plans~~ of care developed by ~~adult day health care center professional staff and the center's director, [*activities director*,] registered nurse, or therapist; the participant; and relevant support persons;~~

3. Documentation of interdisciplinary staff meetings which shall be held at least every three months to reassess each participant and evaluate the adequacy of the adult day health care plan of care and make any necessary revisions;

4. At a minimum, 30-day goal oriented progress notes recorded by the individual *who is* designated as the adult day health care coordinator. If a participant's condition and treatment plan changes more often, progress notes shall be written more frequently than every 30 days;

5. The ~~adult day health care~~ center shall obtain a rehabilitative progress report and updated treatment plan from all professional disciplines involved in the participant's care every 30 days (physical therapy, speech therapy, occupational therapy, home health and others);

6. Daily ~~log records~~ of services provided. The daily ~~log record~~ shall contain the specific services delivered by ~~adult day health care center staff~~. The ~~log record~~ shall also contain the arrival and departure [~~time times~~] of the participant and be signed weekly by the ~~participant or representative and an adult day health care center professional staff member director, activities director, registered nurse, or therapist employed by the center~~. The daily ~~log record~~ shall be completed on a daily basis, neither before nor after the date of service delivery. At least once a week, a staff member shall chart significant comments regarding care given to the participant. If the staff member writing comments is different from the staff signing the weekly ~~log record~~, that staff member shall sign the weekly comments. *A copy of this record must be given to the participant or representative weekly; and*

7. All correspondence to the participant ~~and to~~, DMAS, and *the designated preauthorization contractor*.

~~8. All DMAS utilization review forms and plans of care.~~

12 VAC 30-120-50. Personal care services.

The following requirements govern the provision of personal care services.

A. General. Personal care services may be offered to individuals ~~in their homes~~ as an alternative to ~~more costly~~ institutional care. Personal care may be offered either as the sole home and community-based care service that avoids institutionalization or in conjunction with adult day health care or, respite care, or ~~both PERS~~. ~~When the individual referred for personal care is already receiving another home and community-based care service, the DMAS utilization review staff shall assess the need for the additional home and community-based care service and authorize the service if it is deemed necessary to avoid institutionalization.~~

Recipients may continue to work or attend post-secondary school, or both, while they receive services under this waiver. The personal care attendant who assists the recipient may accompany that person to work or school or both and may assist the person with personal needs while the individual is at work or school or both. DMAS will also pay for any personal care services that the attendant gives to the enrolled recipient to assist him in getting ready for work or school or both or when he returns home.

DMAS will review the recipient's needs and the complexity of the disability when determining the services that will be provided to the recipient in the workplace or school or both.

DMAS will not duplicate services that are required as a reasonable accommodation as a part of the Americans with Disabilities Act (ADA) (42 USC §§ 12131 through 12165) or the Rehabilitation Act of 1973. For example, if the recipient's only need is for assistance during lunch, DMAS would not pay for the attendant to be with the recipient for any hours extending beyond lunch. For a recipient whose speech is such that they cannot be understood without an interpreter (not translation of a foreign language), or the recipient is physically unable to speak or make himself understood even with a communication device, the attendant's services may be necessary for the length of time the recipient is at work or school or both. DMAS will reimburse for the attendant's services unless the attendant is required to assist the recipient for the length of time the recipient is at work or school or both as a part of the ADA or the Rehabilitation Act.

The provider agency must develop an individualized plan of care that addresses the recipient's needs at home and work and in the community.

DMAS will not pay for the attendant to assist the enrolled recipient with any functions related to the recipient completing his job or school functions or for supervision time during work or school or both.

B. Special provider participation conditions. The personal care provider shall:

~~1. Demonstrate a prior successful health care delivery.~~

~~2. 1. Operate from a business office;~~

3- 2. Employ (or subcontract with) and directly supervise a registered nurse (RN) who will provide ongoing supervision of all personal care aides.

a. The RN registered nurse shall be currently licensed to practice in the Commonwealth of Virginia and have at least two years of related clinical nursing experience (which may include work in an acute care hospital, public health clinic, home health agency, or rehabilitation hospital, nursing facility, or as a licensed practical nurse (LPN)).

b. The registered nurse shall have a satisfactory work record, as evidenced by two references from prior job experience, including no evidence of abuse, neglect, or exploitation of incapacitated or older adults and children. Providers are responsible for complying with § 32.1-162.9:1 of the Code of Virginia regarding criminal record checks. The criminal record check shall be available for review by DMAS staff who are authorized by the agency to review these files.

c. The RN registered nurse supervisor shall make an initial home assessment home visit prior to on or before the start of care for all new recipients admitted to personal care, when a recipient is readmitted after being discharged from services, or if he is transferred to another provider or ADHC.

d. The RN registered nurse supervisor shall make supervisory visits as often as needed, but no fewer visits than provided as follows, to ensure both quality and appropriateness of services.

(1) A minimum frequency of these visits is every 30 days for recipients with a cognitive impairment and every [90 60] days for recipients who do not have a cognitive impairment.

[(2) Cognitive impairment is defined as a severe deficit in mental capability that affects areas such as thought processes, problem-solving, judgement, memory, or comprehension and that interferes with such things as reality orientation, ability to care for self, ability to recognize danger to self or others, or impulse control.

(3) (2) The initial home assessment visit by the registered nurse shall be conducted to create the plan of care and assess the recipient's needs. The registered nurse shall return for a follow-up visit within 30 days after the initial visit to assess the recipient's needs and make a final determination that there is no cognitive impairment. This determination must be documented in the recipient's record by the registered nurse. Recipients who are determined to have a cognitive impairment will continue to have supervisory visits every 30 days.

(4) (3) If there is no cognitive impairment, the registered nurse may give the recipient or caregiver or both the option of having the supervisory visit every [90 60] days or any increment in between, not to exceed [90 60] days. The registered nurse must document in the recipient's record this conversation and the option that was chosen.

[(5) (4)] The provider agency has the responsibility of determining if 30-day registered nurse supervisory visits are appropriate for the recipient. The provider agency may offer the extended registered nurse visits, or the agency may choose to continue the 30-day supervisory visits based on the needs of the individual. The decision must be documented in the recipient's record.

[(6) (5)] If a recipient's personal care aide is supervised by the provider's registered nurse less often than every 30 days and DMAS or the designated preauthorization contractor determines that the recipient's health, safety or welfare is in jeopardy, DMAS, or the designated preauthorization contractor, may require the provider's registered nurse to supervise the personal care aide every 30 days or more frequently than what has been determined by the registered nurse. This will be documented and entered in the recipient's record.

e. During visits to the recipient's home, the RN a registered nurse shall observe, evaluate, and document the adequacy and appropriateness of personal care services with regard to the recipient's current functioning status, medical, and social needs. The personal care aide's record shall be reviewed and the recipient's (or family's) satisfaction with the type and amount of service discussed. The RN registered nurse summary shall note:

(1) Whether personal care services continue to be appropriate,

(2) Whether the plan is adequate to meet the need recipient's needs or if changes are indicated need to be made in the plan; of care;

(3) Any special tasks performed by the aide and the aide's qualifications to perform these tasks;

(4) Recipient's satisfaction with the service;

(5) Hospitalization or change in the medical condition or functioning status; of the recipient;

(6) Other services received by the recipient and their the amount; and

(7) The presence or absence of the aide in the home during the RN's registered nurse's visit.

f. The A registered nurse shall be available to the personal care aide for conference pertaining to individuals being served by the aide and shall be available to aides by telephone at all times that the aide is providing services to personal care recipients. Any change in the identity of the RN providing coverage shall be reported immediately to DMAS.

g. The RN registered nurse supervisor shall evaluate the aides' performance and the recipient's individual needs to identify any gaps insufficiencies in the aides' abilities to function competently and shall provide training as indicated. [This shall be documented in the recipient's record.]

Final Regulations

h. If there is a delay in the registered nurses' supervisory visits, because the recipient was unavailable, the reason for the delay must be documented in the recipient's record.

4. 3. Employ and directly supervise personal care aides who will provide direct care to personal care recipients. Each aide hired by the provider agency shall be evaluated by the provider agency to ensure compliance with minimum qualifications as required by DMAS. Each aide shall:

a. Be able to read and write- *in English to the degree necessary to perform the expected tasks;*

b. Complete a *minimum of 40 hours of training consistent with DMAS standards. Prior to assigning an aide to a recipient, the provider agency shall ensure that the aide has satisfactorily completed a training program consistent with DMAS standards-;*

c. Be physically able to do the work-;

d. Have a satisfactory work record, as evidenced by references from prior job experience, including no evidence of possible abuse, neglect, or exploitation of incapacitated or older adults and children. *Providers are responsible for complying with § 32.1-162.9:1 of the Code of Virginia regarding criminal record checks. The criminal record check shall be available for review by DMAS staff who are authorized by the agency to review these files;*

e. Not be a member of the recipient's family (e.g., family is defined as: (i) the parents of minor children who are receiving waiver services [; or (ii)] spouses of individuals who are receiving waiver services [;] children, siblings, grandparents, and grandchildren); [or legal guardians of the individuals who are receiving waiver services]; and

f. *Payment may be made for services furnished by other family members when there is objective written documentation as to why there are no other providers available to provide the care. These family members must meet the same requirements as aides who are not family members.*

~~C. Provider inability to render services and substitution of aides.~~

1. ~~When a personal care aide is absent and the agency has no other aide available to provide services, the provider agency is responsible for ensuring that services continue to recipients. The agency may either obtain a substitute aide from another agency, if the lapse in coverage is to be less than two weeks in duration, or may transfer the recipient to another agency. If no other provider agency is available, the provider agency shall notify the recipient or family so they may contact the local health department to request a Nursing Home Preadmission Screening if nursing home placement is desired.~~

2. ~~During temporary, short-term lapses in coverage (not to exceed two weeks in duration), the following procedure shall apply:~~

~~a. The personal care agency having recipient responsibility shall provide the registered nurse supervision for the substitute aide.~~

~~b. The agency providing the substitute aide shall send to the personal care agency having recipient care responsibility a copy of the aide's signed daily records signed by the recipient.~~

~~c. The provider agency having recipient responsibility shall bill DMAS for services rendered by the substitute aide.~~

~~3. If a provider agency secures a substitute aide, the provider agency shall be responsible for ensuring that all DMAS requirements continue to be met, including documentation of services rendered by the substitute aide and documentation that the substitute aide's qualifications meet DMAS requirements.~~

~~D. C. Required documentation in for recipients' records. The provider agency shall maintain all records of each personal care recipient. These records shall be separate from those of nonhome and community-based care services, such as companion or home health services. These records shall be reviewed periodically by the DMAS staff who are authorized by the agency to review these files. At a minimum these records the record shall contain:~~

1. The most recently updated Long-Term Care Uniform Assessment Instrument, the Preadmission Screening Medicaid-Funded Long-Term Care Service Authorization form (DMAS-96), the Screening Team Service Plan of for Medicaid-Funded Long-Term Care (DMAS-97), all provider agency plans of care, and all DMAS-122's. Patient Information forms (DMAS-122);

2. ~~All DMAS utilization review forms and plans of care.~~

~~3. 2. The initial assessment by the RN supervisory a registered nurse completed prior to or on the date that services are initiated-;~~

4. 3. Registered nurses' notes recorded and dated during any significant contacts with the personal care aide and during supervisory visits to the recipient's home-;

5. 4. All correspondence to the recipient and to, DMAS-, and the designated preauthorization contractor;

6. 5. Reassessments made during the provision of services-;

7. 6. Significant contacts made with family, physicians, DMAS, the designated preauthorization contractor, formal, informal service providers and all professionals concerning the recipient. related to the recipient's Medicaid services or medical care;

8. 7. All personal care aide records. The personal care aide record shall contain:

a. The specific services delivered to the recipient by the aide and the recipient's responses-; to this service;

b. The aide's daily arrival and departure times-;

c. The aide's weekly comments or observations about the recipient to include, including observations of the recipient's physical and emotional condition, daily activities, and responses to services rendered; and

d. The aide's and recipient's or responsible caregiver's weekly signatures, including the date, to verify that personal care services have been rendered during that week have been rendered as documented in the record. An employee of the provider cannot sign for the recipient unless he is a family member of the recipient;

Signatures, times and dates shall not be placed on the aide record prior to the last date of the week that the services are delivered; and

9- 8. All recipient progress reports.

~~E. Recipient progress report. The provider is required to submit to DMAS annually for every recipient a recipient progress report, an updated Long Term Care Assessment and four aide log sheets. This information is used to assess the recipient's ongoing need for Medicaid funded long term care and appropriateness and adequacy of services rendered.~~

12 VAC 30-120-55. Personal emergency response system (PERS) services.

A. Service description. PERS is a service that monitors recipient safety in the home and provides access to emergency assistance for medical or environmental emergencies through the provision of a two-way voice communication system that dials a 24-hour response or monitoring center upon activation and via the recipient's home telephone line. PERS may also include medication monitoring devices.

B. Criteria. PERS services are limited to those recipients, ages 14 and older, who live alone or are alone for significant parts of the day and who have no regular caregiver for extended periods of time, and who would otherwise require extensive routine supervision. PERS may only be provided in conjunction with personal care, respite care, or adult day health care. [A recipient may not receive PERS if he has a cognitive impairment as defined in 12 VAC 30-120-10.]

PERS can be authorized when there is no one else, other than the recipient, in the home who is competent and continuously available to call for help in an emergency. If the recipient's caregiver has a business in the home, such as, but not limited to, a day care center, PERS will only be approved if the recipient is evaluated as being dependent in the categories of "Behavior Pattern" and "Orientation" on the Uniform Assessment Instrument (UAI).

Medication monitoring units must be physician ordered. In order to receive medication monitoring services, a recipient must also receive PERS services.

C. Service units and service limitations.

1. A unit of service shall include administrative costs, time, labor, and supplies associated with the installation, maintenance, [adjustments,] and monitoring of the PERS. A unit of service is one-month rental price, which is set by DMAS. The one-time installation of the unit includes

installation, account activation, recipient and caregiver instruction. The one-time installation shall also include the cost of the removal of the PERS equipment.

2. PERS services must be capable of being activated by a remote wireless device and be connected to the recipient's telephone line. The PERS console unit must provide hands-free voice-to-voice communication with the response center. The activating device must be waterproof, be able to automatically transmit to the response center an activator low battery alert signal prior to the battery losing power, and be able to be worn by the recipient.

In cases where medication monitoring units must be filled by the provider, the person filling the unit must be a registered nurse, a licensed practical nurse, or a licensed pharmacist. The units can be refilled every 14 days.

D. Provider requirements. In addition to meeting the general conditions and requirements for home and community-based care participating providers as specified in 12 VAC 30-120-20 and 12 VAC 30-120-30, providers must also meet the following qualifications:

1. A PERS provider is a certified home health or personal care agency, a durable medical equipment provider, a hospital, or a PERS manufacturer that has the ability to provide PERS equipment, direct services (i.e., installation, equipment maintenance, and service calls), and PERS monitoring;

2. The PERS provider must provide an emergency response center with fully trained operators who are capable of receiving signals for help from a recipient's PERS equipment 24 hours a day, 365 or 366 days per year as appropriate; determining whether an emergency exists; and notifying an emergency response organization or an emergency responder that the PERS recipient needs emergency help;

3. A PERS provider must comply with all applicable Virginia statutes, all applicable regulations of DMAS, and all other governmental agencies having jurisdiction over the services to be performed;

4. The PERS provider has the primary responsibility to furnish, install, maintain, test, and service the PERS equipment, as required, to keep it fully operational. The provider shall replace or repair the PERS device within 24 hours of the recipient's notification of a malfunction of the console unit, activating devices, or medication monitoring unit while the original equipment is being repaired;

5. The PERS provider must properly install all PERS equipment into a PERS recipient's functioning telephone line within seven days of the request unless there is appropriate documentation of why this timeframe cannot be met. The PERS provider must furnish all supplies necessary to ensure that the system is installed and working properly. The PERS provider must test the PERS device monthly, or more frequently if needed, to ensure that the device is fully operational;

6. The PERS installation shall include local seize line circuitry, which guarantees that the unit will have priority over the telephone connected to the console unit should the

Final Regulations

telephone be off the hook or in use when the unit is activated;

7. A PERS provider must maintain a data record for each PERS recipient at no additional cost to DMAS or the recipient. The record must document all of the following:

- a. Delivery and installation date of the PERS;
- b. Recipient/caregiver signature verifying receipt of the PERS device;
- c. Verification by a test that the PERS device is operational, monthly or more frequently if needed;
- d. Updated and current recipient responder and contact information, as provided by the recipient or the recipient's care provider; and
- e. A case log documenting the recipient's utilization of the system, all contacts, and all communications with the recipient, caregiver, and responders;

8. The PERS provider must have back-up monitoring capacity in case the primary system cannot handle incoming emergency signals;

9. Standards for PERS equipment. All PERS equipment must be approved by the Federal Communications Commission and meet the Underwriters' Laboratories, Inc. (UL) Safety Standard Number 1635 for Digital Alarm Communicator System Units (copyright 2002) and Number 1637 for Home Health Care Signaling Equipment (copyright 2002). The UL listing mark on the equipment will be accepted as evidence of the equipment's compliance with such standard. The PERS device must be automatically reset by the response center after each activation, ensuring that subsequent signals can be transmitted without requiring a manual reset by the recipient;

10. A PERS provider must furnish education, data, and ongoing assistance to DMAS and the designated preauthorization contractor to familiarize staff with the service, allow for ongoing evaluation and refinement of the program, and must instruct the recipient, caregiver, and responders in the use of the PERS service;

11. The emergency response activator must be activated either by breath, by touch, or by some other means, and must be usable by persons who are visually or hearing impaired or physically disabled. The emergency response communicator must be capable of operating without external power during a power failure at the recipient's home for a minimum period of 24 hours and automatically transmit a low battery alert signal to the response center if the back-up battery is low. The emergency response console unit must also be able to self-disconnect and redial the back-up monitoring site without the recipient resetting the system in the event it cannot get its signal accepted at the response center;

12. Monitoring agencies must be capable of continuously monitoring and responding to emergencies under all conditions, including power failures and mechanical malfunctions. It is the PERS provider's responsibility to ensure that the monitoring agency and the monitoring

agency's equipment meets the following requirements. The monitoring agency must be capable of simultaneously responding to multiple signals for help from recipients' PERS equipment. The monitoring agency's equipment must include the following:

- a. A primary receiver and a back-up receiver, which must be independent and interchangeable;
- b. A back-up information retrieval system;
- c. A clock printer, which must print out the time and date of the emergency signal, the PERS recipient's identification code, and the emergency code that indicates whether the signal is active, passive, or a responder test;
- d. A back-up power supply;
- e. A separate telephone service;
- f. A toll-free number to be used by the PERS equipment in order to contact the primary or back-up response center; and
- g. A telephone line monitor, which must give visual and audible signals when the incoming telephone line is disconnected for more than 10 seconds;

13. The monitoring agency must maintain detailed technical and operation manuals that describe PERS elements, including the installation, functioning, and testing of PERS equipment; emergency response protocols; and recordkeeping and reporting procedures;

14. The PERS provider shall document and furnish within 30 days (of the action taken) a written report for each emergency signal that results in action being taken on behalf of the recipient. This excludes test signals or activations made in error. This written report shall be furnished to the personal care provider, the respite care provider, or in cases where the recipient only receives ADHC services, to the ADHC provider;

15. The PERS provider is prohibited from performing any type of direct marketing activities to Medicaid recipients; and

16. The provider must obtain and keep on file a copy of the most recently completed Patient Information form (DMAS-122). Until the provider obtains a copy of the DMAS-122, the provider must clearly document efforts to obtain the completed DMAS-122 from the personal care, respite care, or the ADHC provider.

12 VAC 30-120-60. Respite care services.

These requirements govern the provision of respite care services.

A. General. Respite care services may be offered to individuals [~~in their homes~~] as an alternative to ~~more costly~~ institutional care. Respite care is distinguished from other services in the continuum of long-term care because it is specifically designed to focus on the need of the *unpaid* caregiver for temporary relief. Respite care may only be offered to individuals who have a primary caregiver living in the home who requires temporary relief to avoid

institutionalization of the individual. The authorization of respite care is limited to ~~30-24-hour days over a 12-month period~~ 720 hours per calendar year per recipient. A recipient who transfers to a different provider or is discharged and readmitted into the Elderly and Disabled Individuals Waiver program within the same calendar year will not receive an additional 720 hours of respite care. DMAS cannot be billed for more than 720 respite care hours in a calendar year for a waiver recipient. Reimbursement shall be made on an hourly basis for any amount authorized up to eight hours within a 24-hour period. Any amount over an eight-hour day will be reimbursed on a per diem basis, not to exceed a total of 720 hours per calendar year. [The option of respite care may be offered either as a secondary home and community-based care service to those individuals who receive either personal care or adult day health care or as the sole home and community-based care service received in lieu of nursing facility placement, or in conjunction with PERS.]

B. Special provider participation conditions. To be approved for respite care contracts with DMAS, the respite care provider shall:

~~1. Demonstrate a prior successful health care delivery.~~

~~2. 1. Operate from a business office.~~

~~3. 2. Employ (or subcontract with) and directly supervise a registered nurse (RN) who will provide ongoing supervision of all respite care aides.~~

a. The RN registered nurse shall be currently licensed to practice in the Commonwealth and have at least two years of related clinical nursing experience (which may include work in an acute care hospital, public health clinic, home health agency, or, *rehabilitation hospital*, nursing home, or as an LPN).

b. The registered nurse shall have a satisfactory work record, as evidenced by two references from prior job experience, including no evidence of abuse, neglect, or exploitation of incapacitated or older adults and children. Providers are responsible for complying with § 32.1-162.9:1 of the Code of Virginia regarding criminal record checks. The criminal record check shall be available for review by DMAS staff who are authorized by the agency to review these files.

~~b. c. Based on continuing evaluations of the aides' performance and the recipients' individual needs, the RN registered nurse supervisor shall identify any gaps insufficiencies in the aides' abilities to function competently and shall provide training as indicated.~~

~~e. d. The RN registered nurse supervisor shall make an initial home assessment visit prior to on or before the start of care for any recipient admitted to respite care.~~

~~d. The RN~~ e. A registered nurse shall make supervisory visits as often as needed to ensure both quality and appropriateness of services.

(1) When respite care services are received on a routine basis, the minimum acceptable frequency of these visits shall be every 30 days.

(2) When respite care services are not received on a routine basis, but are episodic in nature, ~~the RN a registered nurse~~ shall not be required to conduct a supervisory visit every 30 days. Instead, ~~the nurse supervisor a registered nurse~~ shall conduct the initial home assessment visit with the respite care aide immediately preceding on or before the start of care and make a second home visit ~~within~~ during the second respite care period visit.

(3) When respite care services are routine in nature and offered in conjunction with personal care, the 30-day supervisory visit conducted for personal care services may serve as the RN registered nurse supervisory visit for respite care. However, the RN registered nurse supervisor shall document supervision of respite care separately from the personal care documentation. For this purpose, the same recipient record can be used with a separate section for respite care documentation.

~~e. f. During visits to the recipient's home, the RN registered nurse shall observe, evaluate, and document the adequacy and appropriateness of respite care services with regard to the recipient's current functioning status, medical, and social needs. The respite care aide's record shall be reviewed and along with the recipient's or family's satisfaction with the type and amount of service discussed. The RN registered nurse shall document in a summary note:~~

(1) Whether respite care services continue to be appropriate;

(2) Whether the plan of care is adequate to meet the recipient's needs or if changes need to be made, to the plan of care;

(3) The recipient's satisfaction with the service;

(4) Any hospitalization or change in the medical condition or functioning status, of the recipient;

(5) Other services received by the recipient and their the amount, of the services received; and

(6) The presence or absence of the aide in the home during the registered nurse's visit.

~~f. In all cases, the RN shall be available to the respite care aide to discuss the recipient's being served by the aide.~~

~~g. The RN providing supervision to respite care aides shall be available to them by telephone at all times that services are being provided to respite care recipients. Any lapse in RN coverage shall be reported immediately to DMAS.~~

g. A registered nurse shall be available to the respite care aide for conference pertaining to individuals being served by the aide and shall be available to aides by telephone at all times that aides are providing services to respite care recipients.

Final Regulations

h. If there is a delay in the registered nurse's supervisory visits, because the recipient is unavailable, the reason for the delay must be documented in the recipient's record.

4. 3. Employ and directly supervise respite care aides who provide direct care to respite care recipients. Each aide hired by the provider agency shall be evaluated by the provider agency to ensure compliance with minimum qualifications as required by DMAS. Each aide must:

a. Be able to read and write ~~in English to the degree necessary to perform the tasks expected;~~

b. Have completed a *minimum* of 40 hours of training consistent with DMAS standards. Prior to assigning an aide to a recipient, the provider agency shall ensure that the aide has satisfactorily completed a training program consistent with DMAS standards;

c. Be evaluated in his job performance by the ~~RN~~ *registered nurse* supervisor;

d. ~~Have the physical ability~~ *Be physically able* to do the work;

e. Have a satisfactory work record, as evidenced by references from prior job experience, including no evidence of ~~possible~~ *abuse or, neglect or exploitation of incompetent and/or incapacitated individuals or older adults and children. Providers are responsible for complying with § 32.1-162.9:1 of the Code of Virginia regarding criminal record checks. The criminal record checks shall be available for review by DMAS staff who are authorized by the agency to review these files.*

f. Not be a member of a recipient's family (e.g., family is defined as: (i) the parents of *minor children who are receiving waiver services* [~~or~~] (ii) the spouses of *individuals receiving waiver services* [~~or~~] *siblings, grandparents, and grandchildren*) [~~or~~ (iii) *legal guardians of individuals who are receiving waiver services*].

g. *Payment may be made for services furnished by other family members when there is objective written documentation as to why there are no other providers available to provide the care. These family members must meet the same requirements as aides who are not family members.*

5. 4. The Respite Care Agency may employ a licensed ~~practice~~ *practical* nurse to ~~deliver~~ *perform* respite care services, which shall be reimbursed by DMAS under the following circumstances:

a. *The licensed practical nurse (LPN) shall be currently licensed to practice in the Commonwealth. The LPN must have a satisfactory work record, as evidenced by references from prior job experience, including no evidence of abuse, neglect, or exploitation of incapacitated or older adults and children. Providers shall be responsible for complying with § 32.1-162.9:1 of the Code of Virginia regarding criminal record checks. The criminal record checks shall be available for review by DMAS staff who are authorized by the agency to review these files;*

a. b. ~~The individual receiving care recipient~~ has a need for routine skilled care which cannot be provided by unlicensed personnel. These individuals would typically require a skilled level of care if in a nursing facility ([~~i.e.~~ e.g.], recipients on a ventilator, recipients requiring nasogastric, or gastrostomy feedings, etc.);

b. c. No other individual in the recipient's support system is able to supply the skilled component of the recipient's care during the caregiver's absence;

c. d. The recipient is unable to receive skilled nursing visits from any other source which could provide the skilled care usually given by the caregiver, ~~unless such skilled nursing visits would be more costly than the respite care requested;~~ *and*

d. e. The agency ~~can~~ *must* document *in the recipient's record* the circumstances which require the provision of services by an LPN.

C. ~~Inability to provide services and substitution of aides. When a respite care aide is absent and the respite care provider agency has no other aide available to provide services, the provider agency is responsible for ensuring that services continue to recipients.~~

1. ~~If a provider agency cannot supply a respite care aide to render authorized services, the agency may either obtain a substitute aide from another agency, if the lapse in coverage is to be less than two weeks in duration, or may transfer the recipient's care to another agency.~~

2. ~~If no other provider agency is available who can supply an aide, the provider agency shall notify the recipient or family so that they may contact the local health department to request a Nursing Home Preadmission Screening if nursing home placement is desired.~~

3. ~~During temporary, short-term lapses in coverage, which shall not exceed two weeks in duration, a substitute aide may be secured from another respite care provider agency or other home care agency. Under these circumstances, the following procedures apply:~~

a. ~~The respite care agency having recipient responsibility shall be responsible for providing the RN supervision for the substitute aide;~~

b. ~~The agency providing the substitute aide shall send to the respite care agency having recipient care responsibility a copy of the aide's daily records signed by the recipient and the substitute aide. All documentation of services rendered by the substitute aide shall be in the recipient's record. The documentation of the substitute aide's qualifications shall also be obtained and recorded in the personnel files of the agency having recipient care responsibility.~~

c. ~~The provider agency having recipient responsibility shall bill DMAS for services rendered by the substitute aide. The two agencies involved shall negotiate the financial arrangements of paying the substitute aide.~~

4. ~~Substitute aides obtained from other agencies may be used only in cases where no other arrangements can be~~

~~made for recipient respite care services coverage and may be used only on a temporary basis. If a substitute aide is needed for more than two weeks, the case shall be transferred to another respite care provider agency that has the aide capability to serve the recipient(s).~~

~~5. If a provider agency secures a substitute aide it is the responsibility of the provider agency having recipient care responsibility to ensure that all DMAS requirements continue to be met, including documentation of services rendered by the substitute aide and documentation that the substitute aide's qualifications meet DMAS requirements.~~

~~D. C. Required documentation for recipients' records. The provider agency shall maintain all records of each respite care recipient. These records shall be separated from those of other nonhome and community-based care services, such as companion services or home health services. These records shall be reviewed periodically by the DMAS staff who are authorized by the agency to review these files. At a minimum these records shall contain:~~

~~1. The most recently updated Long-Term Care Uniform Assessment Instrument, the Nursing Home Preadmission Screening Medicaid-Funded Long-Term Care Service Authorization form (DMAS-96), the Screening Team Service Plan for Medicaid-Funded Long-Term Care (DMAS-97), all respite care [assessment assessments] and plans of care, and all DMAS-122's. Patient Information forms (DMAS-122);~~

~~2. All DMAS utilization review forms and plans of care.~~

~~3. 2. The initial assessment by the RN supervisory a registered nurse completed prior to or on the date services are initiated;~~

~~4. 3. Registered nurse's notes recorded and dated during significant contacts with the respite care aide and during supervisory visits to the recipient's home;~~

~~5. 4. All correspondence to the recipient and to, DMAS, and the designated preauthorization contractor;~~

~~6. 5. Reassessments made during the provision of services;~~

~~7. 6. Significant contacts made with family, physicians, DMAS, the designated preauthorization contractor, formal and informal service providers, and all professionals concerning the recipient. related to the recipient's Medicaid services or medical care; and~~

~~8. 7. All respite care aide record of services rendered and recipient's responses records. The respite care aide record shall contain:~~

~~a. The specific services delivered to the recipient by the respite care aide or LPN, and the recipient's response, to this service;~~

~~b. The daily arrival and departure time times of the aide or LPN for respite care services only;~~

~~c. Comments or observations recorded weekly about the recipient. Aide or LPN comments shall include but not be limited to observation of the recipient's physical and~~

~~emotional condition, daily activities, and the recipient's response to services rendered;~~ and

~~d. The signature by signatures of the aide or LPN, and the recipient, once each week to verify that respite care services have been rendered. Signature, times, and dates shall not be placed on the aide record prior to the last date of the week that the services are delivered. If the recipient is unable to sign the aide record, it must be documented in the recipient's record how or who will sign in his place. An employee of the provider shall not sign for the recipient unless he is a family member [or legal guardian] of the recipient.~~

~~9. Copies of all aide records shall be subject to review by state and federal Medicaid representatives.~~

~~10. If a respite care recipient is also receiving any other service (meals on wheels, companion, home health services, etc.) the respite care record shall indicate that these services are also being received by the recipient.~~

~~E. Authorization of combined services. Respite care, when offered in conjunction with another home and community-based care service, is considered by DMAS a secondary home and community-based care service necessary for the recipients' continued maintenance in the community. Respite care is only available to caregivers as an adjunct to another primary home and community-based care service under the following conditions:~~

~~1. The individual has been authorized to receive a primary home and community-based care service by the Nursing Home Preadmission Screening Team and such care has been initiated.~~

~~2. The primary home and community-based care services offered to the individual are determined to be insufficient to prevent the breakdown of the caregiver due to the physical burden and emotional stress of providing continuous support and care to the dependent individual.~~

~~F. Provider responsibility. The provider of the primary home and community-based care service shall contact the DMAS utilization review staff when the need for respite care as a secondary home and community-based care service has been identified according to the criteria above. DMAS shall conduct an assessment of the individual caregiver's need for respite care and, if appropriate, authorize respite care.~~

~~8. All recipient progress reports.~~

NOTICE: The forms used in administering 12 VAC 30-120, Waivered Services, are listed below. Any amended or added forms are reflected in the listing and are published following the listing.

FORMS

Virginia Uniform Assessment Instrument (UAI) (1994).

Medicaid Funded Long-Term Care Service Authorization Form, DMAS-96 (rev. 8/97).

Service Coordinator Plan of Care, DMAS-97B (rev. 6/97).

Patient Information, DMAS-122 (rev. 12/98).

Final Regulations

*Level of Care Eligibility Review Instrument [, DMAS-99C]
(rev. [~~5/02~~ 12/02]).*

Questionnaire: Assessing a Recipient's Ability to Independently Manage Personal Attendant Services (2/98).

Questionnaire to Assess an Applicant's Ability to Independently Manage Personal Attendant Services in the CD-PAS Waiver or DD Waiver, DMAS-95 Addendum (eff. 8/00).

DD Waiver Enrollment Request, DMAS-453 (eff. 1/01).

DD Waiver Consumer Service Plan, DMAS-456 (eff. 1/01).

DD Medicaid Waiver--Level of Functioning Survey--Summary Sheet, DMAS-458 (eff. 1/01).

Documentation of Recipient Choice between Institutional Care or Home and Community-Based Services (eff. 8/00).

LEVEL OF CARE ELIGIBILITY REVIEW INSTRUMENT

ASSESSMENT & WAIVER INFORMATION

1. Waiver: E&D (*Specific service(s), check all that apply*): Personal Care ADHC Respite Care PERS
 CD-PAS
 AIDS (*Specific service, check all that apply*): Case Management Nutritional Supplements PDN
 Personal Care Respite Care Consumer Directed

2. Date of last assessment (*DMAS-99; DMAS-301; DMAS-99B; AIDS Waiver home visit*): _____

PROVIDER INFORMATION

1. Provider name: _____ Provider #: _____
 2. Address: _____ Phone: _____
 3. Contact person (*Print*): _____ Fax: _____ Admission date: _____

RECIPIENT IDENTIFICATION/BACKGROUND INFORMATION

1. Recipient Name: _____ Medicaid #: _____
(Last) (First) (Middle Initial)
 Address: _____
(Street) (City) (State) (Zip Code) (City/Country Code)

2. Age: _____ SSN#: _____ DOB (*xx/xx/xxxx*): _____ Sex: Male Female

3. Marital Status: Married Widowed Separated Divorced Single Unknown

4. Communication of Needs: English Verbally, other language (*specify*): _____
 Sign language/Gestures/Device: Does Not Communicate Hearing Impaired

CAREGIVER INFORMATION

1. Does the recipient have an informal caregiver? Yes No
 2. The caregiver's help is: Adequate to meet the recipient's need. Not adequate to meet the recipient's needs.

RECIPIENT ELIGIBILITY INFORMATION - FUNCTIONAL STATUS

ADLs	Needs No Help	MH Only	Human Help		MH & Human Help		Performed By Others	Not Performed
			Supervise	Phys. Assist	Supervise	Phys. Assist		
Bathing								
Dressing								
Toileting								
Transferring								
Eating/Feeding								

Continence	Continent	Incontinent (Less than weekly)	External Device/ Indwelling/Ostomy (Self care)	Incontinent (Weekly or more)	External Device (Not self care)	Indwelling Catheter (Not self care)	Ostomy
Bladder							

Mobility	Needs No Help	MH Only	Human Help		MH & Human Help		Confined Moves About	Confined - Does Not Move About
			Supervise	Phys. Assist.	Supervise	Phys. Assist.		

Orientation	Oriented	Disoriented-Some Spheres/Sometime	Disoriented-Some Spheres/All Times	Disoriented-All Spheres/Sometimes	Disoriented-All Spheres/All Times	Semi-Comatose /Comatose

Behavior	Appropriate	Wandering/Passive Less than Weekly	Wandering/Passive Weekly or more	Abusive/Aggressive /Disruptive Less than Weekly	Abusive/Aggressive /Disruptive Weekly or more	Semi-Comatose to Comatose

Joint Motion	Med. Administration
<input checked="" type="checkbox"/> Within normal limits or instability corrected	<input checked="" type="checkbox"/> Without assistance
<input checked="" type="checkbox"/> Limited motion	<input checked="" type="checkbox"/> Administered/monitored by lay person
<input checked="" type="checkbox"/> Instability uncorrected or immobile	<input checked="" type="checkbox"/> Administered/monitored by professional nursing staff

DMAS-99C (Rev. 1202)

Final Regulations

Recipient's Name: _____ Medicaid #: _____

RECIPIENT ELIGIBILITY INFORMATION – MEDICAL / NURSING NEED(S)

1. Current Health Status/Condition: _____ _____
2. Current Medical Nursing Need(s) – Check all that apply: <input checked="" type="checkbox"/> Application of aseptic dressings (a) <input checked="" type="checkbox"/> Routine catheter care (b) <input checked="" type="checkbox"/> Respiratory therapy (c) <input checked="" type="checkbox"/> Therapeutic exercise and positioning (d) <input checked="" type="checkbox"/> Chemotherapy (e) <input checked="" type="checkbox"/> Radiation (f) <input checked="" type="checkbox"/> Dialysis (g) <input checked="" type="checkbox"/> Suctioning (h) <input checked="" type="checkbox"/> Tracheotomy care (i) <input checked="" type="checkbox"/> Infusion Therapy (j) <input checked="" type="checkbox"/> Oxygen (k) <input checked="" type="checkbox"/> Routine skin care to prevent pressure ulcers for individuals who are immobile. (l) <input checked="" type="checkbox"/> Care of small uncomplicated pressure ulcers, and local skin rashes (m) <input checked="" type="checkbox"/> Use of physical (e.g., side rails, poseys, locked wards) and/or chemical restraints. (n) <input checked="" type="checkbox"/> Management of those with sensory, metabolic, or circulatory impairment with demonstrated clinical evidence of medical instability (o) <input checked="" type="checkbox"/> Routine care of colostomy or ileostomy or management of neurogenic bowel and bladder (p) <input checked="" type="checkbox"/> Supervision for adequate nutrition and hydration for individuals who show clinical evidence of malnourishment or dehydration or have a recent history of weight loss or inadequate hydration which, if not supervised would be expected to result in malnourishment or dehydration (q) <input checked="" type="checkbox"/> Other: (r) _____

AIDS Waiver Only:

1. AIDS/HIV diagnoses: <input checked="" type="checkbox"/> Yes <input checked="" type="checkbox"/> No

Signature Date

Print Name & Title

This form contains patient-identifiable information and is intended for review and use of no one except authorized parties. Misuse or disclosure of this information is prohibited by State and Federal Laws. If you have obtained this form by mistake, please send it to: DMAS, 600 East Broad Street, Suite 1300, Richmond, VA 23219

DOCUMENTS INCORPORATED BY REFERENCE

The Art of Readable Writing, Rudolf Flesch, Ph.D., 1949, revised 1962, Collier Books.

Elderly and Disabled Waiver Services Manual, [First Edition,] Department of Medical Assistance Services, published July 1, 2002.

UL1635, Standard for Safety for Digital Alarm Communicator System Units, copyright 2002 [, Underwriters Laboratories, Inc] .

UL1637, Standard for Safety for Home Health Care Signaling Equipment, copyright 2002 [, Underwriters Laboratories, Inc] .

VA.R. Doc. No. R02-126; Filed December 11, 2002, 10:56 a.m.



TITLE 14. INSURANCE

STATE CORPORATION COMMISSION

Bureau of Insurance

REGISTRAR'S NOTICE: The State Corporation Commission is exempt from the Administrative Process Act in accordance with § 2.2-4002 A 2 of the Code of Virginia, which exempts courts, any agency of the Supreme Court, and any agency that by the Constitution is expressly granted any of the powers of a court of record.

Title of Regulation: 14 VAC 5-200. Rules Governing Long-Term Care Insurance (amending 14 VAC 5-200-20, 14 VAC 5-200-30, 14 VAC 5-200-40, 14 VAC 5-200-60, 14 VAC 5-200-75, 14 VAC 5-200-150, and 14 VAC 5-200-200; adding 14 VAC 5-200-77 and 14 VAC 5-200-153).

Statutory Authority: §§ 12.1-13 and 38.2-223 of the Code of Virginia.

Effective Date: April 1, 2003.

Summary:

The amendments carry out the provisions of Chapter 334 of the 2002 Acts of Assembly that amended § 38.2-5206 of the Code of Virginia to require the State Corporation Commission to adopt standards regarding the initial filing requirements and premium rate schedule increases similar to those set forth in the model long-term care regulation developed by the National Association of Insurance Commissioners.

Significant revisions (i) provide standards that initial rate filings must meet; (ii) provide requirements for premium rate schedule increases; and (iii) add definitions that support the proposed new rules. Changes also either modify effective dates or are otherwise nonsubstantive in nature.

Changes made to the proposed regulation clarify in 14 VAC 5-200-60 F 2 the way premium increases are calculated and

correct cross references to the Code of Virginia in several sections.

Agency Contact: Bob Wright, Special Projects Coordinator, Life and Health Division, Bureau of Insurance, P.O. Box 1157, Richmond, VA 23218, telephone (804) 371-9074, FAX (804) 371-9944, toll-free 1-800-552-7945 or e-mail wrwright@scc.state.va.us.

AT RICHMOND, NOVEMBER 26, 2002

COMMONWEALTH OF VIRGINIA

At the relation of the

STATE CORPORATION COMMISSION

CASE NO. INS-2002-00118

Ex Parte: In the matter of Adopting Revisions to the Rules Governing Long-Term Care Insurance

ORDER CANCELING HEARING AND ADOPTING REVISIONS TO RULE

By Order to Take Notice entered herein October 23, 2002, revisions proposed by the Commission's Bureau of Insurance (the "Bureau") to Chapter 200 of Title 14 of the Virginia Administrative Code entitled "Rules Governing Long-Term Care Insurance," to be effective April 1, 2003, were submitted for comment to all insurers licensed by the Commission to write long-term care insurance in the Commonwealth of Virginia. The proposed revisions also were submitted for comment to interested parties designated by the Bureau.

The Order to Take Notice provided that comments in support of or in opposition to the proposed revisions were required to be filed with the Clerk of the Commission on or before November 22, 2002.

The Order to Take Notice also provided that a hearing would be held on December 4, 2002, to consider the adoption of the revisions proposed by the Bureau, and that any person intending to appear and be heard at such hearing must file written notice of such intent, including his comments in support of or in opposition to the proposed revisions, with the Clerk of the Commission on or before November 22, 2002.

Metropolitan Life Insurance Company timely filed a comment with the Clerk of the Commission on November 22, 2002, wherein it noted that a cross-reference to the Code of Virginia, which appeared in two sections of the proposed revisions, was incorrect. The Bureau has reviewed the proposed revisions, agrees there was an incorrect cross-reference, and has corrected such cross-reference.

The Commission, having considered the proposed revisions, the filed comment and the Bureau's response thereto, is of the opinion that the hearing previously scheduled for December 4, 2002, should be canceled, and that the attached revisions to the rules should be adopted.

THEREFORE, IT IS ORDERED THAT:

(1) The hearing previously scheduled for December 4, 2002, be, and the same is hereby, CANCELED.

Final Regulations

(2) The revisions to the "Rules Governing Long-Term Care Insurance," which amend the rules at 14 VAC 5-200-20, 14 VAC 5-200-30, 14 VAC 5-200-40, 14 VAC 5-200-60, 14 VAC 5-200-75, 14 VAC 5-200-150, and 14 VAC 5-200-200, and propose new rules to be designated as 14 VAC 5-200-77 and 14 VAC 5-200-153, and which are attached hereto and made a part hereof, should be, and they are hereby, ADOPTED to be effective April 1, 2003.

(3) AN ATTESTED COPY hereof, together with a copy of the attached revisions, shall be sent by the Clerk of the Commission to the Bureau of Insurance in care of Deputy Commissioner Gerald A. Milsky, who forthwith shall give further notice of the adoption of the revisions to the rules by mailing a copy of this Order, together with a clean copy of the revised rules, to all insurers licensed by the Commission to write long-term care insurance in the Commonwealth of Virginia and interested parties designated by the Bureau of Insurance.

(4) The Commission's Division of Information Resources forthwith shall cause a copy of this Order, together with the attached revisions, to be forwarded to the Virginia Registrar of Regulations for appropriate publication in the Virginia Register of Regulations.

(5) On or before December 3, 2002, the Commission's Division of Information Resources shall make available this Order and the attached revisions on the Commission's website, <http://www.state.va.us/scc/caseinfo/orders.htm>.

(6) The Bureau of Insurance shall file with the Clerk of the Commission an affidavit of compliance with the notice requirements of paragraph (3) above.

REGISTRAR'S NOTICE: The proposed regulation was adopted as published in 19:5 VA.R. 766-777 November 18, 2002, with the additional changes shown below. Therefore, pursuant to § 2.2-4031 A of the Code of Virginia, the text of the final regulation is not set out at length; however, the changes from the proposed regulation are printed below.

14 VAC 5-200-20. [No change from proposed.]

14 VAC 5-200-30. [No change from proposed.]

14 VAC 5-200-40. Definitions.

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

"Applicant" means in the case of an individual long-term care insurance policy, the person who seeks to contract for such benefits, or in the case of a group long-term care insurance policy, the proposed certificateholder.

"Certificate" means any certificate or evidence of coverage issued under a group long-term care insurance policy, which policy has been delivered or issued for delivery in this Commonwealth.

"Commission" means the Virginia State Corporation Commission.

"Exceptional increase" means only those increases filed by an insurer and identified as exceptional for which the commission

determines the need for the premium rate increase is justified (i) due to changes in laws or regulations applicable to long-term care coverage in this Commonwealth, or (ii) due to increased and unexpected utilization that affects the majority of insurers of similar products. Except as provided in 14 VAC 5-200-153, exceptional increases are subject to the same requirements as other premium rate schedule increases. The commission, in determining that the necessary basis for an exceptional increase exists, shall also determine any potential offsets to higher claims costs.

"Expected loss ratio" means the ratio of the present value of future premiums benefits to the present value of future benefits premiums over the entire period of the contract.

"Group long-term care insurance" means a long-term care insurance policy which complies with § 38.2-3521.1 or § 38.2-3522.1 of the Code of Virginia delivered or issued for delivery in this Commonwealth.

"Incidental," as used in 14 VAC 5-200-153 J, means that the value of the long-term care benefits provided is less than 10% of the total value of the benefits provided over the life of the policy. These values shall be measured as of the date of issue.

"Insurer" means any insurance company, health services plan, fraternal benefit society, health maintenance organization, cooperative nonprofit life benefit company, or mutual assessment life, accident and sickness insurer.

"Long-term care insurance" means any insurance policy or rider primarily advertised, marketed, offered or designed to provide coverage for not less than 12 consecutive months for each covered person on an expense incurred, indemnity, prepaid, or other basis, for one or more necessary or medically necessary diagnostic, preventive, therapeutic, rehabilitative, maintenance, personal care, mental health or substance abuse services, provided in a setting other than an acute care unit of a hospital. Such term includes group and individual annuities and life insurance policies or riders which provide directly or which supplement long-term care insurance issued by insurers. Such term also includes a policy or rider which provides for payment of benefits based upon cognitive impairment or the loss of functional capacity. Long-term care insurance shall not include any insurance policy which is offered primarily to provide basic Medicare supplement coverage, basic hospital expense coverage, basic medical-surgical expense coverage, hospital confinement indemnity coverage, major medical expense coverage, disability income or related asset-protection coverage, accident only coverage, specified disease or specified accident coverage, or limited benefit health coverage. With regard to life insurance, this term does not include life insurance policies which accelerate the death benefit specifically for one or more of the qualifying events of terminal illness, medical conditions requiring extraordinary medical intervention, or permanent institutional confinement, and which provide the option of a lump-sum payment for those benefits and in which neither the benefits nor the eligibility for the benefits is conditioned upon the receipt of long-term care. Notwithstanding any other provision contained herein, any product advertised, marketed or offered as long-term care insurance shall be subject to the provisions of this chapter.

Health maintenance organizations, cooperative nonprofit life benefit companies and mutual assessment life, accident and sickness insurers shall apply to the commission for approval to provide long-term care insurance prior to issuing this type of coverage.

"Policy" means any individual or group policy of insurance, contract, subscriber agreement, certificate, rider or endorsement delivered or issued for delivery in this Commonwealth by an insurer.

"Qualified actuary" means a member in good standing of the American Academy of Actuaries.

"Similar policy forms" means all of the long-term care insurance policies and certificates issued by an insurer in the same long-term care benefit classification as the policy form being considered. Certificates of groups as set forth in subsections A and C of § [~~38.2-3522.4~~ 38.2-3521.1] of the Code of Virginia are not considered similar to certificates or policies otherwise issued as long-term care insurance, but are similar to other comparable certificates with the same long-term care benefit classifications. For purposes of determining similar policy forms, long-term care benefit classifications are defined as follows: institutional long-term care benefits only, noninstitutional long-term care benefits only, or comprehensive long-term care benefits.

14 VAC 5-200-60. Policy practices and provisions.

A. Renewability. The terms "guaranteed renewable" and "noncancellable" shall not be used in any individual long-term care insurance policy without further explanatory language in accordance with the disclosure requirements of 14 VAC 5-200-70.

1. No such policy issued to an individual shall contain renewal provisions other than "guaranteed renewable ["] or ["] noncancellable."

2. The term "guaranteed renewable" may be used only when the insured has the right to continue the long-term care insurance in force by the timely payment of premiums and when the insurer has no unilateral right to make any change in any provision of the policy or rider while the insurance is in force, and cannot decline to renew, except that rates may be revised by the insurer on a class basis.

3. The term "noncancellable" may be used only when the insured has the right to continue the long-term care insurance in force by the timely payment of premiums during which period the insurer has no unilateral right to make any change in any provision of the insurance or in the premium rate.

B. Limitations and exclusions. No policy may be delivered or issued for delivery in this Commonwealth as long-term care insurance if such policy limits or excludes coverage by type of illness, treatment, medical condition or accident, except as follows:

1. Preexisting conditions or diseases, subject to *subsection B of § 38.2-5204 B* of the Code of Virginia;

2. Mental or nervous disorders; however, this shall not permit exclusion or limitation of benefits on the basis of

Alzheimer's Disease, senile dementia, organic brain disorder or other similar diagnoses;

3. Alcoholism and drug addiction;

4. Illness, treatment or medical condition arising out of:

a. War or act of war (whether declared or undeclared);

b. Participation in a felony, riot or insurrection;

c. Service in the armed forces or units auxiliary thereto;

d. Suicide (sane or insane), attempted suicide or intentionally self-inflicted injury; or

e. Aviation (this exclusion applies only to nonfare-paying passengers).

5. Treatment provided in a government facility (unless otherwise required by law), services for which benefits are available under Medicare or other governmental program (except Medicaid), any state or federal workers' compensation, employer's liability or occupational disease law, or any motor vehicle no-fault law, services provided by a member of the covered person's immediate family and services for which no charge is normally made in the absence of insurance.

6. This subsection is not intended to prohibit exclusions and limitations by type of provider or territorial limitations.

C. Extension of benefits. Termination of long-term care insurance shall be without prejudice to any benefits payable for institutionalization if such institutionalization began while the long-term care insurance was in force and continues without interruption after termination. Such extension of benefits beyond the period the long-term care insurance was in force may be limited to the duration of the benefit period, if any, or to payment of the maximum benefits and may be subject to any policy waiting period, and all other applicable provisions of the policy.

D. Continuation or conversion.

1. Group long-term care insurance issued in this Commonwealth on or after December 1, 2000, shall provide covered individuals with a basis for continuation of coverage or a basis for conversion of coverage.

2. For the purposes of this chapter, "a basis for continuation of coverage" means a policy provision which maintains coverage under the existing group policy when such coverage would otherwise terminate and is subject only to the continued timely payment of premium when due. Group policies which restrict provision of benefits and services to, or contain incentives to use, certain providers and/or facilities may provide continuation benefits which are substantially equivalent to the benefits of the existing group policy. The substantial equivalency of benefits is subject to review by the commission, and in doing so, the commission shall take into consideration the differences between managed care and non-managed care plans, including, but not limited to, provider system arrangements, service availability, benefit levels and administrative complexity.

3. For the purposes of this chapter, "a basis for conversion of coverage" means a policy provision stating that an

Final Regulations

individual whose coverage under the group policy would otherwise terminate or has been terminated for any reason, including discontinuance of the group policy in its entirety or with respect to an insured class, and who has been continuously insured under the group policy (and any group policy which it replaced) for at least six months immediately prior to termination, shall be entitled to the issuance of a converted policy by the insurer under whose group policy he or she is covered, without evidence of insurability.

4. For the purposes of this chapter, "converted policy" means an individual policy of long-term care insurance providing benefits identical to or benefits determined by the commission to be substantially equivalent to or in excess of those provided under the group policy from which conversion is made. Where the group policy from which conversion is made restricts provision of benefits and services to, or contains incentives to use, certain providers and/or facilities, the insurer, in making a determination as to the substantial equivalency of benefits, shall take into consideration the differences between managed care and non-managed care plans, including, but not limited to, provider system arrangements, service availability, benefit levels and administrative complexity. The determination of substantial equivalency is subject to review by the commission.

5. Written application for the converted policy shall be made and the first premium due, if any, shall be paid as directed by the insurer not later than 31 days after termination of coverage under the group policy. The converted policy shall be issued effective on the day following the termination of coverage under the group policy and shall be renewable annually.

6. Unless the group policy from which conversion is made replaced previous group coverage, the premium for the converted policy shall be calculated on the basis of the insured's age at inception of coverage under the group policy from which conversion is made. Where the group policy from which conversion is made replaced previous group coverage, the premium for the converted policy shall be calculated on the basis of the insured's age at inception of coverage under the initial group policy replaced.

7. Continuation of coverage or issuance of a converted policy shall be mandatory, except where:

a. Termination of group coverage resulted from an individual's failure to make any required payment of premium or contribution when due; or

b. The terminating coverage is replaced, as to an individual insured, not later than 31 days after termination, by group coverage effective on the day following the termination of coverage:

(1) Providing benefits identical to or benefits substantially equivalent to or in excess of those provided by the terminating coverage; and

(2) The premium for which is calculated in a manner consistent with the requirements of subdivision 6 of this subsection. The determination of substantial equivalency is subject to review by the commission.

8. Notwithstanding any other provision of this section, a converted policy issued to an individual who at the time of conversion is covered by another long-term care insurance policy which provides benefits on the basis of incurred expenses may contain a provision which results in a reduction of benefits payable if the benefits provided under the additional coverage, together with the full benefits provided by the converted policy, would result in payment of more than 100% of incurred expenses. Such provision shall only be included in the converted policy if the converted policy also provides for a premium decrease or refund which reflects the reduction in benefits payable.

9. The converted policy may provide that the benefits payable under the converted policy, together with the benefits payable under the group policy from which conversion is made, shall not exceed those that would have been payable had the individual's coverage under the group policy remained in force and effect.

10. Notwithstanding any other provision of this section, any insured individual whose eligibility for group long-term care coverage is based upon his or her relationship to another person shall be entitled to continuation of coverage under the group policy upon termination of the qualifying relationship by death or dissolution of marriage.

11. For the purposes of this chapter, a "Managed Care Plan" is a health care or assisted living arrangement designed to coordinate patient care or control costs through utilization review, case management or use of specific provider networks.

E. Discontinuance and replacement. If a group long-term care policy is replaced by another group long-term care policy issued to the same policyholder, the succeeding insurer shall offer coverage to all persons covered under the previous group policy on its date of termination. Coverage provided or offered to individuals by the insurer and premiums charged to persons under the new group policy:

1. Shall not result in any exclusion for preexisting conditions that would have been covered under the group policy being replaced; and

2. Shall not vary or otherwise depend on the individual's health or disability status, claim experience or use of long-term care services.

F. Premium increases.

1. The premium charged to an insured shall not increase due to either:

a. The increasing age of the insured at ages beyond age 65; or

b. The duration the insured has been covered under the policy.

2. The purchase of additional coverage shall not be considered a premium rate increase, but for purposes of the calculation required under 14 VAC 5-200-185, the portion of the [*premium attributable to the*] additional coverage shall be added to and considered part of the initial annual premium.

3. A reduction in benefits shall not be considered a premium change, but for purposes of the calculation under 14 VAC 5-200-185, the initial annual premium shall be based on the reduced benefits.

14 VAC 5-200-75. [No change from proposed.]

14 VAC 5-200-77. [No change from proposed.]

14 VAC 5-200-150. Loss ratio.

A. This section shall apply to all long-term care insurance policies or certificates except those covered under 14 VAC 5-200-77 and 14 VAC 5-200-153.

A. B. Benefits under individual long-term care insurance policies shall be deemed reasonable in relation to premiums provided the expected loss ratio is at least 60% calculated in a manner which provides for adequate reserving of the long-term care insurance risk. In evaluating the expected loss ratio, due consideration shall be given to all relevant factors, including:

1. Statistical credibility of incurred claims experience and earned premiums;
2. The period for which rates are computed to provide coverage;
3. Experienced and projected trends;
4. Concentration of experience within early policy duration;
5. Expected claim fluctuation;
6. Experience refunds, adjustments or dividends;
7. Renewability features;
8. All appropriate expense factors;
9. Interest;
10. Experimental nature of the coverage;
11. Policy reserves;
12. Mix of business by risk classification; and
13. Product features such as long elimination periods, high deductibles and high maximum limits.

Demonstrations of loss ratios shall be made in compliance with the Rules Governing the Filing of Rates for Individual and Certain Group Accident and Sickness Insurance Policy Forms, Chapter 130 (14 VAC 5-130-40 ~~et seq.~~) of this title.

B. C. Subsection *A B* of this section shall not apply to life insurance policies that accelerate benefits for long-term care. A life insurance policy that funds long-term care benefits entirely by accelerating the death benefit is considered to provide reasonable benefits in relation to premiums paid, if the policy complies with all of the following provisions:

1. The interest credited internally to determine cash value accumulations, including long-term care, if any, are guaranteed not to be less than the minimum guaranteed interest rate for cash value accumulations without long-term care set forth in the policy;

2. The portion of the policy that provides life insurance benefits meets the nonforfeiture requirements of Chapter 32 (§ 38.2-3200 et seq.) of Title 38.2 of the Code of Virginia;

3. If an application for a long-term care insurance contract or certificate is approved, the issuer shall deliver the contract or certificate of insurance to the applicant no later than 30 days after the date of approval;

4. At the time of policy delivery, a policy summary shall be delivered for an individual life insurance policy that provides long-term care benefits within the policy or by rider. In the case of direct response solicitations, the insurer shall deliver the policy summary upon the applicant's request, but regardless of request shall make delivery no later than at the time of policy delivery. In addition to complying with all applicable requirements, the summary shall also include:

- a. An explanation of how the long-term care benefit interacts with other components of the policy, including deductions from death benefits;
- b. An illustration of the amount of benefits, the length of benefit, and the guaranteed lifetime benefits [,] if any, for each covered person;
- c. Any exclusions, reductions and limitations on benefits of long-term care;
- d. A statement that any long-term care inflation protection option required by 14 VAC 5-200-100 is not available under this policy;
- e. If applicable to the policy type, the summary shall also include:
 - (1) A disclosure of the effects of exercising other rights under the policy;
 - (2) A disclosure of guarantees related to long-term care costs of insurance charges; and
 - (3) Current and projected maximum lifetime benefits; and
- f. The provisions of the policy summary listed above may be incorporated into a basic illustration or into the life insurance policy summary;

5. Any time a long-term care benefit, funded through a life insurance vehicle by the acceleration of the death benefit, is in benefit payment status, a monthly report shall be provided to the policyholder. The report shall include:

- a. Any long-term care benefits paid out during the month;
- b. An explanation of any changes in the policy, e.g., death benefits or cash values, due to long-term care benefits being paid out; and
- c. The amount of long-term care benefits existing or remaining;

6. Any policy illustration that meets the applicable requirements of 14 VAC 5-40-40 ~~et seq.~~; and

7. An actuarial memorandum is filed with the Bureau of Insurance that includes:

Final Regulations

- a. A description of the basis on which the long-term care rates were determined;
- b. A description of the basis for the reserves;
- c. A summary of the type of policy, benefits, renewability, general marketing method, and limits on ages of issuance;
- d. A description and a table of each actuarial assumption used. For expenses, an insurer must include percentage of premium dollars per policy and dollars per unit of benefits, if any;
- e. A description and a table of the anticipated policy reserves and additional reserves to be held in each future year for active lives;
- f. The estimated average annual premium per policy and the average issue age;
- g. A statement as to whether underwriting is performed at the time of application. The statement shall indicate whether underwriting is used and, if used, the statement shall include a description of the type or types of underwriting used, such as medical underwriting or functional assessment underwriting. Concerning a group policy, the statement shall indicate whether the enrollee or any dependent will be underwritten and when underwriting occurs; and
- h. A description of the effect of the long-term care policy provision on the required premiums, nonforfeiture values and reserves on the underlying life insurance policy, both for active lives and those in long-term care claim status.

14 VAC 5-200-153. Premium rate schedule increases.

A. This section shall apply as follows:

1. Except as provided in subdivision 2 of this subsection, this section applies to any long-term care policy or certificate issued in this Commonwealth on or after October 1, 2003.
2. For certificates issued on or after April 1, 2003, under a group long-term care insurance policy as set forth in subsections A and C of § [~~38.2-3522.1~~ 38.2-3521.1] of the Code of Virginia, which policy was in force on April 1, 2003, the provisions of this section shall apply on the policy anniversary following April 1, 2004.

B. An insurer shall request [the commission's] approval of a pending premium rate schedule increase, including an exceptional increase, [~~to the commission~~] prior to the notice to the policyholders and shall include:

1. Information required by 14 VAC 5-200-75;
2. Certification by a qualified actuary that:
 - a. If the requested premium rate schedule increase is implemented and the underlying assumptions, which reflect moderately adverse conditions, are realized, no further premium rate schedule increases are anticipated;
 - b. The premium rate filing is in compliance with the provisions of this section;

3. An actuarial memorandum justifying the rate schedule change request that includes:

a. Lifetime projections of earned premiums and incurred claims based on the filed premium rate schedule increase; and the method and assumptions used in determining the projected values, including reflection of any assumptions that deviate from those used for pricing other forms currently available for sale;

(1) Annual values for the five years preceding and the three years following the valuation date shall be provided separately;

(2) The projections shall include the development of the lifetime loss ratio, unless the rate increase is an exceptional increase;

(3) The projections shall demonstrate compliance with subsection C of this section; and

(4) For exceptional increases,

(a) The projected experience should be limited to the increases in claims expenses attributable to the approved reasons for the exceptional increase; and

(b) In the event the commission determines as provided in the definition of exceptional increase in 14 VAC 5-200-40 that offsets may exist, the insurer shall use appropriate net projected experience;

b. Disclosure of how reserves have been incorporated in this rate increase whenever the rate increase will trigger contingent benefit upon lapse;

c. Disclosure of the analysis performed to determine why a rate adjustment is necessary, which pricing assumptions were not realized and why, and what other actions taken by the company have been relied on by the actuary;

d. A statement that policy design, underwriting and claims adjudication practices have been taken into consideration; and

e. In the event that it is necessary to maintain consistent premium rates for new policies and policies receiving a rate increase, the insurer will need to file composite rates reflecting projections of new policies;

4. A statement that renewal premium rate schedules are not greater than new business premium rate schedules except for differences attributable to benefits, unless sufficient justification is provided to the commission; and

5. Sufficient information for review and approval of the premium rate schedule increase by the commission.

C. All premium rate schedule increases shall be determined in accordance with the following requirements:

1. Exceptional increases shall provide that 70% of the present value of projected additional premiums from the exceptional increase will be returned to policyholders in benefits;

2. Premium rate schedule increases shall be calculated such that the sum of the accumulated value of incurred claims, without the inclusion of active life reserves, and the present value of future projected incurred claims, without the inclusion of active life reserves, will not be less than the sum of the following:

- a. The accumulated value of the initial earned premium times 58%;
- b. Eighty-five percent of the accumulated value of prior premium rate schedule increases on an earned basis;
- c. The present value of future projected initial earned premiums times 58%; and
- d. Eighty-five percent of the present value of future projected premiums not in subdivision 2 c of this subsection on an earned basis;

3. In the event that a policy form has both exceptional and other increases, the values in subdivisions 2 b and d of this subsection will also include 70% for exceptional rate increase amounts; and

4. All present and accumulated values used to determine rate increases shall use the maximum valuation interest rate for contract reserves as specified in § 38.2-3132 of the Code of Virginia. The actuary shall disclose as part of the actuarial memorandum the use of any appropriate averages.

D. For each rate increase that is implemented, the insurer shall file for approval by the commission updated projections, as defined in subdivision B 3 a of this section, annually for the next three years and include a comparison of actual results to projected values. The commission may extend the period to greater than three years if actual results are not consistent with projected values from prior projections. For group insurance policies that meet the conditions in subsection K of this section, the projections required by subdivision B 3 a of this section shall be provided to the policyholder in lieu of filing with the commission.

E. If any increased premium rate in the revised premium rate schedule is greater than 200% of the comparable rate in the initial premium schedule, the premiums exceeding 200% shall be clearly identified and lifetime projections, as defined in subdivision B 3 a of this section, shall be filed for approval by the commission every five years following the end of the required period in subsection D of this section. For group insurance policies that meet the conditions in subsection K of this section, the projections required by this subsection shall be provided to the policyholder in lieu of filing with the commission.

F. 1. If the commission has determined that the actual experience following a rate increase does not adequately match the projected experience and that the current projections under moderately adverse conditions demonstrate that incurred claims will not exceed proportions of premiums specified in subsection C of this section, the commission may require the insurer to implement any of the following:

- a. Premium rate schedule adjustments; or

b. Other measures to reduce the difference between the projected and actual experience.

It is to be expected that the actual experience will not exactly match the insurer's projections. During the period that projections are monitored as described in subsections D and E of this section, the commission should determine that there is not an adequate match if the differences in earned premiums and incurred claims are not in the same direction (both actual values higher or lower than projections) or the difference as a percentage of the projected is not of the same order.

2. In determining whether the actual experience adequately matches the projected experience, consideration should be given to subdivision B 3 e of this section, if applicable.

G. If the majority of the policies or certificates to which the increase is applicable are eligible for the contingent benefit upon lapse, the insurer shall file:

1. A plan, subject to commission approval, for improved administration or claims processing designed to eliminate the potential for further deterioration of the policy form requiring further premium rate schedule increases or to demonstrate that appropriate administration and claims processing have been implemented or are in effect; otherwise the commission may impose the condition in subsection H of this section; and

2. The original anticipated lifetime loss ratio, and the premium rate schedule increase that would have been calculated according to subsection C of this section had the greater of the original anticipated lifetime loss ratio or 58% been used in the calculations described in subdivisions C 2 a and c of this section.

H. 1. For a rate increase filing that meets the following criteria, the commission shall review, for all policies included in the filing, the projected lapse rates and past lapse rates during the 12 months following each increase to determine if significant adverse lapsation has occurred or is anticipated:

- a. The rate increase is not the first rate increase requested for the specific policy form or forms;
- b. The rate increase is not an exceptional increase; and
- c. The majority of the policies or certificates to which the increase is applicable are eligible for the contingent benefit upon lapse.

2. In the event significant adverse lapsation has occurred, is anticipated in the filing or is evidenced in the actual results as presented in the updated projections provided by the insurer following the requested rate increase, the commission may determine that a rate spiral exists. Following the determination that a rate spiral exists, the commission may require the insurer to offer, without underwriting, to all in force insureds subject to the rate increase the option to replace existing coverage with any other long-term care insurance product being offered by the insurer or its affiliates.

a. The offer shall:

- (1) Be subject to the approval of the commission;

Final Regulations

(2) Be based on actuarially sound principles, but not be based on attained age; and

(3) Provide that maximum benefits under any new policy accepted by an insured shall be reduced by comparable benefits already paid under the existing policy.

b. The insurer shall maintain the experience of all the replacement insureds separate from the experience of insureds originally issued the policy forms. In the event of a request for a rate increase on the policy form, the rate increase shall be limited to the lesser of:

(1) The maximum rate increase determined based on the combined experience; or

(2) The maximum rate increase determined based only on the experience of the insureds originally issued the form plus 10%.

I. If the commission determines that the insurer has exhibited a persistent practice of filing inadequate initial premium rates for long-term care insurance, the commission may, in addition to the provisions of subsection H of this section, prohibit the insurer from either of the following:

1. Filing and marketing comparable coverage for a period of up to five years; or

2. Offering all other similar coverages and limiting marketing of new applications to the products subject to recent premium rate schedule increases.

J. Subsections A through I of this section shall not apply to policies for which the long-term care benefits provided by the policy are incidental, as defined in 14 VAC 5-200-40, if the policy complies with all of the following provisions:

1. The interest credited internally to determine cash value accumulations, including long-term care, if any, are guaranteed not to be less than the minimum guaranteed interest rate for cash value accumulations without long-term care set forth in the policy;

2. The portion of the policy that provides insurance benefits other than long-term care coverage meets the nonforfeiture requirements as applicable in any of the following:

a. Sections 38.2-3200 through 38.2-3218 of the Code of Virginia, and

b. Sections 38.2-3219 through 38.2-3229 of the Code of Virginia;

3. The policy meets the disclosure requirements of §§ 38.2-5207.1 and 38.2-5207.2 of the Code of Virginia;

4. The portion of the policy that provides insurance benefits other than long-term care coverage meets the requirements as applicable in the following:

a. Policy illustrations as required by 14 VAC 5-40; and

b. Disclosure requirements in 14 VAC 5-40.

5. An actuarial memorandum is filed with the commission that includes:

a. A description of the basis on which the long-term care rates were determined;

b. A description of the basis for the reserves;

c. A summary of the type of policy, benefits, renewability, general marketing method, and limits on ages of issuance;

d. A description and a table of each actuarial assumption used. For expenses, an insurer shall include percent of premium dollars per policy and dollars per unit of benefits, if any;

e. A description and a table of the anticipated policy reserves and additional reserves to be held in each future year for active lives;

f. The estimated average annual premium per policy and the average issue age;

g. A statement as to whether underwriting is performed at the time of application. The statement shall indicate whether underwriting is used and, if used, the statement shall include a description of the type or types of underwriting used, such as medical underwriting or functional assessment underwriting. Concerning a group policy, the statement shall indicate whether the enrollee or any dependent will be underwritten and when underwriting occurs; and

h. A description of the effect of the long-term care policy provision on the required premiums, nonforfeiture values and reserves on the underlying insurance policy, both for active lives and those in long-term care claim status.

K. Subsections F and H of this section shall not apply to group insurance policies as defined in subsections A and C of § [~~38.2-3522-4~~ 38.2-3521.1] of the Code of Virginia where:

1. The policies insure 250 or more persons and the policyholder has 5,000 or more eligible employees of a single employer; or

2. The policyholder, and not the certificateholders, pays a material portion of the premium, which shall not be less than 20% of the total premium for the group in the calendar year prior to the year a rate increase is filed.

14 VAC 5-200-200. [No change from proposed.]

VA.R. Doc. No. R03-59; Filed December 9, 2002, 11:35 a.m.



TITLE 16. LABOR AND EMPLOYMENT

DEPARTMENT OF LABOR AND INDUSTRY

Apprenticeship Council

Title of Regulation: **16 VAC 20-10. Public Participation Guidelines (amending 16 VAC 20-10-10, 16 VAC 20-10-20, 16 VAC 20-10-40, 16 VAC 20-10-50, 16 VAC 20-10-80, 16 VAC 20-10-90, and 16 VAC 20-10-100).**

Statutory Authority: §§ 2.2-4007 and 40.1-117 of the Code of Virginia.

Effective Date: February 1, 2003.

Summary:

The amendments conform language to current Administrative Process Act (APA) requirements, correct citations to the APA, remove language contained in the APA that is repeated in the regulation, remove language that conflicts with the current APA or the Governor's Executive Orders, and add Internet posting as another method for informing interested parties of regulatory activity.

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

Agency Contact: Bonnie R. Hopkins, Regulatory Coordinator, Department of Labor and Industry, Powers-Taylor Building, 13 S. Thirteenth Street, Richmond, VA 23219, telephone (804) 371-2631, FAX (804) 371-6524 or e-mail brh@doli.state.va.us.

Summary:

The amendments (i) rename "adult care residence" as "assisted living facility" throughout the regulation; (ii) allow for a shared administrator when an assisted living facility and a nursing home are located in the same building, and when there is a management plan to ensure that residents receive proper care and supervision; (iii) add a section regarding freedom of movement for residents to ensure that no resident's movement is limited inappropriately; and (iv) establish a clear division between standards for special care units for residents with serious cognitive impairments due to a primary psychiatric diagnosis of dementia and standards for mixed populations. Special care units for residents with dementia may be locked if in conformance with building and fire safety codes. Specific admission, staffing, programmatic and building requirements have been added for special care units to protect the health and safety of the residents. These amendments conform the regulation to changes made by Chapter 845 of the 2000 General Assembly session.

Other amendments include changes resulting from the following legislation enacted by the 2000 General Assembly: Chapter 130 (community services board access to assisted living facilities), Chapter 804 (disclosure of staffing), Chapter 176 (training of mandatory reporters of adult abuse, neglect, and exploitation), Chapter 177 (posting related to residents' rights), and Chapters 178 and 203 (training for new applicants for licensure). In addition, amendments are made to conform the regulation to 1996 legislation relating to "Do Not Resuscitate" orders.

Since publication of the proposed amendments, changes were made as a result of legislation passed at the 2002 General Assembly session. Chapter 45 of the 2002 Acts of Assembly adds the option of evaluation by a licensed clinical psychologist to determine if a resident has a serious cognitive impairment prior to placement in an assisted living facility, Chapter 332 clarifies that assisted living facilities must post the rights and responsibilities of residents of assisted living facilities rather than the implementing policies and procedures, and Chapter 747 recodifies Title 63.1 as Title 63.2.

Summary of Public Comment and Agency 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: Judy McGreal, Program Development Consultant, Department of Social Services, Division of Licensing Programs, 730 East Broad Street, Richmond, VA 23219, telephone (804) 692-1792, FAX (804) 692-2370 or e-mail jzm7@dss.state.va.us.

REGISTRAR'S NOTICE: The proposed regulation was adopted as published in 18:24 VA.R. 3207-3210 August 12, 2002, without change. Therefore, pursuant to § 2.2-4031 of the Code of Virginia, the text of the final regulation is not set out.

VA.R. Doc. No. R02-18; Filed December 4, 2002, 1:47 p.m.

TITLE 22. SOCIAL SERVICES

STATE BOARD OF SOCIAL SERVICES

Title of Regulation: **22 VAC 40-71. Standards and Regulations for Licensed Assisted Living Facilities (amending 22 VAC 40-71-10, 22 VAC 40-71-20, 22 VAC 40-71-30, 22 VAC 40-71-50, 22 VAC 40-71-60, 22 VAC 40-71-80, 22 VAC 40-71-90, 22 VAC 40-71-110, 22 VAC 40-71-130, 22 VAC 40-71-150, 22 VAC 40-71-160, 22 VAC 40-71-170, 22 VAC 40-71-180, 22 VAC 40-71-210, 22 VAC 40-71-270, 22 VAC 40-71-280, 22 VAC 40-71-290, 22 VAC 40-71-310, 22 VAC 40-71-330, 22 VAC 40-71-360, 22 VAC 40-71-410, 22 VAC 40-71-440, 22 VAC 40-71-450, 22 VAC 40-71-460, 22 VAC 40-71-480, 22 VAC 40-71-490, 22 VAC 40-71-530, 22 VAC 40-71-540, 22 VAC 40-71-550, 22 VAC 40-71-560, 22 VAC 40-71-570, 22 VAC 40-71-580, 22 VAC 40-71-590, 22 VAC 40-71-600, 22 VAC 40-71-630, 22 VAC 40-71-640, 22 VAC 40-71-650, 22 VAC 40-71-660, 22 VAC 40-71-670, 22 VAC 40-71-680, 22 VAC 40-71-690, and 22 VAC 40-71-700; adding 22 VAC 40-71-45 and 22 VAC 40-71-275).**

Statutory Authority: §§ 63.2-217 and 63.2-1732 of the Code of Virginia.

Effective Date: March 28, 2003.

REGISTRAR'S NOTICE: The proposed regulation was adopted as published in 18:19 VA.R. 2422-2451 June 3, 2002, with the changes identified below. Pursuant to § 2.2-4031 of the Code of Virginia, the adopted regulation is not published at length; however, the sections that have changed since publication of the proposed are set out.

Final Regulations

CHAPTER 71.
STANDARDS AND REGULATIONS FOR LICENSED ADULT
CARE RESIDENCES ASSISTED LIVING FACILITIES.

PART I.
GENERAL PROVISIONS.

22 VAC 40-71-10. Definitions.

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

"Activities of daily living (ADLs)" means bathing, dressing, toileting, transferring, bowel control, bladder control and eating/feeding. A person's degree of independence in performing these activities is a part of determining appropriate level of care and services.

"Administer medication" means to open a container of medicine or to remove the prescribed dosage and to give it to the resident for whom it is prescribed.

"Administrator" means the licensee or a person designated by the licensee who oversees the day-to-day operation of the facility, including compliance with all regulations for licensed ~~adult care residences assisted living facilities.~~

~~*"Adult care residence"* means any place, establishment, or institution, public or private, operated or maintained for the maintenance or care of four or more adults who are aged, infirm or disabled and who are cared for in a primarily residential setting, except (i) a facility or portion of a facility licensed by the State Board of Health or the Department of Mental Health, Mental Retardation and Substance Abuse Services, but including any portion of such facility not so licensed; (ii) the home or residence of an individual who cares for or maintains only persons related to him by blood or marriage; and (iii) a facility or portion of a facility serving infirm or disabled persons between the ages of 18 and 21, or 22 if enrolled in an educational program for the handicapped pursuant to § 22.1-214 of the Code of Virginia, when such facility is licensed by the Virginia Department of Social Services as a child caring institution under Chapter 40 (§ 63.1-195 et seq.) of Title 63.1 of the Code of Virginia, but including any portion of the facility not so licensed. Included in this definition are any two or more places, establishments or institutions owned or operated by a single entity and providing maintenance or care to a combined total of four or more aged, infirm or disabled adults.~~

"Ambulatory" means the condition of a resident who is physically and mentally capable of self-preservation by evacuating in response to an emergency to a refuge area as defined by the Uniform Statewide Building Code without the assistance of another person, or from the structure itself without the assistance of another person if there is no such refuge area within the structure, even if such resident may require the assistance of a wheelchair, walker, cane, prosthetic device, or a single verbal command to evacuate.

"Assisted living care" means a level of service provided by an ~~adult care residence assisted living facility~~ for adults who may have physical or mental impairments and require at least moderate assistance with the activities of daily living. Included in this level of service are individuals who are dependent in

behavior pattern (i.e., abusive, aggressive, disruptive) as documented on the uniform assessment instrument.

"Assisted living facility" means [, as defined in § 63.2-100 of the Code of Virginia,] any congregate residential setting that provides or coordinates personal and health care services, 24-hour supervision, and assistance (scheduled and unscheduled) for the maintenance or care of four or more adults who are aged, infirm or disabled and who are cared for in a primarily residential setting, except (i) a facility or portion of a facility licensed by the State Board of Health or the Department of Mental Health, Mental Retardation and Substance Abuse Services, but including any portion of such facility not so licensed; (ii) the home or residence of an individual who cares for or maintains only persons related to him by blood or marriage; (iii) a facility or portion of a facility serving infirm or disabled persons between the ages of 18 and 21, or 22 if enrolled in an educational program for the handicapped pursuant to § 22.1-214 of the Code of Virginia, when such facility is licensed by the [Virginia] department [of Social Services] as a [~~child caring institution~~ children's residential facility] under Chapter [~~40 (§ 63.1-195 et seq.)~~ of Title 63.1 17 (§ 63.2-1700 et seq.) of Title 63.2] of the Code of Virginia, but including any portion of the facility not so licensed; and (iv) any housing project for [seniors persons 62 years of age or older] or the disabled that provides no more than basic coordination of care services and is funded by the U.S. Department of Housing and Urban Development including, but not limited to, U.S. Department of Housing and Urban Development Sections 8, 202, 221(d)(3), 221(d)(4), 231, 236 or 811 housing, by the U.S. Department of Agriculture, or by the Virginia Housing Development Authority. Included in this definition are any two or more places, establishments or institutions owned or operated by a single entity and providing maintenance or care to a combined total of four or more aged, infirm or disabled adults.

[~~"BOCA®" means the trademark of Building Officials and Code Administrators International, Inc., and it is registered in the U.S. Patent and Trademark Office.]~~

"Building" means a structure with exterior walls under one roof.

"Case management" means multiple functions designed to link clients to appropriate services. Case management may include a variety of common components such as initial screening of needs, comprehensive assessment of needs, development and implementation of a plan of care, service monitoring, and client follow-up.

"Case manager" means an employee of a public human services agency who is qualified and designated to develop and coordinate plans of care.

"Chemical restraint" means a psychopharmacologic drug that is used for discipline or convenience and not required to treat the resident's medical symptoms, including when the drug is used in one or more of the following ways:

1. In excessive dose (including duplicate drug therapy);
2. For excessive duration;
3. Without adequate monitoring;

4. Without adequate indications for its use;
5. In the presence of adverse consequences which indicate the dose should be reduced or discontinued; and
6. In a manner that results in a decline in the resident's functional status.

~~"Committee" means a person who has been legally invested with the authority and charged with the duty of managing the estate or making decisions to promote the well-being of a person who has been determined by the circuit court to be totally incapable of taking care of his person or handling and managing his estate because of mental illness or mental retardation. A committee shall be appointed only if the court finds that the person's inability to care for himself or handle and manage his affairs is total.~~

[*"Community services board" means a citizens' board established pursuant to § 37.1-195 of the Code of Virginia that provides mental health, mental retardation and substance abuse programs and services within the political subdivision or political subdivisions participating on the board.]*

"Conservator" means a person appointed by the court who is responsible for managing the estate and financial affairs of an incapacitated person and, where the context plainly indicates, includes a "limited conservator" or a "temporary conservator." The term includes a local or regional program designated by the Department for the Aging as a public conservator pursuant to Article 2 (§ 2.2-711 et seq.) of Chapter 7 of Title 2.2 of the Code of Virginia.

"Continuous licensed nursing care" means around-the-clock observation, assessment, monitoring, supervision, or provision of medical treatments provided by a licensed nurse. Residents requiring continuous licensed nursing care may include:

1. Individuals who have a medical instability due to complexities created by multiple, interrelated medical conditions; or
2. Individuals with a health care condition with a high potential for medical instability.

"Department" means the Virginia Department of Social Services.

"Department's representative" means an employee of the Virginia Department of Social Services, acting as the authorized agent in carrying out the duties specified in the Code of Virginia.

"Direct care staff" means supervisors, assistants, aides, or other employees of a facility who assist residents in their daily living activities. Examples are likely to include nursing staff, geriatric assistants and mental health workers but are not likely to include waiters, chauffeurs, and cooks.

"Discharge" means the movement of a resident out of the ~~adult care residence assisted living facility.~~

"Emergency" means, as it applies to restraints, a situation which may require the use of a restraint where the resident's behavior is unmanageable to the degree an immediate and serious danger is presented to the health and safety of the resident or others.

"Emergency placement" means the temporary status of an individual in an ~~adult care residence assisted living facility~~ when the person's health and safety would be jeopardized by not permitting entry into the facility until the requirements for admission have been met.

"Extended license" means a license that is granted for more than one year's duration because the facility demonstrated a pattern of strong compliance with licensing standards.

"Guardian" means a person who has been legally invested with the authority and charged with the duty of taking care of the person, managing his property and protecting the rights of the person who has been declared by the circuit court to be incapacitated and incapable of administering his own affairs. The powers and duties of the guardian are defined by the court and are limited to matters within the areas where the person in need of a guardian has been determined to be incapacitated.

"Habilitative service" means activities to advance a normal sequence of motor skills, movement, and self-care abilities or to prevent unnecessary additional deformity or dysfunction.

"Health care provider" means a person, corporation, facility or institution licensed by this Commonwealth to provide health care or professional services such as a physician or hospital, dentist, pharmacist, registered or licensed practical nurse, optometrist, podiatrist, chiropractor, physical therapist, physical therapy assistant, clinical psychologist, or health maintenance organization. This list is not all inclusive.

"Household member" means any person domiciled in an ~~adult care residence assisted living facility~~ other than residents or staff.

"Human subject research" means any medical or psychological research which utilizes human subjects who may be exposed to the possibility of physical or psychological injury as a consequence of participation as subjects and which departs from the application of those established and accepted methods appropriate to meet the subject's needs but does not include (i) the conduct of biological studies exclusively utilizing tissue or fluids after their removal or withdrawal from a human subject in the course of standard medical practice, (ii) epidemiological investigations, or (iii) medical treatment of an experimental nature intended to save or prolong the life of the subject in danger of death, to prevent the subject from becoming disfigured or physically or mentally incapacitated or to improve the quality of the subject's life pursuant to § 37.1-234 of the Code of Virginia.

[*"Independent clinical psychologist" means a clinical psychologist who is chosen by the resident of the assisted living facility and who has no financial interest in the assisted living facility, directly or indirectly, as an owner, officer or employee or as an independent contractor with the facility.]*

"Independent living environment" means one in which the resident or residents perform all activities of daily living and instrumental activities of daily living for themselves without requiring the assistance of any staff member in the ~~adult care residence assisted living facility.~~

"Independent living status" means that the resident is assessed as capable of performing all activities of daily living

Final Regulations

and instrumental activities of daily living for himself without requiring the assistance of any staff member in the ~~adult care residence~~ *assisted living facility*. (If the policy of a facility dictates that medications are administered or distributed centrally without regard for the residents' capacity, this shall not be considered in determining independent status.)

"Independent physician" means a physician who is chosen by the resident of the ~~adult care residence~~ *assisted living facility* and who has no financial interest in the ~~adult care residence~~ *assisted living facility*, directly or indirectly, as an owner, officer, or employee or as an independent contractor with the ~~residence~~ *facility*.

NOTE: *"Physician"* is defined later in this section.

"Individualized service plan" means the written description of actions to be taken by the licensee to meet the assessed needs of the resident.

"Instrumental activities of daily living (IADLs)" means meal preparation, housekeeping, laundry, and managing money. A person's degree of independence in performing these activities is a part of determining appropriate level of care and services.

"Intermittent intravenous therapy" means therapy provided by a licensed health care professional at medically predictable intervals for a limited period of time on a daily or periodic basis.

"Licensee" means any person, association, partnership or corporation to whom the license is issued.

"Licensed health care professional" means any health care professional currently licensed by the Commonwealth of Virginia to practice within the scope of his profession, such as a clinical social worker, dentist, licensed practical nurse, nurse practitioner, *occupational therapist*, pharmacist, physical therapist, physician, physician assistant, psychologist, registered nurse, and speech-language pathologist.

NOTE: Responsibilities of physicians contained within this chapter may be implemented by nurse practitioners or physician assistants as assigned by the supervising physician and within the parameters of professional licensing.

"Maintenance or care" means the protection, general supervision and oversight of the physical and mental well-being of the aged, infirm or disabled individual. Assuming responsibility for the well-being of residents, either directly or through contracted agents, is considered "general supervision and oversight."

"Mandated reporter" means any person licensed to practice medicine or any of the healing arts, any hospital resident or intern, any person employed in the nursing profession, any person employed by a public or private agency or facility and working with adults, any person providing full-time or part-time care to adults for pay on a regularly scheduled basis, any person employed as a social worker, any mental health professional and any law-enforcement officer, in his professional or official capacity, who has reason to suspect that an adult is an abused, neglected or exploited adult. This is pursuant to § [~~63.1-55.3~~ 63.2-1606] of the Code of Virginia.

"Maximum physical assistance" means that an individual has a rating of total dependence in four or more of the seven activities of daily living as documented on the uniform assessment instrument.

NOTE: An individual who can participate in any way with performance of the activity is not considered to be totally dependent.

"Mental impairment" means a disability which reduces an individual's ability to reason or make decisions.

"Minimal assistance" means dependency in only one activity of daily living or dependency in one or more of the instrumental activities of daily living as documented on the uniform assessment instrument.

"Moderate assistance" means dependency in two or more of the activities of daily living as documented on the uniform assessment instrument.

"Nonambulatory" means the condition of a resident who by reason of physical or mental impairment is not capable of self-preservation without the assistance of another person.

"Nonemergency" means, as it applies to restraints, circumstances which may require the use of a restraint for the purpose of providing support to a physically weakened resident.

~~*"Payee"* means an individual, other than the guardian or committee, who has been designated to receive and administer funds belonging to a resident in an adult care residence. A payee is not a guardian or committee unless so appointed by the court.~~

"Personal representative" means the person representing or standing in the place of the resident for the conduct of his affairs. This may include a guardian, ~~committee conservator~~, attorney-in-fact under durable power of attorney, next of kin, decedent, trustee, or other person expressly named by the resident as his agent.

"Physical impairment" means a condition of a bodily or sensory nature that reduces an individual's ability to function or to perform activities.

"Physical restraint" means any manual method or physical or mechanical device, material, or equipment attached or adjacent to the resident's body that the resident cannot remove easily, which restricts freedom of movement or access to his body.

"Physician" means an individual licensed to practice medicine in any of the 50 states or the District of Columbia.

"Psychopharmacologic drug" means any drug prescribed or administered with the intent of controlling mood, mental status or behavior. Psychopharmacologic drugs include not only the obvious drug classes, such as antipsychotic, antidepressants, and the anti-anxiety/hypnotic class, but any drug that is prescribed or administered with the intent of controlling mood, mental status, or behavior, regardless of the manner in which it is marketed by the manufacturers and regardless of labeling or other approvals by the ~~Federal~~ Food and Drug Administration (FDA).

"Public pay" means a resident of an adult care facility eligible for benefits under the Auxiliary Grants Program.

"Qualified assessor" means an entity contracting with the Department of Medical Assistance Services to perform nursing facility preadmission screening or to complete the uniform assessment instrument for a home- and community-based waiver program, including an independent physician contracting with the Department of Medical Assistance Services to complete the uniform assessment instrument for residents of ~~adult care residences~~ *assisted living facilities*, or any hospital which has contracted with the Department of Medical Assistance Services to perform nursing facility preadmission screenings.

"Rehabilitative services" means activities that are ordered by a physician or other qualified health care professional which are provided by a rehabilitative therapist (physical therapist, occupational therapist or speech-language pathologist). These activities may be necessary when a resident has demonstrated a change in his capabilities and are provided to enhance or improve his level of functioning.

"Resident" means any aged, infirm, or disabled adult residing in an ~~adult care residence~~ *assisted living facility* for the purpose of receiving maintenance or care.

"Residential living care" means a level of service provided by an ~~adult care residence~~ *assisted living facility* for adults who may have physical or mental impairments and require only minimal assistance with the activities of daily living. Included in this level of service are individuals who are dependent in medication administration as documented on the uniform assessment instrument. This definition includes *the services provided by independent living facilities that voluntarily become licensed.*

"Respite care" means services provided for maintenance and care of aged, infirm or disabled adults for temporary periods of time, regularly or intermittently. Facilities offering this type of care are subject to this chapter.

"Restorative care" means activities designed to assist the resident in reaching or maintaining his level of potential. These activities are not required to be provided by a rehabilitative therapist and may include activities such as range of motion, assistance with ambulation, positioning, assistance and instruction in the activities of daily living, psychosocial skills training, and reorientation and reality orientation.

"Safe, secure environment" means a [~~setting in which the health, safety and welfare of residents are protected, and necessary care and services are provided to maximize individual well-being~~ *self-contained special care unit for individuals with serious cognitive impairments due to a primary psychiatric diagnosis of dementia who cannot recognize danger or protect their own safety and welfare. Means of egress that lead to unprotected areas must be monitored or secured through devices that conform to applicable building and fire safety standards, including but not limited to, door alarms, cameras, constant staff oversight, security bracelets that are part of an alarm system, pressure pads at doorways, delayed egress mechanisms, locking devices or perimeter fence gates. There may be one or more*

self-contained special care units in a facility or the whole facility may be a special care unit. NOTE: Nothing in this definition limits or contravenes the privacy protections set forth in § 63.2-1808 of the Code of Virginia].

"Serious cognitive impairment" means severe deficit in mental capability of a chronic, enduring or long term nature that affects areas such as thought processes, problem-solving, judgment, memory, and comprehension and that interferes with such things as reality orientation, ability to care for self, ability to recognize danger to self or others, and impulse control. Such cognitive impairment is not due to acute or episodic conditions, nor conditions arising from treatable metabolic or chemical imbalances or caused by reactions to medication or toxic substances.

"Skilled nursing treatment" means a service ordered by a physician which is provided by and within the scope and practice of a licensed nurse.

[~~"Special care unit" means a self-contained safe, secure environment for individuals with serious cognitive impairments due to a primary psychiatric diagnosis of dementia who cannot recognize danger or protect their own safety and welfare. Means of egress that lead to unprotected areas must be monitored or secured through devices that conform to applicable building and fire safety standards, including but not limited to, door alarms, cameras, constant staff oversight, security bracelets that are part of an alarm system, pressure pads at doorways, delayed egress mechanisms, locking devices and perimeter fence gates. There may be one or more special care units in a facility or the whole facility may be a special care unit. NOTE: Nothing in this definition limits or contravenes the privacy protections set forth in § 63.1-182.1 of the Code of Virginia.]~~

"Systems review" means a physical examination of the body to determine if the person is experiencing problems or distress, including cardiovascular system, respiratory system, gastrointestinal system, urinary system, endocrine system, musculoskeletal system, nervous system, sensory system and the skin.

[~~"Therapeutic goal" means the expected outcome of any planned interventions, training, rehabilitation, habilitation, or support services that help a resident obtain or maintain an optimal level of functioning by reducing the effects of a disability or disorder on the physical, mental, behavioral, or social functioning.]~~

"Transfer" means movement of a resident to a different assigned living area within the same licensed facility.

"Transfer trauma" means feelings or symptoms of stress, emotional shock or disturbance, hopelessness, or confusion resulting from the resident being moved from one residential environment to another.

"Uniform assessment instrument (UAI)" means the department designated assessment form. There is an alternate version of the form which may be used for private pay residents, i.e., those not eligible for benefits under the Auxiliary Grants Program. Social and financial information which is not relevant because of the resident's payment status is not included on the private pay version of the form.

Final Regulations

22 VAC 40-71-20. Applicability.

A. These standards and regulations for licensed ~~adult care residences assisted living facilities~~ apply to any ~~facility~~ *congregate residential setting that*:

- ~~That is operated or maintained~~ *Provides or coordinates personal and health care services, 24-hour supervision, and assistance for the maintenance or care of four or more adults in one or more locations who are aged, infirm or disabled.*
- ~~That~~ *Assumes responsibility, either directly or through contracted agents, for the maintenance or care of four or more adults who are aged, infirm or disabled.*

B. The following types of facilities are not subject to licensure as an ~~adult care residence assisted living facility~~:

- A facility or portion of a facility licensed by the State Board of *Health or the Department of Mental Health, Mental Retardation, and Substance Abuse Services.*
- The home or residence of an individual who cares for or maintains only persons related to him by blood or marriage.
- A facility or portion of a facility, licensed as a children's residential facility under *Chapter 10 (§ 63.1-185 [63.1-195 63.2-100] et seq.) of Title [63.4 63.2] of the Code of Virginia, serving infirm or disabled persons between the ages of 18 and 21, or 22 if enrolled in an educational program for the handicapped.*
- Any housing project for [seniors persons 62 years of age or older] or the disabled that provides no more than basic coordination of care services and is funded by the U.S. Department of Housing and Urban Development, by the U.S. Department of Agriculture, or by the Virginia Housing Development Authority.*

22 VAC 40-71-30. [No change from proposed.]

22 VAC 40-71-45. Community services board access.

All assisted living facilities shall provide reasonable access to staff or contractual agents of community services boards, local government departments with policy-advisory community services boards or behavioral health authorities as defined in Title 37.1 of the Code of Virginia for the purposes of:

~~[1. Assessing or evaluating, providing case management or other services or assistance to, or monitoring the care of clients residing in the facility; or~~

~~2. Evaluating other facility residents who have previously requested their services.~~

- Assessing or evaluating clients residing in the facility;*
- Providing case management or other services or assistance to clients residing in the facility; or*
- Monitoring the care of clients residing in the facility.*

Such staff or contractual agents also shall be given reasonable access to other facility residents who have previously requested their services.]

PART II.

PERSONNEL AND STAFFING REQUIREMENTS.

22 VAC 40-71-50. Licensee.

A. The licensee shall ensure compliance with all regulations for licensed ~~adult care residences assisted living facilities~~ and terms of the license issued by the department; with other relevant federal, state or local laws and regulations; and with the facility's own policies.

B. The licensee shall meet the following requirements:

- The licensee shall give evidence of financial responsibility.

- The licensee shall be of good character and reputation.

~~[3. The licensee shall provide a safe, secure environment for residents.]~~

[3. 4.] *The licensee shall protect the physical and mental well-being of residents.*

~~[4. 5.]~~ *The licensee shall keep such records and make such reports as required by this chapter for licensed ~~adult care residences assisted living facilities~~. Such records and reports may be inspected at any reasonable time in order to determine compliance with this chapter.*

~~[5. 6.]~~ *The licensee shall meet the qualifications of the administrator if he assumes those duties.*

C. An ~~adult care residence assisted living facility~~ sponsored by a religious organization, a corporation or a voluntary association shall be controlled by a governing board of directors that shall fulfill the duties of the licensee.

D. Upon initial application for an assisted living facility license, any person applying to operate such a facility who has not previously owned or managed or does not currently own or manage a licensed assisted living facility shall be required to undergo training by the commissioner or his designated agents. [Such training shall be required of those owners and currently employed administrators of an assisted living facility at the time of initial application for a license.]

- The commissioner may also approve training programs provided by other entities and allow owners or [managers administrators] to attend such approved training programs in lieu of training by the department.*

- The commissioner may also approve for licensure applicants who meet requisite experience criteria as established by the board.*

- The training programs shall focus on the health and safety regulations and resident rights as they pertain to assisted living facilities and shall be completed by the owner or [manager administrator] prior to the granting of an initial license.*

- The commissioner may, at his discretion, issue a license conditioned upon the owner or [manager's administrator's] completion of the required training.*

22 VAC 40-71-60. [No change from proposed.]

22 VAC 40-71-80. Staff training and orientation.

A. All employees shall be made aware of:

1. The purpose of the facility;
2. The services provided;
3. The daily routines; and
4. Required compliance with regulations for ~~adult care residences~~ *assisted living facilities* as it relates to their duties and responsibilities.

B. All personnel shall be trained in the relevant laws, regulations, and the ~~residence's~~ *facility's* policies and procedures sufficiently to implement the following:

1. Emergency and disaster plans for the facility;
2. Techniques of complying with emergency and disaster plans including evacuating residents when applicable;
3. Use of the first aid kit and knowledge of its location;
4. Confidential treatment of personal information;
5. Observance of the rights and responsibilities of residents;
6. Procedures for detecting and reporting suspected abuse, neglect, or exploitation of residents [~~to the appropriate local department of social services~~] *and for mandated reporters, the consequences for failing to make a required report. [(NOTE: Section 63.2-1606 of the Code of Virginia specifies procedures for reporting and consequences for not reporting.)]* (NOTE: ~~Section 63.1-55.3 of the Code of Virginia requires anyone providing full or part time care to adults for pay on a regular basis to report suspected adult abuse, neglect, or exploitation. See 22 VAC 40-71-10 for a definition of mandated reporter~~);
7. Techniques for assisting residents in overcoming transfer trauma; and
8. Specific duties and requirements of their positions. [~~Training in these areas shall occur within the first seven days of employment, and prior to assuming job responsibilities unless under the sight supervision of a trained staff person.~~

C. The training and orientation required in subsections A and B of this section shall occur within the first seven days of employment and prior to assuming job responsibilities unless under the sight supervision of a trained staff person.]

[~~C. D.~~] Within the first 30 days of employment, all direct care staff shall be trained to have general knowledge in the care of aged, infirm or disabled adults with due consideration for their individual capabilities and their needs.

[~~D. E.~~] On an annual basis, all direct care staff shall attend at least eight hours of training.

1. The training shall be relevant to the population in care and shall be provided through in-service training programs or institutes, workshops, classes, or conferences.

2. When adults with mental impairments reside in the facility, at least two of the required eight hours of training shall focus on the resident who is mentally impaired.

3. Documentation of this training shall be kept by the facility in a manner that allows for identification by individual employee.

22 VAC 40-71-90 through 22 VAC 40-71-130. [No change from proposed.]

PART III.
ADMISSION, RETENTION AND DISCHARGE OF
RESIDENTS.

22 VAC 40-71-150. Admission and retention of residents.

A. No resident shall be admitted or retained for whom the facility cannot provide or secure appropriate care, or who requires a level of service or type of service for which the facility is not licensed or which the facility does not provide, or if the facility does not have the staff appropriate in numbers and with appropriate skill to provide such services.

B. ~~Adult care residences~~ *Assisted living facilities* shall not admit an individual before a determination has been made that the facility can meet the needs of the resident. The facility shall make the determination based upon:

1. The completed UAI;
2. The physical examination report; and
3. An interview between the administrator or a designee responsible for admission and retention decisions, the resident and his personal representative, if any.

NOTE: In some cases, medical conditions may create special circumstances which make it necessary to hold the interview on the date of admission.

C. Upon receiving the UAI prior to admission of a resident, the ~~adult care residence~~ *assisted living facility* administrator shall provide written assurance to the resident that the facility has the appropriate license to meet his care needs at the time of admission. Copies of the written assurance shall be given to the personal representative, if any, and case manager, if any, and shall be kept on file at the facility.

D. All residents shall be 18 years of age or older.

E. No person shall be admitted without his consent and agreement, or that of his personal representative, if applicable.

F. ~~Adult care residences~~ *Assisted living facilities* shall not admit or retain individuals with any of the following conditions or care needs:

1. Ventilator dependency;
2. Dermal ulcers III and IV except those stage III ulcers which are determined by an independent physician to be healing, as permitted in subsection G of this section;
3. Intravenous therapy or injections directly into the vein, except for intermittent intravenous therapy managed by a health care professional licensed in Virginia as permitted in subsection H or subsection I of this section;

Final Regulations

4. Airborne infectious disease in a communicable state that requires isolation of the individual or requires special precautions by the caretaker to prevent transmission of the disease, including diseases such as tuberculosis and excluding infections such as the common cold;
5. Psychotropic medications without appropriate diagnosis and treatment plans;
6. Nasogastric tubes;
7. Gastric tubes except when the individual is capable of independently feeding himself and caring for the tube or as permitted in subsection I of this section;
8. Individuals presenting an imminent physical threat or danger to self or others;
9. Individuals requiring continuous licensed nursing care;
10. Individuals whose physician certifies that placement is no longer appropriate;
11. Unless the individual's independent physician determines otherwise, individuals who require maximum physical assistance as documented by the UAI and meet Medicaid nursing facility level of care criteria as defined in the State Plan for Medical Assistance (12 VAC 30-10-10 ~~et seq.~~);
12. Individuals whose health care needs cannot be met in the specific ~~adult care residence~~ *assisted living facility* as determined by the ~~residence facility~~.

G. When a resident has a stage III dermal ulcer that has been determined by an independent physician to be healing, periodic observation and any necessary dressing changes shall be performed by a licensed health care professional under a physician's treatment plan.

H. Intermittent intravenous therapy may be provided to a resident for a limited period of time on a daily or periodic basis by a licensed health care professional under a physician's treatment plan. When a course of treatment is expected to be ongoing and extends beyond a two-week period, evaluation is required at two-week intervals by the licensed health care professional.

I. At the request of the resident, care for the conditions or care needs specified in subdivisions F 3 and F 7 of this section may be provided to a resident in an ~~adult care residence~~ *assisted living facility* by a physician licensed in Virginia, a nurse licensed in Virginia under a physician's treatment plan or by a home care organization licensed in Virginia when the resident's independent physician determines that such care is appropriate for the resident. This standard does not apply to recipients of auxiliary grants.

J. When care for a resident's special medical needs is provided by licensed staff of a home care agency, the ~~adult care residence~~ *assisted living facility* staff may receive training from the home care agency staff in appropriate treatment monitoring techniques regarding safety precautions and actions to take in case of emergency.

K. Notwithstanding § [~~63.1-174.004~~ 63.2-1805] of the Code of Virginia, at the request of the resident, hospice care may be

provided in an ~~adult care residence~~ *assisted living facility* under the same requirements for hospice programs provided in Article 7 (§ 32.1-162.1 et seq.) of Chapter 5 of Title 32.1 of the Code of Virginia, if the hospice program determines that such program is appropriate for the resident.

L. A person shall have a physical examination by an independent physician, including screening for tuberculosis, within 30 days prior to the date of admission. The report of such examination shall be on file at the ~~adult care residence~~ *assisted living facility* and shall contain the following:

1. The date of the physical examination;
2. Height, weight, and blood pressure;
3. Significant medical history;
4. General physical condition, including a systems review as is medically indicated;
5. Any diagnosis or significant problems;
6. Any allergies;
7. Any recommendations for care including medication, diet and therapy;
8. The type or types of tests for tuberculosis used and the results. This information shall include the results of a Mantoux tuberculin skin test, chest x-ray or bacteriological examination as deemed appropriate by a physician to rule out tuberculosis in a communicable form. Documentation is required [~~which~~ *that*] includes the information contained on the form recommended by the Virginia Department of Health;
9. A statement that the individual does not have any of the conditions or care needs prohibited by subsection F of this section;
10. A statement that specifies whether the individual is considered to be ambulatory or nonambulatory; and
11. Each report shall be signed by the examining clinician.

NOTE: See 22 VAC 40-71-10, definition of "licensed health care professional" for clarification regarding "physician."

M. When a person is accepted for respite care or on an intermittent basis, the physical examination report shall be valid for six months.

N. Subsequent tuberculosis evaluations.

1. Any resident who comes in contact with a known case of infectious tuberculosis shall be screened as deemed appropriate in consultation with the local health department.
2. Any resident who develops respiratory symptoms of three or more weeks duration shall be evaluated immediately for the presence of infectious tuberculosis.
3. If a resident develops an active case of tuberculosis, the facility shall report this information to the local health department.

O. The department, at any time, may request a report of a current psychiatric or physical examination, giving the diagnoses or evaluation or both, for the purpose of

determining whether the resident's needs may continue to be met in an ~~adult care residence~~ *assisted living facility*. When requested, this report shall be in the form specified by the department.

P. An ~~adult care residence~~ *assisted living facility* shall only admit or retain residents as permitted by its use group classification and certificate of occupancy. The ambulatory/nonambulatory status of an individual is based upon:

1. Information contained in the physical examination report; and
2. Information contained in the most recent UAI.

Q. An emergency placement shall occur only when the emergency is documented and approved by a Virginia adult protective services worker or case manager for public pay individuals or an independent physician or a Virginia adult protective services worker for private pay individuals.

R. When an emergency placement occurs, the person shall remain in the ~~adult care residence~~ *assisted living facility* no longer than seven working days [7] unless all the requirements for admission have been met and the person has been admitted.

S. Prior to or at the time of admission to an ~~adult care residence~~ *assisted living facility*, the following personal and social data on a person shall be maintained in the individual's record:

1. Name;
2. Last home address, and address from which resident was received, if different;
3. Date of admission;
4. Social security number;
5. Birthdate (if unknown, estimated age);
6. Birthplace, if known;
7. Marital status, if known;
8. Name, address and telephone number of personal representative, or other person responsible;
9. Name, address and telephone number of next of kin, if known (two preferred);
10. Name, address and telephone number of personal physician, if known;
11. Name, address and telephone number of personal dentist, if known;
12. Name, address and telephone number of clergyman and place of worship, if applicable;
13. Name, address and telephone number of local department of social services or any other agency, if applicable, and the name of the case manager or caseworker;
14. Service in the Armed Forces, if applicable;
15. Special interests and hobbies; and

16. Information concerning advance directives, if applicable.

NOTE: For assisted living *care* facilities, 22 VAC 40-71-640 also applies.

T. At or prior to the time of admission, there shall be a written agreement/acknowledgment of notification dated and signed by the resident/applicant for admission or the appropriate personal representative, and by the licensee or administrator. This document shall include the following:

1. Financial arrangement for accommodations, services and care which specifies:
 - a. Listing of specific charges for accommodations, services, and care to be made to the individual resident signing the agreement, the frequency of payment, and any rules relating to nonpayment;
 - b. Description of all accommodations, services, and care which the facility offers and any related charges;
 - c. The amount and purpose of an advance payment or deposit payment and the refund policy for such payment;
 - d. The policy with respect to increases in charges and length of time for advance notice of intent to increase charges;
 - e. If the ownership of any personal property, real estate, money or financial investments is to be transferred to the ~~residence~~ *facility* at the time of admission or at some future date, it shall be stipulated in the agreement; and
 - f. The refund policy to apply when transfer of ownership, closing of facility, or resident transfer or discharge occurs.
2. Requirements or rules to be imposed regarding resident conduct and other restrictions or special conditions and signed acknowledgment that they have been reviewed by the resident or his appropriate personal representative.
3. Acknowledgment that the resident has been informed of the policy regarding the amount of notice required when a resident wishes to move from the facility.
4. Acknowledgment that the resident has been informed of the policy required by 22 VAC 40-71-490 † J regarding weapons.
5. Those actions, circumstances, or conditions which would result or might result in the resident's discharge from the facility.
6. Acknowledgment that the resident has reviewed a copy of § [~~63.1-182.4~~ 63.2-1808] of the Code of Virginia, Rights and Responsibilities of Residents of ~~Adult Care Residences~~ *Assisted Living Facilities*, and that the provisions of this statute have been explained to him.
7. Acknowledgment that the resident or his personal representative has reviewed and had explained to him the ~~residence's~~ *facility's* policies and procedures for implementing § [~~63.1-182.4~~ 63.2-1808] of the Code of Virginia, including the grievance policy and the transfer/discharge policy.

Final Regulations

8. Acknowledgment that the resident has been informed of the bed hold policy in case of temporary transfer, if the facility has such a policy.

U. Copies of the signed agreement/acknowledgment of notification shall be provided to the resident and any personal representative and shall be retained in the resident's record.

V. A new agreement shall be signed or the original agreement shall be updated and signed by the licensee or administrator when there are changes in financial arrangements, services, or requirements governing the resident's conduct. If the original agreement provides for specific changes in financial arrangements, services, or requirements, this standard does not apply.

W. Upon admission and upon request, the assisted living facility shall provide in writing a description of the types of staff working in the facility and the services provided, including the hours such services are available.

~~W.~~ X. An ~~adult care residence~~ assisted living facility shall establish a process to ensure that any resident temporarily detained in an inpatient facility pursuant to § 37.1-67.1 of the Code of Virginia is accepted back in the ~~adult care residence~~ assisted living facility if the resident is not involuntarily committed pursuant to § 37.1-67.3 of the Code of Virginia.

~~X.~~ Y. If an ~~adult care residence~~ assisted living facility allows for temporary movement of a resident with agreement to hold a bed, it shall develop and follow a written bed hold policy, which includes, but is not limited to, the conditions for which a bed will be held, any time frames, terms of payment, and circumstances under which the bed will no longer be held.

22 VAC 40-71-160. [No change from proposed.]

PART IV. RESIDENT ACCOMMODATIONS, CARE AND RELATED SERVICES.

22 VAC 40-71-170. Assessment and individualized service plans.

A. Uniform assessment instrument (UAI).

1. Private pay residents. As a condition of admission, the facility shall obtain a UAI with the items completed that are specified in Assessment in Adult Care Residences (22 VAC 40-745-40 ~~et seq.~~). The facility shall obtain the UAI from one of the following entities:

- a. An independent physician;
- b. A facility employee with documented training in the completion of the UAI and appropriate application of level of care criteria, provided the administrator or the administrator's designated representative approves and then signs the completed UAI; or
- c. A case manager employed by a public human services agency or other qualified assessor.

2. Public pay residents. As a condition of admission, the facility shall obtain a completed UAI from the prospective resident's case manager or other qualified assessor.

3. The UAI shall be completed within 90 days prior to the date of admission to the ~~adult care residence~~ assisted living facility except that if there has been a change in the resident's condition since the completion of the UAI which would appear to affect the admission, a new UAI shall be completed.

4. When a resident moves to an ~~adult care residence~~ assisted living facility from another ~~adult care residence~~ assisted living facility or other long-term care setting which uses the UAI, if there is a completed UAI on record, another UAI does not have to be completed. The transferring long-term care provider must update the UAI to indicate any change in the individual's condition.

B. Facilities opting to complete the UAI for prospective private pay residents shall ensure that the information is obtained as required by 22 VAC 40-745-40 ~~et seq.~~

C. Individualized service plan. The licensee/administrator or designee, in conjunction with the resident, and the resident's family, case worker, case manager, health care providers or other persons, as appropriate, shall develop and implement an individualized service plan to meet the resident's service needs. [*The plan shall be designed to maximize the resident's level of functional ability.*]

An individualized service plan is not required for those residents who are assessed as capable of maintaining themselves in an independent living status.

The service plan shall be completed within 45 days after admission and shall include the following:

1. Description of identified need;
2. A written description of what services will be provided and who will provide them;
3. When and where the services will be provided; and
4. The expected outcome.

~~5.~~ If a resident lives in a building housing 19 or fewer residents, the service plan shall include a statement that specifies whether the person does need or does not need to have a staff member awake and on duty at night.

The master service plan shall be filed in the resident's record; extracts from the plan may be filed in locations specifically identified for their retention, e.g., dietary plan in kitchen.

D. The individualized service plan shall reflect the resident's assessed needs and support the principles of individuality, personal dignity, freedom of choice and home-like environment and shall include other formal and informal supports that may participate in the delivery of services.

E. Uniform assessment instruments shall be completed at least once every 12 months on residents of ~~adult care residences~~ assisted living facilities. Uniform assessment instruments shall be completed as needed as the condition of the resident changes and whenever there is a change in the resident's condition that appears to warrant a change in the resident's approved level of care. All UAIs shall be completed as prescribed in subsections A and B of this section.

F. At the request of the ~~adult care residence assisted living facility~~, the resident's representative, the resident's physician, the department [~~of Social Services~~], or the local department [~~of social services~~], an independent assessment using the UAI shall be completed to determine whether the resident's care needs are being met in the ~~adult care residence assisted living facility~~. The ~~adult care residence assisted living facility~~ shall assist the resident in obtaining the independent assessment as requested.

G. For private pay residents, the ~~adult care residence assisted living facility~~ shall be responsible for coordinating with an independent physician, a case manager or other qualified assessor as necessary to ensure that UAIs are completed as required.

H. Individualized service plans shall be reviewed and updated at least once every 12 months. Individualized service plans shall be reevaluated as needed as the condition of the resident changes.

I. The licensee shall designate a staff person to review, monitor, implement and make appropriate modifications to the individualized service plan. This person shall also keep the resident's case manager, if applicable, informed of significant changes in the resident's condition.

22 VAC 40-71-180. [No change from proposed.]

22 VAC 40-71-210. [No change from proposed.]

22 VAC 40-71-270. Resident rights.

A. The resident shall be encouraged and informed of appropriate means as necessary to exercise his rights as a resident and a citizen throughout the period of his stay at the ~~residence facility~~.

B. The resident has the right to voice or file grievances, or both, with the ~~residence facility~~ and to make recommendations for changes in the policies and services of the ~~residence facility~~. The residents shall be protected by the licensee or administrator, or both, from any form of coercion, discrimination, threats, or reprisal for having voiced or filed such grievances.

C. Any resident of an ~~adult care residence assisted living facility~~ has the rights and responsibilities as provided in § [~~63.1-182.4~~ 63.2-1808] of the Code of Virginia and this chapter.

D. The operator or administrator of an ~~adult care residence assisted living facility~~ shall establish written policies and procedures for implementing § [~~63.1-182.4~~ 63.2-1808] of the Code of Virginia.

E. [~~All established policies and procedures regarding~~] The rights and responsibilities of residents shall be printed in at least 12-point type and posted conspicuously in a public place in all assisted living facilities. The facility shall [~~include in them~~ also post] the name, title and telephone number of the appropriate regional licensing supervisor of the Department of Social Services, the Adult Protective Services' toll-free telephone number, the toll-free telephone number of the Virginia Long-Term Care Ombudsman Program and any substate (local) ombudsman program serving the area, and

the toll-free telephone number of the [~~Department for the Rights of Virginians with Disabilities~~ Virginia Office for Protection and Advocacy].

E. F. The rights and responsibilities of residents in ~~adult care residences assisted living facilities~~ shall be reviewed with all residents annually. Evidence of this review shall be the resident's written acknowledgment of having been so informed which shall include the date of the review and shall be filed in his record.

F. [~~G. The~~] ~~residence [facility shall make available in an easily accessible place a copy of the rights and responsibilities of residents]~~ and shall include in it the name, title, address and telephone number of the appropriate regional licensing supervisor of the Department of Social Services, the toll-free telephone number of the Virginia Long-Term Care Ombudsman Program and any substate (local) ombudsman program serving the area, and the toll free number of the Department for the Rights of Virginians with Disabilities.

22 VAC 40-71-275. Freedom of movement.

A. Any resident who does not have a serious cognitive impairment [~~and with~~] an inability to recognize danger or protect his own safety and welfare shall be allowed to freely leave the facility. A resident who has a serious cognitive impairment and an inability to recognize danger or protect his own safety and welfare shall be subject to the provisions set forth in 22 VAC 40-71-700 B or C.

B. Doors leading to the outside shall not be locked from the inside or secured from the inside in any manner that amounts to a lock, except that doors may be locked or secured in a manner that amounts to a lock in special care units as provided in 22 VAC 41-71-700 C.

NOTE: Any devices used to lock or secure doors in any manner must be in accordance with applicable building and fire codes.

C. The facility shall provide freedom of movement for the residents to common areas and to their personal spaces. The facility shall not lock residents out of or inside their rooms.

22 VAC 40-71-280 through 22 VAC 40-71-360. [No change from proposed.]

22 VAC 40-71-410. Do Not Resuscitate (DNR) orders.

Do Not Resuscitate orders shall only be carried out in a licensed ~~adult care residence assisted living facility~~ when the order, which must be in writing, has been prescribed by a the resident's attending physician, is included in the individualized service plan and there is an employee with a current certification in cardiopulmonary resuscitation (CPR), [~~unless disallowed as provided for in § 63.1-174.3 of the Code of Virginia~~ (See provision from § 63.2-1807 of the Code of Virginia in this section)], or a licensed nurse available to implement the order.

Section [~~63.1-174.3~~ 63.2-1807] of the Code of Virginia states that the owners or operators of any assisted living facility may provide that their employees who are certified in CPR shall not be required to resuscitate any resident for whom a valid

Final Regulations

written order not to resuscitate in the event of cardiac or respiratory arrest has been issued by the resident's attending physician and has been included in the resident's individualized service plan.

22 VAC 40-71-440. Management and control of resident funds.

Pursuant to § [~~63.1-182.1 A-3~~ 63.2-1808 A 3] of the Code of Virginia, unless a ~~committee~~ conservator or guardian of a resident has been appointed (see 22 VAC 40-71-60 ~~G E~~), the resident shall be free to manage his personal finances and funds; provided, however, that the ~~residence~~ facility may assist the resident in such management in accordance with 22 VAC 40-71-450 and 22 VAC 40-71-460.

22 VAC 40-71-450. [No change from proposed.]

22 VAC 40-71-460. [No change from proposed.]

22 VAC 40-71-480. Staff training when aggressive or restrained residents are in care.

The following training is required for staff in ~~adult-care residences~~ *assisted living facilities* that accept, or have in care, residents who are aggressive or restrained:

1. Aggressive residents.

a. Direct care staff shall be trained in methods of dealing with residents who have a history of aggressive behavior or of dangerously agitated states prior to being involved in the care of such residents.

b. This training shall include, at a minimum, information, demonstration, and practical experience in self-protection and in the prevention and de-escalation of aggressive behavior.

2. Restrained residents.

a. Direct care staff shall be appropriately trained in caring for the health needs of residents who are restrained prior to being involved in the care of such residents. Licensed medical personnel, e.g., R.N.s, L.P.N.s, are not required to take this training if their academic [~~background-deal~~ *backgrounds deal*] with this type of care.

b. This training shall include, at a minimum, information, demonstration and experience in:

- (1) The proper techniques for applying and monitoring restraints;
- (2) Skin care appropriate to prevent redness, breakdown, and decubiti;
- (3) Active and active assisted range of motion to prevent [~~joint~~] contractures;
- (4) Assessment of blood circulation to prevent obstruction of blood flow and promote adequate blood circulation to all extremities;
- (5) Turning and positioning to prevent skin breakdown and keep the lungs clear;
- (6) Provision of sufficient bed clothing and covering to maintain a normal body temperature; and

(7) Provision of additional attention to meet the physical, mental, emotional, and social needs of the restrained resident.

3. The training described in subdivisions 1 and 2 of this section shall meet the following criteria:

a. Training shall be provided by a qualified health professional.

b. A written description of the content of this training, a notation of the person/agency/organization or institution providing the training and the names of staff receiving the training shall be maintained by the facility except that, if the training is provided by the department, only a listing of staff trained and the date of training are required.

4. Refresher training for all direct care staff shall be provided at least annually or more often as needed.

a. The refresher training shall encompass the techniques described in subdivision 1 or 2 of this section, or both.

b. A record of the refresher training and a description of the content of the training shall be maintained by the facility.

PART V. BUILDING AND GROUNDS.

22 VAC 40-71-490. [No change from proposed.]

22 VAC 40-71-530. Sleeping areas.

Resident sleeping quarters shall provide:

1. For not less than 450 cubic feet of air space per resident;

2. For square footage as provided in this subdivision:

a. As of February 1, 1996, all buildings approved for construction or change in use group, as referenced in the ~~BOCA [BOCA@ National~~ *Virginia Uniform Statewide*] Building Code [(13 VAC 5-61)], shall have not less than 100 square feet of floor area in bedrooms accommodating one resident; otherwise not less than 80 square feet of floor area in bedrooms accommodating one resident shall be required.

b. As of February 1, 1996, all buildings approved for construction or change in use group, as referenced in the ~~BOCA [BOCA@ National~~ *Virginia Uniform Statewide*] Building Code, shall have not less than 80 square feet of floor area per person in bedrooms accommodating two or more residents; otherwise not less than 60 square feet of floor area per person in bedrooms accommodating two or more persons shall be required;

3. For ceilings at least 7-1/2 feet in height;

4. For window areas as provided in this subdivision:

a. There shall be at least eight square feet of glazed window area above ground level in a room housing one person, and

b. There shall be at least six square feet of glazed window area above ground level per person in rooms occupied by two or more persons;

5. For occupancy by no more than four residents in a room. A ~~residence~~ facility that had a valid license on January 1, 1980, permitting care of more than four residents in specific rooms, will be deemed to be in compliance with this standard; however, the ~~residence~~ facility may not exceed the maximum number of four residents in any other room in the facility. This exception will not be applicable if the ~~residence~~ facility is remodeled or if there is a change of sponsorship.
6. For at least three feet of space between sides and ends of beds that are placed in the same room;
7. That no bedroom shall be used as a corridor to any other room;
8. That all beds shall be placed only in bedrooms; and
9. That household members and staff shall not share bedrooms with residents.

22 VAC 40-71-540 through 22 VAC 40-71-600. [No change from proposed.]

PART VI.

ADDITIONAL REQUIREMENTS FOR [~~ASSISTED LIVING CARE~~] FACILITIES [~~LICENSED FOR ASSISTED LIVING CARE~~].

Article 1.

General Requirements.

22 VAC 40-71-630 through 22 VAC 40-71-650. [No change from proposed.]

Article 2.

Additional Requirements for [~~Assisted Living Care~~] Facilities [~~Caring Licensed for Assisted Living Care that Care~~] for Adults with Mental Illness or Mental Retardation or Who Are Substance Abusers.

22 VAC 40-71-660 through 22 VAC 40-71-690. [No change from proposed.]

Article 3.

Additional Requirements for Assisted Living Care Facilities Caring for Adults With Serious Cognitive ~~Deficits~~ Impairments.

22 VAC 40-71-700. Adults with serious cognitive deficits impairments.

~~A. The requirements provided in subsection B of this section apply when any resident exhibits behavior indicating a serious cognitive deficit and when the resident cannot recognize danger or protect his own safety and welfare, except as noted in subdivision B 12 of this section.~~

~~B. If there is a mixed population the requirements apply to the entire facility unless specified otherwise. If there is a self-contained special care unit for residents with serious cognitive deficits, the requirements apply only to the special care unit.~~

A. All residents with serious cognitive impairments due to a primary psychiatric diagnosis of dementia who cannot recognize danger or protect their own safety and welfare shall be subject to either subsection B or C of this section. All residents with serious cognitive impairments due to any other

diagnosis who cannot recognize danger or protect their own safety and welfare shall be subject to subsection B of this section.

NOTE: Serious cognitive impairment is defined in 22 VAC 40-71-10.

B. The following requirements apply when there is a mixed population consisting of any combination of (i) residents who have serious cognitive impairments due to a primary psychiatric diagnosis of dementia who are unable to recognize danger or protect their own safety and welfare and who are not in a special care unit [as provided for in subsection C of this section]; (ii) residents who have serious cognitive impairments due to any other diagnosis who cannot recognize danger or protect their own safety and welfare; and (iii) other residents. The following requirements also apply when all the residents have serious cognitive impairments due to any diagnosis other than a primary psychiatric diagnosis of dementia and cannot recognize danger or protect their own safety and welfare. Except for special care units covered by subsection C of this section, these requirements apply to the entire facility unless specified otherwise.

1. [When residents are present,] there shall be at least two direct care staff members awake and on duty at all times in each building at all times that [when residents are present] who shall be responsible for [their the] care and supervision [of the residents].

NOTE: The exception to 22 VAC 40-71-130 C does not apply.

2. During trips away from the facility, there shall be sufficient staff to provide sight and sound supervision to all residents who cannot recognize danger or protect their own safety and welfare.

3. Commencing immediately [upon employment] and within six months [of employment], direct care staff shall [complete attend] four hours of [training in] dementia/cognitive deficit impairment [training] that meets the requirements of subdivision 5 of this subsection. This training is counted toward meeting the annual training requirements requirement for the first year. Previous training that meets the requirements of subdivision 5 of this subsection [that and] was completed in the year prior to employment is transferable if there is documentation of the training. The documented previous training is counted toward the required four hours but not toward the annual training requirement.

4. Commencing immediately [upon employment] and within three months [of employment], the administrator shall [complete attend] 12 hours of [training in] dementia/cognitive deficit impairment [training]. This training is counted toward the annual training requirements requirement for the first year. Previous training that meets the requirements of subdivision 5 of this subsection [that and] was completed in the year prior to employment is transferable if there is documentation of the training. The documented previous training is counted toward the required 12 hours but not toward the annual training requirement.

Final Regulations

5. Curriculum for the [*training in*] ~~dementia/cognitive deficit impairment~~ [*training*] shall be developed by a qualified health professional or by a licensed social worker, *shall be relevant to the population in care* and shall include, but need not be limited to:

- a. Explanation of ~~Alzheimer's disease and related disorders~~ *cognitive impairments*;
- b. Resident care techniques, ~~such as assistance with the activities of daily living~~;
- c. Behavior management;
- d. Communication skills; ~~and~~
- e. Activity planning; *and*
- f. *Safety considerations.*

6. Within the first ~~week~~ *month* of employment, employees other than the administrator and direct care staff shall complete one hour of orientation on the nature and needs of residents with ~~dementia/cognitive deficits~~ *impairments relevant to the population in care.*

7. Doors leading to the outside shall have a system of security monitoring of *residents with serious cognitive impairments who cannot recognize danger or protect their own safety and welfare*, such as door alarms, cameras, or ~~constant staff oversight~~, security bracelets ~~which that~~ are part of an alarm system, ~~unless the door leads to a secured outdoor area [and or] delayed egress mechanisms.~~ *Residents with serious cognitive impairments who cannot recognize danger or protect their own safety and welfare [shall be provided a safe, secure environment through measures that do not include prohibiting the resident may be limited but not prohibited] from exiting the facility or any part thereof. Before limiting any resident from freely leaving the facility, the resident's record shall reflect the behavioral observations or other bases for determining that the resident has a serious cognitive impairment and an inability to recognize danger or protect his own safety and welfare.*

8. The facility shall have a secured outdoor area for the residents' use or provide staff supervision while residents *with serious cognitive impairments who cannot recognize danger or protect their own safety and welfare* are outside.

9. There shall be protective devices on the bedroom and the bathroom windows of residents with ~~dementia~~ *serious cognitive impairments who cannot recognize danger or protect their own safety and welfare* and on windows in common areas accessible to *these residents with dementia* to prevent the windows from being opened wide enough for a resident to crawl through.

10. The facility shall provide to residents free access to an indoor walking corridor or other area ~~which that~~ may be used for walking.

11. Special environmental precautions shall be taken by the facility to eliminate hazards to the safety and well-being of residents with ~~dementia/~~ *serious cognitive deficits impairments who cannot recognize danger or protect their own safety and welfare.* Examples of environmental

precautions include signs, carpet patterns and arrows ~~which that~~ point the way; and reduction of background noise.

12. *When there are indications that ordinary materials or objects may be harmful to a resident with a serious cognitive impairment who cannot recognize danger or protect his own safety and welfare, these materials or objects shall be inaccessible to the resident except under staff supervision.*

12. *EXCEPTION:* This subsection does not apply when facilities are licensed for 10 or fewer residents if no more than three of the residents ~~exhibit behavior indicating~~ *have serious cognitive deficits* *impairments*, when the ~~resident~~ *residents* cannot recognize danger or protect ~~his~~ *their* own safety and welfare. ~~The~~ *Each* prospective resident or his personal representative shall be so notified prior to admission.

C. *In order to be admitted or retained in a [special care unit safe, secure environment] as defined in 22 VAC 40-71-10, a resident must have a serious cognitive impairment due to a primary psychiatric diagnosis of dementia and be unable to recognize danger or protect his own safety and welfare. The following requirements apply when such residents reside in a [special care unit safe, secure environment]. These requirements apply only to the [special care unit safe, secure environment].*

1. *Prior to his admission to a [special care unit safe, secure environment], the resident shall have been assessed by [an independent clinical psychologist licensed to practice in the Commonwealth or by] an independent physician as having a serious cognitive impairment due to a primary psychiatric diagnosis of dementia [and as being unable with an inability] to recognize danger or protect his own safety and welfare. [The diagnosis shall also include type or etiology.] The physician shall be board certified or board eligible in a specialty or subspecialty relevant to the diagnosis and treatment of serious cognitive impairments, e.g., family practice, geriatrics, internal medicine, neurology, neurosurgery, or psychiatry. The physician's assessment shall be in writing and shall be maintained in the resident's record. The assessment shall include, but not be limited to, the following areas:*

- a. *Cognitive functions, e.g., orientation, comprehension, problem-solving, attention/concentration, memory, intelligence, abstract reasoning, judgment, insight;*
- b. *Thought and perception, e.g., process, content;*
- c. *Mood/affect;*
- d. *Behavior/psychomotor;*
- e. *Speech/language; and*
- f. *Appearance.*

2. *Prior to placing a resident with a serious cognitive impairment due to a primary psychiatric diagnosis of dementia in a [special care unit safe, secure environment], the facility shall obtain the written approval of one of the following persons, in the following order of priority:*

a. The resident, if capable of making an informed decision;

b. A guardian or legal representative for the resident if one has been appointed;

c. A relative who is willing and able to take responsibility to act as the resident's representative, in the following specified order, (i) spouse; (ii) adult child; (iii) parent; (iv) adult sibling; (v) adult grandchild; (vi) adult niece or nephew; (vii) aunt or uncle;

d. If the resident is not capable of making an informed decision and a guardian, legal representative or [relatives are relative is] unavailable, an independent physician who is skilled and knowledgeable in the diagnosis and treatment of dementia.

The obtained written approval shall be retained in the resident's file.

NOTE: As soon as one of the persons in the order as prioritized above disapproves of placement or [continued placement retention] in the [special care unit safe, secure environment], then the assisted living facility shall not place or retain the resident or prospective resident in the special care unit. [If the resident is not to be retained in the unit, the discharge requirements specified in 22 VAC 40-71-60 apply.]

3. The facility shall document that the order of priority specified in subdivision 2 of this subsection was followed and the documentation shall be retained in the resident's file.

[4. Prior to admitting a resident with a serious cognitive impairment due to a primary psychiatric diagnosis of dementia to a safe, secure environment, the licensee/administrator or designee shall determine whether placement in the special care unit is appropriate. The determination and justification for the decision shall be in writing and shall be retained in the resident's file.]

[4. 5.] Six months after the completion of the initial [and each subsequent] uniform assessment instrument [as required in 22 VAC 40-71-170 and thereafter at the time of completion of each subsequent uniform assessment instrument as required in 22 VAC 40-71-170], the [assisted living facility licensee/administrator or designee] shall perform a review of the appropriateness of each resident's continued residence in the special care unit. The [facility licensee/administrator or designee] shall also perform a review of the appropriateness of continued residence in the unit whenever warranted by a change in a resident's condition. The review shall be performed in consultation with the following persons, as appropriate: (i) the resident, (ii) a responsible family member, (iii) a guardian, (iv) a personal representative, (v) direct care staff who provide care and supervision to the resident, (vi) the resident's mental health provider, (vii) the licensed health care professional required in 22 VAC 40-71-630 J, (viii) the resident's physician, and (ix) any other professional involved with the resident. The [facility licensee/administrator or designee] shall make a determination as to whether continued residence in the

special care unit is appropriate at the time of [completion of each annual uniform assessment instrument and] each review required by this subdivision. The determination and justification for the decision shall be in writing and shall be retained in the resident's file.

[5. Therapeutic goals shall be established for each resident. These therapeutic goals shall be based on the resident's assessment and shall be documented on the resident's individualized service plan.]

~~6. In addition to the requirements of 22 VAC 40-71-650 A, scheduled activities shall be designed to promote the achievement of therapeutic goals, as appropriate.]~~

[7. 6.] Each week a variety of scheduled activities shall be available that shall include, but not necessarily be limited to, the following categories:

a. Cognitive/mental stimulation/creative activities, e.g., discussion groups, reading, reminiscing, story telling, writing;

b. Physical activities (both gross and fine motor skills), e.g., exercise, dancing, gardening, cooking;

c. Productive/work activities, e.g., practicing life skills, setting the table, making decorations, folding clothes;

d. Social activities, e.g., games, music, arts and crafts;

e. Sensory activities, e.g., auditory, visual, scent and tactile stimulation; and

f. Outdoor activities, weather permitting; e.g., walking outdoors, field trips.

NOTE: Several of the examples listed above may fall under more than one category.

NOTE: These activities do not require additional hours beyond those specified in 22 VAC 40-71-650 A.

[8. 7.] If appropriate to meet the needs of the resident with a short attention span, there shall be multiple short activities.

[9. 8.] Staff shall regularly encourage residents to participate in activities and provide guidance and assistance, as needed.

[10. 9.] In addition to the scheduled activities required by 22 VAC 40-71-650 A, there shall be unscheduled staff and resident interaction throughout the day that fosters an environment that promotes socialization opportunities for residents.

[11. 10.] Residents shall be given the opportunity to be outdoors on a daily basis, weather permitting.

[12. 11.] As appropriate, residents shall be encouraged to participate in supervised activities or programs outside the special care unit.

[13. 12.] There shall be a designated employee responsible for managing or coordinating the structured activities program. This employee shall be on-site in the special care unit at least 20 hours a week, shall maintain personal interaction with the residents and familiarity with

Final Regulations

their needs and interests, and shall meet at least one of the following qualifications:

- a. Be a qualified therapeutic recreation specialist or an activities professional;
- b. Be eligible for certification as a therapeutic recreation specialist or an activities professional by a recognized accrediting body;
- c. Have one year full-time [work] experience, within the last five years, in an activities program in an adult care setting;
- d. Be a qualified occupational therapist or an occupational therapy assistant; or
- e. Prior to or within six months of employment, have successfully completed 40 hours of department approved training in adult group activities and in recognizing and assessing the activity needs of residents.

NOTE: The required 20 hours on-site does not have to be devoted solely to managing or coordinating activities, [~~nor~~ neither] is it required that the person responsible for managing or coordinating the activities program conduct the activities.

[~~44.~~ 13.] The facility shall obtain documentation of the qualifications as specified in subdivision [~~43~~ 12] of this subsection for the designated employee responsible for managing or coordinating the structured activities program. The documentation shall be retained in the staff member's file. Written confirmation of department approval of training provided for in subdivision [~~43~~ 12] e of this subsection shall also be retained in the staff member's file, as appropriate.

[~~45.~~ 14.] When residents are present, there shall be at least two direct care staff members awake and on duty at all times in each special care unit who shall be responsible for the care and supervision of the residents.

EXCEPTION: Only one direct care staff member has to be awake and on duty in the unit if sufficient to meet the needs of the residents, if (i) there are no more than five residents present in the unit, and (ii) there are at least two other direct care staff members in the building, one of whom is readily available to assist with emergencies in the special care unit, provided that [supervision necessary to ensure] the health, safety and welfare of residents throughout the building [~~are~~ is] not [~~endangered~~ compromised].

NOTE: The exception to 22 VAC 40-71-130 C does not apply.

[~~46.~~ 15.] During trips away from the facility, there shall be sufficient staff to provide sight and sound supervision to residents.

[~~47.~~ 16.] Commencing immediately [upon employment] and within two months [~~of employment~~], the administrator and direct care staff shall attend at least four hours of training in cognitive impairments due to dementia. This training is counted toward meeting the annual training requirement for the first year. The training shall cover the following topics:

- a. Information about the cognitive impairment, including areas such as cause, progression, behaviors, management of the condition;
- b. Communicating with the resident;
- c. Managing dysfunctional behavior; and
- d. Identifying and alleviating safety risks to residents with cognitive impairment.

Previous training that meets the requirements of this subdivision and subdivisions [18 and 19] [~~and 20~~] of this subsection that was completed in the year prior to employment is transferable if there is documentation of the training. The documented previous training is counted toward the required four hours but not toward the annual training requirement.

NOTE: In this subdivision, for direct care staff, employment means employment in the [~~special care unit~~ safe, secure environment].

[~~48.~~ 17.] Within the first year of employment, the administrator and direct care staff shall attend at least six more hours of training, in addition to that required in subdivision [~~47~~ 16] of this subsection, in caring for residents with cognitive impairments due to dementia. The training is counted toward meeting the annual training requirement for the first year. The training shall cover the following topics:

- a. Assessing resident needs and capabilities and understanding and implementing service plans;
- b. Resident care techniques for persons with physical, cognitive, behavioral and social disabilities;
- c. Creating a therapeutic environment;
- d. Promoting resident dignity, independence, individuality, privacy and choice;
- e. Communicating with families and other persons interested in the resident;
- f. Planning and facilitating activities appropriate for [~~the~~ each] resident;
- g. Common behavioral problems and behavior management techniques.

Previous training that meets the requirements of this subdivision and subdivisions [18 and] 19 [~~and 20~~] of this subsection that was completed in the year prior to employment is transferable if there is documentation of the training. The documented previous training is counted toward the required six hours but not toward the annual training requirement.

NOTE: In this subdivision, for direct care staff, employment means employment in the [~~special care unit~~ safe, secure environment].

[~~49.~~ 18.] The training required in subdivisions [16 and] 17 [~~and 18~~] of this subsection shall be developed by:

- a. A licensed health care professional acting within the scope of the requirements of his profession who has at

least 12 hours of training in the care of individuals with cognitive impairments due to dementia; or

b. A person who has been approved by the department to develop the training.

[~~20.~~ 19.] The training required in subdivisions [16 and] 17 [~~and 18~~] of this subsection shall be provided by a person qualified under subdivision [~~49~~ 18] a of this subsection or a person who has been approved by the department to provide the training.

[~~24.~~ 20.] During the first year of employment, direct care staff shall attend at least 16 hours of training. Thereafter, the annual training requirement specified in 22 VAC 40-71-630 H applies.

[~~22.~~ 21.] Within the first month of employment, employees, other than the administrator and direct care staff, who will have contact with residents in the special care unit shall complete one hour of orientation on the nature and needs of residents with cognitive impairments due to dementia.

[~~23.~~ 22.] Doors that lead to unprotected areas shall be monitored or secured through devices that conform to applicable building and fire codes, including but not limited to, door alarms, cameras, constant staff oversight, security bracelets that are part of an alarm system, pressure pads at doorways, delayed egress mechanisms, locking devices [~~and or~~] perimeter fence gates. Residents who reside in [~~special care units shall be provided a safe, secure environment through measures that may include prohibiting the resident~~ safe, secure, environments may be prohibited] from exiting the facility or the special care unit, if applicable building and fire codes are met.

[~~24.~~ 23.] There shall be protective devices on the bedroom and bathroom windows of residents and on windows in common areas accessible to residents to prevent the windows from being opened wide enough for a resident to crawl through.

[~~25.~~ 24.] The facility shall have a secured outdoor area for the residents' use or provide staff supervision while residents are outside.

[~~26.~~ 25.] The facility shall provide to residents free access to an indoor walking corridor or other area that may be used for walking.

[~~27.~~ 26.] As of October 9, 2001, buildings approved for construction or change in use group, as referenced in the [~~BOCA@National~~ Virginia Uniform Statewide] Building Code, shall have a glazed window area above ground level in at least one of the common rooms, e.g., living room, multipurpose room, dining room. The square footage of the glazed window area shall be at least 8.0% of the square footage of the floor area of the common room.

[~~28.~~ 27.] Special environmental precautions shall be taken by the facility to eliminate hazards to the safety and well-being of residents. Examples of environmental precautions include signs, carpet patterns and arrows that point the way, high visual contrast between floors and walls, and reduction of background noise.

[~~29.~~ 28.] When there are indications that ordinary materials or objects may be harmful to a resident, these materials or objects shall be inaccessible to the resident except under staff supervision.

[~~30.~~ 29.] Special environmental enhancements, tailored to the population in care, shall be provided by the facility to enable residents to maximize their independence and to promote their dignity in comfortable surroundings. Examples of environmental enhancements include memory boxes, activity centers, rocking chairs, and visual contrast between plates/eating utensils and the table.

EXCEPTION: A resident's spouse, parent, adult sibling or adult child who otherwise would not meet the criteria to reside in a [~~special care unit~~ safe, secure environment] may reside in the [special care] unit if the spouse, parent, sibling or child so requests in writing, the facility agrees in writing and the resident, if capable of making the decision, agrees in writing. The written request and agreements must be maintained in the resident's file. The spouse, parent, sibling or child is considered a resident of the facility and as such 22 VAC 40-71 applies. The requirements of this subsection do not apply for the spouse, parent, adult sibling or adult child since that individual does not have a serious cognitive impairment due to a primary psychiatric diagnosis of dementia [~~and does not have with~~] an inability to recognize danger or protect his own safety and welfare.

DOCUMENTS INCORPORATED BY REFERENCE

U.S. Department of Agriculture, Food Guide Pyramid.

BOCA [~~BOCA@National Building Code/1996.~~]

VA.R. Doc. No. R01-258; Filed December 4, 2002, 1:17 p.m.



EMERGENCY REGULATIONS

TITLE 4. CONSERVATION AND NATURAL RESOURCES

MARINE RESOURCES COMMISSION

Title of Regulation: 4 VAC 20-720. Pertaining to Restrictions on Oyster Harvest (amending 4 VAC 20-720-10, 4 VAC 20-720-20, 4 VAC 20-720-40, 4 VAC 20-720-50, 4 VAC 20-720-70, and 4 VAC 20-720-110).

Statutory Authority: §§ 28.2-201, 28.2-210, and 28.2-507 of the Code of Virginia.

Effective Dates: November 27, 2002, through December 26, 2002.

Summary:

The amendments open an additional public harvest area in the Rappahannock River named Temples By Hand Scrape Area to the taking of oysters. Emergency action also increases the weight from 100 pounds to 150 pounds for the standard oyster dredge.

Agency Contact: Deborah Cawthon, Regulatory Coordinator, Marine Resources Commission, 2600 Washington Avenue, 3rd Floor, Newport News, VA 23607, telephone (757) 247-2248, FAX (757) 247-2202, or e-mail dcawthon@mrc.state.va.us.

4 VAC 20-720-10. Purpose.

The purpose of this *emergency* chapter is to protect and conserve Virginia's oyster resource and promote the preservation of oyster broodstock, which has been depleted by disease, harvesting, and natural disasters.

4 VAC 20-720-20. Definitions.

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

"Deep Rock Dredge Area" means the area described as follows: starting at Cherry Point, Swynns Island, thence northeast to G"1P" along the south side of channel to Piankatank River; thence east-southeast to G"1R"; thence southwest to Sandy Point, Gwynns Island, north of Hole in Wall (see map).

"Deep Water Shoal State Replenishment Seed Area (DWS)" in the James River (574.66 Acres) means the areas beginning at a point approximately 530 feet west of Deep Water Shoal Light, said point being Corner 1 as located by Virginia State Plane Coordinates, South Zone, NAD 1927, north 302,280.00, east 2,542,360.00; thence north azimuth 30°49'59", 4,506.99 feet to Corner 2, north 306,150.00, east 2,544,670.00; thence north azimuth 135°08'57", 5,430.60 feet to Corner 3, north 302,300.00, east 2,548,500.00; thence north azimuth 212°13'54", 3,487.42 feet to Corner 4, north 299,350.00, east 2,546,640.00; thence north azimuth 269°10'16", 2,765.29 feet to Corner 5, north 299,310.00, east 2,543,875.00; thence north azimuth 332°58'26", 3,334.09 feet to Corner 1, being the point of beginning.

"Hand scrape" means any device or instrument with a catching bar having an inside measurement of no more than 22 inches, which is used or usable for the purpose of extracting or removing shellfish from a water bottom or the bed of a body of water.

"Pocomoke and Tangier Sounds Management Area (PTSMA)" means the area as defined in § 28.2-524 of the Code of Virginia.

"Pocomoke Sound" means that area northeast from a line from Beach Island Light to the house on the Great Fox Island.

"Public oyster ground" means all those grounds defined in § 28.2-551 of the Code of Virginia, all ground set aside as public oyster ground by court order, and all ground set aside as public oyster ground by order of the Marine Resources Commission.

"Rappahannock River Drumming Ground Hand Scrape Area" means that portion of the Rappahannock and Corrotoman River, west of the Route 3 bridge (Norris Bridge), and north of a line from the center of the Route 3 bridge (Norris Bridge) following westward along the channel to Towles Point at Buoy "R6," excluding the Corrotoman River north of a line from Balls Point to Corrotoman Point (see map).

"Rappahannock River Hand Scrape Area" means that area including all public grounds between a line extending from the eastern-most point of Long Point thence in an easterly direction to flashing red buoy "8"; thence due east to Rogue Point, upriver to a line extending from Tarpley Point; thence in a southwesterly direction to flashing green buoy "13"; thence south-southwesterly to Jones Point (see map).

"Rappahannock River Temples Bay Hand Scrape Area" means that area in the Rappahannock River, west of the Route 3 bridge (Norris Bridge) and south of a line drawn from the center of the Route 3 bridge (Norris Bridge) upriver to Towles Point continuing the line upriver to red buoy "8"; thence across to the southside of the river to Long Point, thence back to the Route 3 bridge (Norris Bridge) along the southern shoreline (see map).

"Tangier Sound" means that area from Tangier Light North to the Maryland-Virginia line (red buoy #6).

"Tangier Sound Hand Tong Area" means that area in the PTSMA south and west of a line from Fishbone Island thence southeast to bell buoy "5", thence south southwest to buoy "3" (such area to include all of Public Ground 3 and Flat Rock) and shall be a hand tong area only (see map) and Cod Harbor (approximately 1,124 acres) beginning at a point of East Point Marsh, said point having the Virginia state coordinates, south section, coordinates of north 555,414.89, east 2,730,388.85; thence south 79°59', east 2,260 feet to a line designating the western extent of the PTSMA as described in § 28.2-524 of the Code of Virginia; thence south 10°16', west 2,800 feet; thence south 28°46', west 8,500 feet to a point on Sand Spit, position north 545,131.78, east, 2,728,014.94; thence along the mean low water line of Cod Harbor in a west, north and northeast direction crossing Canton Creek and Mailboat Harbor from headland to headland to the point of beginning. (See map.)

"Unassigned ground" means all grounds other than public oyster ground as defined by this *emergency* chapter and which have not been set aside or assigned by lease, permit, or easement by the Marine Resources Commission.

4 VAC 20-720-40. Open season and areas.

The lawful seasons and areas for the harvest of oysters from the public oyster grounds and unassigned grounds are as follows:

1. James River Seed Area, including the Deep Water Shoal State Replenishment Seed Area: October 1, 2002, through April 30, 2003.
2. James River Jail Island and Point of Shoals Clean Cull Areas: October 1, 2002, through April 30, 2003.
3. Seaside of Eastern Shore: for clean cull oysters only, November 1, 2002, through January 31, 2003.
4. That area of Piankatank River, west of the Route 3 bridge: October 1, 2002, through December 31, 2002.
5. The area of the Rappahannock River west of the line drawn from Tarpley Point to Green Buoy #13 to Jones Point and the area of the Corrotoman River, north of the line drawn from Balls Point to Corrotoman Point: October 15, 2002, through January 15, 2003.
6. The Rappahannock River Hand Scrape Area: October 15, 2002, through January 15, 2003.
7. The Rappahannock River Drumming Ground Hand Scrape Area: October 15, 2002, through January 15, 2003.
8. *The Rappahannock River Temples Bay Hand Scrape Area: November 27, 2002, through January 15, 2003.*
9. 9. That area of the Nomini and Lower Machodoc Rivers to the Virginia-Maryland state line (PRV6A to PRV6B; and PRV5A to PRV5C, respectively): October 15, 2002, through January 15, 2003.
10. 10. That area of the Coan River to the Virginia-Maryland state line (PRV1A to PRV1B), except for that area above a line from Walnut Point (Survey Station Walnut) to Stephens Point (Survey Station Arthur): October 15, 2002, through January 15, 2003.
11. 11. That area of the Yeocomico River inside Public Grounds 102, 104, 107, 112 and 113: October 15, 2002, through January 15, 2003.
12. 12. The following areas of the PTSMA in Tangier Sound, from Tangier Light north to the Maryland-Virginia Line (red buoy #6) and in the Pocomoke Sound, northeast from a line from Beach Island Light to the house on the Great Fox Island: December 1, 2002, through January 31, 2003.
13. 13. Tangier Sound Hand Tong Areas: December 1, 2002, through January 31, 2003.
14. 14. Little Wicomico River: October 15, 2002, through January 15, 2003.
15. 15. Deep Rock Dredge Area: February 1, 2003, through March 31, 2003.

4 VAC 20-720-50. Closed harvest season and areas.

It shall be unlawful for any person to harvest oysters from the following areas during the specified periods:

1. All public oyster grounds and unassigned grounds in the Chesapeake Bay and its tributaries, including the tributaries of the Potomac River, except the following areas: the area of the Rappahannock River west of the line drawn from Tarpley Point to Green Buoy #13 to Jones Point; the area of the Corrotoman River north of the line drawn from Balls Point to Corrotoman Point; the Rappahannock River Hand Scrape Area; the Drumming Ground Hand Scrape Area; that area of the Piankatank River west of the Route 3 bridge; that area of the Nomini and Lower Machodoc Rivers to the Virginia-Maryland state line; that area of the Coan River to the Virginia-Maryland state line, except for above a line from Walnut Point to Stephens Point; that area of the Yeocomico River inside Public Grounds 102, 104, 107, 112 and 113; the Little Wicomico River; the PTSMA in Tangier Sound, from Tangier Light north to the Maryland-Virginia Line; the Pocomoke Sound, northeast from a line from Beach Island Light to the house on the Great Fox Island; the Tangier Sound Hand Tong Area; the James River Seed Area; the James River Jail Island and Point of Shoals Clean Cull Areas; and the Deep Rock Dredge Area: October 1, 2002, through September 30, 2003.

2. James River Seed Area, including the Deep Water Shoal State Replenishment Seed Area, and James River Jail Island and Point of Shoals Clean Cull Areas: May 1, 2003, through September 30, 2003.

3. All public oyster grounds and unassigned grounds on the Seaside of Eastern Shore: for clean cull oysters, October 1 through October 31, 2002, and February 1, 2003, through September 30, 2003; and for seed oysters, all year. Oyster harvest from leased oyster ground and fee simple oyster ground shall require a permit from the Marine Resources Commission as set forth in 4 VAC 20-720-90 of this *emergency chapter*.

4. That area of the Rappahannock River west of the line drawn from Tarpley Point to Green Buoy #13 to Jones Point; the area of the Corrotoman River, north of the line drawn from Balls Point to Corrotoman Point; that area of the Nomini and Lower Machodoc Rivers to the Virginia-Maryland state line; that area of the Coan River to the Virginia-Maryland state line, except for above a line from Walnut Point to Stephens Point; that area of the Piankatank River west of the Route 3 bridge; and that area of the Yeocomico River inside Public Grounds 102, 104, 107, 112 and 113: October 1, 2002, through October 14, 2002 and January 16, 2003, through September 30, 2003.

5. The Rappahannock River Hand Scrape Area: October 1, 2002, through October 14, 2002, and January 16, 2003, through September 30, 2003.

6. The Rappahannock River Drumming Ground Hand Scrape Area: October 1, 2002, through October 14, 2002, and January 16, 2003, through September 30, 2003.

7. *The Rappahannock River Temples Bay Hand Scrape Area: January 16, 2003, through September 30, 2003.*

Emergency Regulations

~~7.~~ 8. The following areas of the PTSMA: in Tangier, from Tangier Light north to the Maryland-Virginia line, and in the area of the PTSMA in the Pocomoke Sound, northeast from a line from Beach Island Light to the house on the Great Fox Island, including the Tangier Sound Hand Tong Area: October 1, 2002, through November 30, 2002, and February 1, 2003, through September 30, 2003.

~~8.~~ 9. Little Wicomico River: October 1, 2002, through October 14, 2002, and January 16, 2003, through September 30, 2003.

~~9.~~ 10. Deep Rock Dredge Area: October 1, 2002, through January 31, 2003, and April 1, 2003, through September 30, 2003.

4 VAC 20-720-70. Gear restrictions.

A. It shall be unlawful for any person to harvest oysters with shaft tongs longer than 18 feet in total overall length from the following public oyster grounds or unassigned grounds: the James River, including the Deep Water Shoal State Replenishment Seed Area; that area of the Rappahannock River west of the line drawn from Tarpley Point to Green Buoy #13 to Jones Point; the area of the Corrotoman River north of the line drawn from Balls Point to Corrotoman Point; that area of the Piankatank River west of the Route 3 bridge; that area of the Nomini and Lower Machodoc Rivers to the Virginia-Maryland state line; the Little Wicomico River; and that area of the Coan River to the Virginia-Maryland state line, except for above a line from Walnut Point to Stephens Point; the Tangier Sound Hand Tong Area; and that area of the Yeocomico River inside Public Grounds 102, 104, 107, 112 and 113. It shall be unlawful for any person to have a hand scrape on board a boat that is harvesting or attempting to harvest oysters from public grounds by hand tong.

B. It shall be unlawful for any person to harvest shellfish with a dredge from the public oyster grounds who has not first obtained a current gear license to use said dredge, and only at times and in areas as established by the commission can this dredge be used for harvesting on public oyster grounds. In order to be allowed to operate a dredge for harvesting oysters from any public oyster grounds, a harvester must have a current dredge gear license and the cost of this license shall be \$50.

C. It shall be unlawful for any person to harvest shellfish from the Rappahannock River Hand Scrape Area; Drumming Ground Hand Scrape Area; and the Little Wicomico, Nomini, Coan, Yeocomico, and Lower Machodoc Rivers without first obtaining a valid hand scrape license at a cost of \$50.

D. It shall be unlawful for any person to harvest shellfish with a hand scrape from any public oyster grounds without first obtaining a valid hand scrape license and in accordance with times and areas established by the commission.

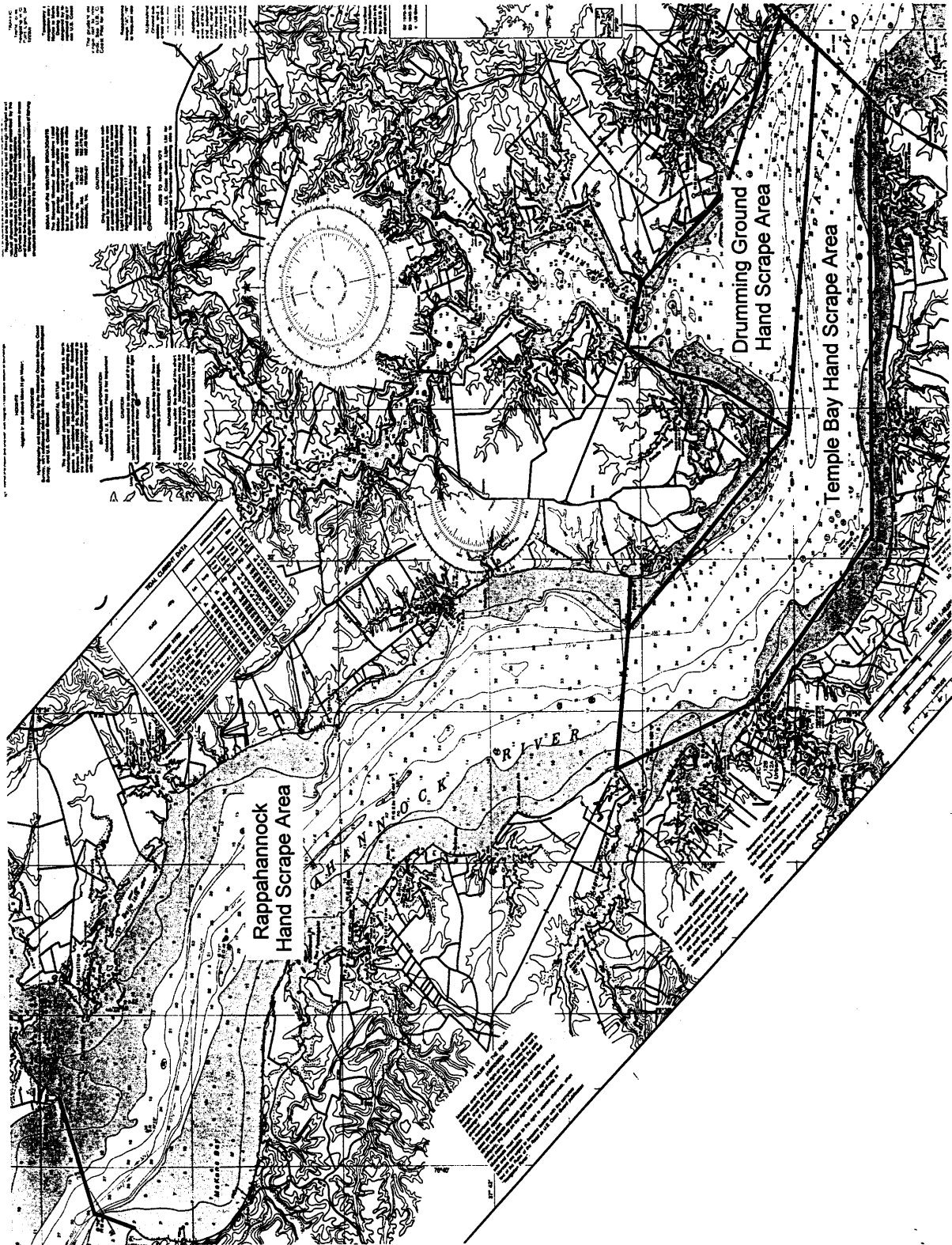
E. It shall be unlawful for any person to have more than one hand scrape on board any boat that is harvesting oysters or attempting to harvest oysters from public grounds. It shall be unlawful for any person to have a hand tong on board a boat that is harvesting or attempting to harvest oysters from public grounds by hand scrape.

F. Harvesting with a standard oyster dredge shall be allowed in that area in the Deep Rock Dredge Area and in the PTSMA in Tangier Sound from Tangier Light north to the Maryland-Virginia line, and in the Pocomoke Sound, northeast from a line from Beach Island Light to the house on the Great Fox Island, except for the designated hand tong areas. Only standard oyster dredges (maximum weights ~~400~~ 150 pounds with attachment, maximum width of 50 inches, maximum tooth length of four inches, minimum teeth spacing of three inches) may be used.

4 VAC 20-720-110. Penalty.

A. As set forth in § 28.2-903 of the Code of Virginia, any person violating any provision of this *emergency* chapter shall be guilty of a Class 3 misdemeanor and a second or subsequent violation of any provision of this *emergency* chapter committed by the same person within 12 months of a prior violation is a Class 1 misdemeanor.

B. In addition to the penalty prescribed by law, any person violating the provisions of this *emergency* chapter shall return all oysters in possession to the water, shall cease harvesting on that day, and all harvesting apparatus shall be subject to seizure.



VA.R. Doc. No. R03-81; Filed November 27, 2002, 11:43 a.m.

Emergency Regulations

TITLE 9. ENVIRONMENT

STATE WATER CONTROL BOARD

Title of Regulation: **9 VAC 25-770. Virginia Financial Responsibility Requirements for Mitigation Associated with Tidal Dredging Projects (adding 9 VAC 25-770-10 through 9 VAC 25-770-190).**

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

Effective Dates: December 5, 2002, through December 4, 2003.

Preamble:

Promulgating this emergency regulation is a necessary action because statutory changes to § 62.1-44.15 5(c) of the Code of Virginia, passed by the 2002 General Assembly (Chapters 49 and 396 of the 2002 Acts of Assembly), require the board to promulgate regulations to be effective within 280 days of their enactment.

The emergency regulation specifies the mechanisms by which the board may require evidence of financial responsibility to ensure completion of compensatory mitigation requirements for certain tidal dredging projects. The regulation also allows persons obtaining Virginia Water Protection (VWP) permits to satisfy the financial responsibility requirement by submitting evidence that the permit holder has demonstrated appropriate financial responsibility to the U.S. Army Corps of Engineers to avoid duplication between Virginia's and the federal program. These requirements apply only to tidal dredging projects and not to nontidal dredging projects or any other types of projects requiring VWP permits.

Substance:

DEQ has developed emergency regulations that require a person obtaining a VWP permit for certain tidal dredging projects to demonstrate to the board evidence of financial responsibility for the completion of any required compensatory mitigation associated with the project. The regulations specify when the board may require financial responsibility, how the amount of financial responsibility should be calculated, and the mechanisms by which to demonstrate such responsibility. The new regulation also specifies when the permit holder must demonstrate financial responsibility and when the permit holder may be released from the obligation to demonstrate. To avoid duplication between the state and federal programs, the regulation allows permit holders to satisfy their financial responsibility requirement by submitting evidence that the permit holder has demonstrated appropriate financial responsibility to the U.S. Army Corps of Engineers for the same dredging project. These requirements apply only to tidal dredging projects and not to nontidal dredging projects or any other types of projects requiring VWP permits.

The provisions are essential to protect the health, safety and welfare of Virginians, as they require a person to demonstrate the financial capability to mitigate the

environmental effects of dredging before beginning any dredging activities.

Agency Contact: Ellen Gilinsky, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4375, FAX (804) 698-4032 or e-mail egilinsky@deq.state.va.us.

CHAPTER 770.

VIRGINIA FINANCIAL RESPONSIBILITY REQUIREMENTS FOR MITIGATION ASSOCIATED WITH TIDAL DREDGING PROJECTS.

PART I.
DEFINITIONS.

9 VAC 25-770-10. Definitions.

Unless a different meaning is required by the context, the following terms as used in this chapter, shall have the following meanings:

"Applicant" means a person applying for a VWP individual or general permit.

"Aquatic resources" or "aquatic environment" means surface waters and the habitat they provide, including both plant and animal communities.

"Board" means the State Water Control board.

"Code" means the Code of Virginia.

"Compensation" or "compensatory mitigation" means actions taken that provide some form of substitute aquatic resource for the impacted aquatic resource.

"Compensatory mitigation plan" means the written plan describing the proposed compensatory mitigation activities required by 9 VAC 25-210-80 of the Virginia Water Protection Permit Program Regulation.

"Creation" means the establishment of a wetland or other aquatic resource where one did not formerly exist.

"Director" means the Director of the Department of Environmental Quality (DEQ) or an authorized representative.

"Dredged material" means material that is excavated or dredged from surface waters.

"Dredging" means a form of excavation in which material is removed or relocated from beneath surface waters.

"Enhancement" means activities conducted in existing wetlands or other aquatic resources that increase one or more aquatic functions or values.

"Excavate" or "excavation" means ditching, dredging, or mechanized removal of earth, soil or rock.

"Fill" means replacing portions of surface water with upland, or changing the bottom elevation of a surface water for any purpose, by placement of any pollutant or material including but not limited to rock, sand, earth, and man-made materials and debris.

"Fill material" means any pollutant which replaces portions of surface water with dry land or which changes the bottom elevation of a surface water for any purpose.

"General permit" means a permit authorizing a specified category of activities.

"In-lieu fee fund" means a monetary fund operated by a nonprofit organization or governmental agency which receives financial contributions from persons impacting wetlands or streams pursuant to an authorized permitted activity and which expends the moneys received to provide consolidated compensatory mitigation for permitted wetland or stream impacts.

"Law" means the State Water Control Law of Virginia.

"Minimization" means lessening impacts by reducing the degree or magnitude of the proposed action and its implementation.

"Mitigation" means sequentially avoiding and minimizing impacts to the maximum extent practicable, and then compensating for remaining unavoidable impacts of a proposed action.

"Mitigation bank" means a site providing off-site, consolidated compensatory mitigation that is developed and approved in accordance with all applicable federal and state laws or regulations for the establishment, use and operation of mitigation banks, and is operating under a signed banking agreement.

"Mitigation banking" means compensating for unavoidable wetland or stream losses in advance of development actions through the sale, purchase or use of credits from a mitigation bank.

"Permittee" means the person who holds a VWP individual or general permit.

"Person" means any firm, corporation, association, or partnership, one or more individuals, or any governmental unit or agency of it.

"Practicable" means available and capable of being done after taking into consideration cost, existing technology and logistics in light of overall project purposes.

"Preservation" means the protection of resources in perpetuity through the implementation of appropriate legal and physical mechanisms.

"Restoration" means the reestablishment of a wetland or other aquatic resource in an area where it previously existed. Wetland restoration means the reestablishment of wetland hydrology and vegetation in an area where a wetland previously existed. Stream restoration means the process of converting an unstable, altered or degraded stream corridor, including adjacent areas and floodplains, to its natural conditions.

"Significant alteration or degradation of existing wetland acreage or function" means human-induced activities that cause either a diminution of the areal extent of the existing wetland or cause a change in wetland community type resulting in the loss of more than minimal degradation of its existing ecological functions.

"State waters" means all water, on the surface and under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction, including wetlands.

"Surface water" means all state waters that are not ground water as defined in § 62.1-255 of the Code of Virginia.

"USACE" means the United States Army Corps of Engineers.

"VWP permit" means an individual or general permit issued by the board under § 62.1-44.15:5 of the Code of Virginia that authorizes activities otherwise unlawful under § 62.1-44.5 of the Code of Virginia or otherwise serves as the Commonwealth of Virginia's § 401 certification.

"Wetlands" means those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.

PART II. GENERAL INFORMATION.

9 VAC 25-770-20. Applicability.

This regulation applies to all persons required to obtain or modify a VWP permit pursuant to the Virginia Water Protection Permit Program Regulation, 9 VAC 25-210-10 et seq., for completion of dredging projects in tidal waters governed under Chapter 12 (§ 28.2-1200 et seq.) or Chapter 13 (§ 28.2-1300 et seq.) of Title 28.2 of the Code.

9 VAC 25-770-30. Compliance date.

An applicant for a VWP permit for completion of a dredging project in tidal waters must file a financial responsibility mechanism or proof of mitigation bank credit purchase or in-lieu fee fund donation with the board with any required final compensatory mitigation plan. The compensatory mitigation plan and financial responsibility documentation shall be submitted by the permittee and approved by the board prior to the onset of any dredging activities in permitted impact areas.

9 VAC 25-770-40. Revocation or suspensions.

Failure to provide or maintain adequate evidence of financial responsibility in accordance with this regulation shall be a basis for termination of a VWP permit. Termination of a VWP permit shall be in accordance with 9 VAC 25-210-180.

9 VAC 25-770-50. Forfeitures.

Forfeiture of any financial obligation imposed pursuant to this chapter shall not relieve any holder of a VWP permit from any obligations to comply with the provisions of the Virginia Water Protection Permit Program Regulation (9 VAC 25-210-10 et seq.) and any other applicable regulations or any other legal obligations for the consequences of abandoning the project.

9 VAC 25-770-60. Transfer of permit.

The new permittee must submit evidence of financial responsibility to the board in accordance with this chapter within 60 days of the transfer of the permit from the existing permittee to the new permittee. When a transfer of the permit occurs, the old permittee shall continue to comply with the

Emergency Regulations

requirements of this chapter until the new permittee has demonstrated that he is complying with the requirements of this chapter. The new permittee shall demonstrate compliance with this chapter within 60 days of the date of the transfer of the permit. Upon demonstration to the board by the new permittee of compliance with this chapter, the board shall notify the old permittee that he or she no longer needs to comply with this chapter as of the date of demonstration.

PART III.

COMPENSATORY MITIGATION PLAN AND FINANCIAL RESPONSIBILITY CRITERIA.

9 VAC 25-770-70. Compensatory mitigation requirements.

A. Compensatory mitigation for any project subject to a VWP permit must include measures to avoid and reduce impacts to surface waters to the maximum extent practicable, and where impacts cannot be avoided, the means by which compensation will be accomplished to achieve no net loss of wetland acreage and function.

B. The applicable compensatory mitigation standards are described in 9 VAC 25-210-80 and 9 VAC 25-210-115 of the Virginia Water Protection Permit Program Regulation. All aspects of the compensatory mitigation plan, including documentation of financial responsibility, shall be finalized, submitted and approved by the board prior to the onset of any dredging activities in permitted impact areas.

9 VAC 25-770-80. Cost estimate for compensatory mitigation activities other than in-lieu fee fund donations or mitigation bank credit purchases.

A. The permittee shall prepare for approval by the board, a detailed written estimate of the cost of implementing compensatory mitigation activities. The written cost estimate shall be submitted concurrently with the final compensatory mitigation plan.

1. The compensatory mitigation plan cost estimate shall equal the full cost of implementation of the plan.

2. The compensatory mitigation cost estimate shall be based on and include the costs to the permittee of hiring a third party to implement the compensatory mitigation plan. The third party may not be either a parent corporation or subsidiary of the permittee.

3. The compensatory mitigation cost estimate may not incorporate any salvage value that may be realized by the sale of materials, facility structures or equipment, land or other facility assets at the time of implementation of the plan.

B. If the length of the estimated project life exceeds one year, the permittee shall add to the total cost estimate an amount to represent an appropriate forecasted rate of inflation over the period covering the life of the project.

C. During the term of the VWP permit, the permittee shall revise the cost estimate concurrently with any revision made to the compensatory mitigation plan or at any time unforeseen circumstances occur which increase the implementation cost. The revised implementation cost estimate shall be adjusted for inflation as specified in subdivision B of this section.

D. The permittee may reduce the cost estimate and the amount of financial responsibility provided under this chapter, if it can be demonstrated that the cost estimate exceeds the cost of implementation of the compensatory mitigation plan. The permittee shall obtain the approval of the board prior to reducing the amount of financial responsibility.

9 VAC 25-770-90. Cost estimates for in-lieu fee fund donations and mitigation bank credit purchases.

A. Permittees with compensatory mitigation plans that provide for donations to in-lieu fee funds must submit to the board, proof that the entity is willing to accept the contribution along with a detailed, written cost estimate as part of the conceptual mitigation plan.

B. Permittees with compensatory mitigation plans that provide for purchase of mitigation bank credits must provide to the board, proof that the selected bank has available credits, along with a detailed, written cost estimate as part of the conceptual mitigation plan.

9 VAC 25-770-100. Payment of in-lieu fee fund donations and mitigation bank credit purchases.

A. Permittees with compensatory mitigation plans that provide for donations to in-lieu fee funds or mitigation bank credit purchases shall make the entire donation or purchase before the onset of activity in the permitted impact areas. Permittees shall submit documentation of the payment or donation to the board for approval a minimum of 10 days prior to onset of activity in permitted areas.

B. A permittee may satisfy the requirements of this section, wholly or in part, by submitting a photocopy of the documentation submitted to the USACE pursuant to Section 404 of the Clean Water Act (33 USC § 1251 et seq., as amended in 1987) documenting the donation or purchase for the current project along with a photocopy of the document issued by the USACE indicating approval of the documentation, if applicable. Any documentation of the in-lieu fee fund donation or mitigation banking credit purchase pursuant to this subsection must demonstrate clearly that the donation or purchase was made to provide compensatory mitigation for the project that is the subject of the VWP permit.

9 VAC 25-770-110. Allowable financial mechanisms for compensatory mitigation activities other than in-lieu fee fund donations or mitigation bank credit purchases.

A. The mechanisms used to demonstrate evidence of financial responsibility shall ensure that the funds necessary to meet the costs of completing compensatory mitigation requirements for the permitted project as described in 9 VAC 25-770-70 will be available whenever they are needed. Permittees shall choose from the options specified in 9 VAC 25-770-120 through 9 VAC 25-770-150. Financial responsibility mechanisms shall be in the amount equal to the cost estimate approved by the board.

B. The permittee shall provide continuous coverage to implement the compensatory mitigation plan until released from financial responsibility requirements by the board.

C. The director may reject the proposed evidence of financial responsibility if the mechanism submitted does not adequately

assure that funds will be available to complete the necessary compensatory mitigation activities. The permittee shall be notified in writing within 60 days of receipt of a complete financial responsibility submission of the tentative decision to accept or reject the proposed evidence.

9 VAC 25-770-120. Surety bond.

A. A permittee may satisfy the requirements of this chapter by obtaining a surety bond that conforms to the requirements of this section and by submitting an originally signed duplicate of the bond to the board. The surety company issuing the bond shall be licensed to operate as a surety in the Commonwealth of Virginia and be among those listed as acceptable sureties on federal bonds in the latest Circular 570 of the U.S. Department of the Treasury.

B. Under the terms of the bond, the surety will become liable on the bond obligation when the permittee fails to perform as guaranteed by the bond.

C. The bond shall guarantee that the permittee or any other authorized person will:

1. Implement compensatory mitigation in accordance with the approved compensatory mitigation plan and other requirements in any VWP permit for the project;
2. Implement the compensatory mitigation plan following an order to do so issued by the board or by a court.

D. The surety bond shall guarantee that the permittee shall provide alternate evidence of financial responsibility as specified in this article within 60 days after receipt by the board of a notice of cancellation of the bond from the surety.

E. If the approved cost estimate increases to an amount greater than the amount of the penal sum of the bond, the permittee shall, within 60 days after the increase, cause the penal sum of the bond to be increased to an amount at least equal to the new estimate and submit a revised mechanism to the board. Whenever the cost estimate decreases, the penal sum may be reduced to the amount of the cost estimate following written approval by the board. Notice of an increase or decrease in the penal sum shall be sent to the board by certified mail within 60 days after the change.

F. The bond shall remain in force for its term unless the surety sends written notice of cancellation by certified mail to the permittee and to the board. Cancellation cannot occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by the board as shown on the signed return receipt. The surety shall provide written notification to the board by certified mail no less than 120 days prior to the expiration date of the bond, that the bond will expire and the date the bond will expire.

G. The board shall cash the surety bond if it is not replaced 60 days prior to expiration with alternate evidence of financial responsibility acceptable to the board or if the permittee fails to fulfill the conditions of the bond.

H. In regards to implementation of a compensatory mitigation plan either by the permittee, by an authorized third party, or by the surety, proper implementation of a compensatory mitigation plan shall be deemed to have occurred when the

board determines that compensatory mitigation has been completed. Such implementation shall be deemed to have been completed when the provisions of the permittee's approved compensatory mitigation plan have been executed and the provisions of any other permit requirements or enforcement orders relative to the compensatory mitigation plan have been complied with.

I. The surety bond shall be worded as described in 9 VAC 25-770-190 A, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted.

9 VAC 25-770-130. Letter of credit.

A. A permittee may satisfy the requirements of this chapter by obtaining an irrevocable standby letter of credit that conforms to the requirements of this section and by submitting an originally signed duplicate of the letter of credit to the board. The issuing institution shall be an entity that has the authority to issue letters of credit in the Commonwealth of Virginia and whose letter-of-credit operations are regulated and examined by a federal agency or the State Corporation Commission.

B. The letter of credit shall be irrevocable and issued for a period of at least one year in an amount at least equal to the current cost estimate for implementation of the compensatory mitigation plan. The letter of credit shall provide that the expiration date will be automatically extended for a period of at least one year. If the issuing institution decides not to extend the letter of credit beyond the current expiration date it shall, at least 120 days before the expiration date, notify both the permittee and the board by certified mail of that decision. The 120-day period will begin on the date of receipt by the board as shown on the signed return receipt. If the letter of credit is canceled by the issuing institution, the permittee shall obtain alternate evidence of financial responsibility to be in effect prior to the expiration date of the letter of credit.

C. Whenever the approved cost estimate increases to an amount greater than the amount of credit, the permittee shall, within 60 days of the increase, cause the amount of credit to be increased to an amount at least equal to the new estimate and submit a revised mechanism to the board. Whenever the cost estimate decreases, the letter of credit may be reduced to the amount of the new estimate following written approval by the board.

D. The board shall cash the letter of credit if it is not replaced 60 days prior to expiration with alternate evidence of financial responsibility acceptable to the board or if the permittee has failed to implement compensatory mitigation in accordance with the approved plan or other permit or special order requirements.

E. In regards to implementation of a compensatory mitigation plan either by the permittee or by an authorized third party, proper implementation of a compensatory mitigation plan shall be deemed to have occurred when the board determines that compensatory mitigation has been completed. Such implementation shall be deemed to have been completed when the provisions of the permittee's approved compensatory mitigation plan have been executed and the provisions of any other permit requirements or enforcement

Emergency Regulations

orders relative to the compensatory mitigation plan have been complied with.

F. The permittee may cancel the letter of credit only if alternate evidence of financial responsibility acceptable to the board is substituted as specified in this chapter or if the permittee is released by the board from the requirements of this regulation.

G. The board shall return the original letter of credit to the issuing institution for termination when:

1. The permittee substitutes acceptable alternate evidence of financial responsibility for implementation of the compensatory mitigation plan as specified in this chapter; or
2. The board notifies the permittee that he is no longer required by this chapter to maintain evidence of financial responsibility for implementation of the compensatory mitigation plan for the project.

H. The letter of credit shall be worded as described in 9 VAC 25-770-190 B, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted.

9 VAC 25-770-140. Certificate of deposit.

A. A permittee may satisfy the requirements of this chapter, wholly or in part, by obtaining a certificate of deposit and assigning all rights, title and interest of the certificate of deposit to the board, conditioned so that the permittee shall comply with the approved compensatory mitigation plan filed for the project. The issuing institution shall be an entity that has the authority to issue certificates of deposit in the Commonwealth of Virginia and whose operations are regulated and examined by a federal agency or the State Corporation Commission (Commonwealth of Virginia). The permittee must submit the originally signed assignment and the originally signed certificate of deposit, if applicable, to the board.

B. The amount of the certificate of deposit shall be at least equal to the current compensatory mitigation cost estimate for the project for which the permit application has been filed or any part thereof not covered by other financial responsibility mechanisms. The permittee shall maintain the certificate of deposit and assignment until all activities required by the approved compensatory mitigation plan have been completed.

C. The permittee shall be entitled to demand, receive and recover the interest and income from the certificate of deposit as it becomes due and payable as long as the market value of the certificate of deposit used continues to at least equal the amount of the current cost estimate for compensatory mitigation activities.

D. The board shall cash the certificate of deposit if the permittee has failed to implement compensatory mitigation in accordance with the approved plan or other permit or special order requirements.

E. In regards to implementation of a compensatory mitigation plan either by the permittee or by an authorized third party, proper implementation of a compensatory mitigation plan shall be deemed to have occurred when the board determines that

compensatory mitigation has been completed. Such implementation shall be deemed to have been completed when the provisions of the permittee's approved compensatory mitigation plan have been executed and the provisions of any other permit requirements or enforcement orders relative to the compensatory mitigation plan have been complied with.

F. Whenever the approved compensatory mitigation cost estimate increases to an amount greater than the amount of the certificate of deposit, the permittee shall, within 60 days of the increase, cause the amount of the certificate of deposit to be increased to an amount at least equal to the new estimate or obtain another certificate of deposit to cover the increase. Whenever the cost estimate decreases, the permittee may reduce the amount of the certificate of deposit to the new estimate following written approval by the board.

G. The board shall return the original assignment and certificate of deposit, if applicable, to the issuing institution for termination when:

1. The permittee substitutes acceptable alternate evidence of financial responsibility for implementation of the compensatory mitigation plan as specified in this chapter; or
2. The board notifies the permittee that he is no longer required by this chapter to maintain evidence of financial responsibility for implementation of the compensatory mitigation plan for the project.

H. The assignment shall be worded as described in 9 VAC 25-770-190 C, except that instructions in brackets shall be replaced with the relevant information and the brackets deleted.

9 VAC 25-770-150. Federal documentation.

A permittee may satisfy the requirements of this chapter, wholly or in part, by submitting a photocopy of the financial responsibility documentation submitted to the USACE pursuant to Section 404 of the Clean Water Act (33 USC § 1251 et seq., as amended in 1987) for the current project along with a photocopy of the document issued by the USACE indicating approval of the financial responsibility, if applicable. Any demonstration of financial responsibility pursuant to this subsection must apply clearly to the project and compensatory mitigation activities that are the subject of the VWP permit.

9 VAC 25-770-160. Release of permittee from the financial responsibility requirements.

A. The permittee shall submit a notice that compensatory mitigation has been completed in accordance with the requirements of the approved compensatory mitigation plan, permit or other order, within 60 days of completion of all compensatory mitigation requirements. Unless the board has reason to believe that the compensatory mitigation activities have not been implemented in accordance with the appropriate plan or other requirements, the board shall notify the permittee in writing that the permittee is no longer required to maintain evidence of financial responsibility for the project. Such notice shall release the permittee only from the requirements for financial responsibility for the project; it does not release the permittee from legal responsibility for meeting the compensatory mitigation requirements.

B. Where a VWP permit for the project is no longer required under Law, the board shall notify the permittee in writing that the permittee is no longer required to maintain evidence of financial responsibility for the project. Such notice shall release the permittee only from the requirements for financial responsibility for the project.

9 VAC 25-770-170. Incapacity of financial providers, permittees.

A. A permittee shall notify the director by certified mail of the commencement of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming the permittee as debtor, within 10 days after commencement of the proceeding.

B. A permittee who fulfills the requirements this chapter by obtaining a letter of credit, a surety bond, or a certificate of deposit will be deemed to be without the required evidence of financial responsibility in the event of bankruptcy of the issuing institution, or a suspension or revocation of the authority of the institution issuing a surety bond, letter of credit, or certificate of deposit to issue such mechanisms. The permittee shall establish other financial responsibility within 60 days of such event.

9 VAC 25-770-180. Delegation of authority.

The Director of the Department of Environmental Quality or a designee acting for him may perform any act of the board provided under this chapter, except as limited by § 62.1-44.14 of the Code of Virginia.

9 VAC 25-770-190. Wording of the instruments.

A. Wording of surety bond

SURETY BOND

Date bond executed: _____

Period of coverage: _____

Effective date: _____

Principal: [legal name and address of owner or operator]

Type of organization: [insert "individual" "joint venture," "partnership," "corporation," or appropriate identification of type of organization] _____

State of incorporation (if applicable): _____

Surety: [name(s) and business address]

Scope of Coverage:

[List the name of the project and the physical address where the project is located and VWP permit number. List the coverage guaranteed by the bond: "for completion of compensatory mitigation activities"

Penal sum of bond: \$ _____

Surety's bond number: _____

Know All Persons by These Presents, that we, the Principal and Surety(ies), hereto are firmly bound to the Department of Environmental Quality, Commonwealth of Virginia, ("DEQ") in the above penal sum for the payment of which we bind ourselves, our heirs, executors, administrators, successors, and assigns jointly and severally; provided that, where the Surety(ies) are corporations acting as co-sureties, we, the Sureties, bind ourselves in such sums jointly and severally only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes each Surety binds itself, jointly and severally with the Principal, for the payment of such sums only as is set forth opposite the name of such Surety, but if no limit of liability is indicated, the limit of liability shall be the full amount of the penal sum.

Whereas said Principal is required under § 62.1-44.15:5c of the State Water Control Law of the Code of Virginia to demonstrate financial responsibility to implement a plan to complete the required compensatory mitigation activities described in a permit, order or regulations;

Now, therefore, the conditions of the obligation are such that if the Principal shall faithfully implement the compensatory mitigation plan in accordance with the applicable regulations and the Director of the DEQ's instructions to implement the plan for the project described above, or if the Principal shall provide alternate documentation of financial responsibility, acceptable to DEQ and obtain the Director's written approval of such assurance, within 60 days after the date the notice of cancellation is received by the Director of the DEQ from the Surety(ies), then this obligation shall be null and void; otherwise it is to remain in full force and effect.

The Surety(ies) shall become liable on this bond when the Principal has failed to fulfill the conditions described above. Upon notification by the Director of the DEQ that the owner or operator has failed to fulfill the conditions above or that the DEQ has determined that the Principal has failed to complete the project described above, the Surety(ies) shall either implement the compensatory mitigation plan or forfeit the full amount of the penal sum as directed by the Director of the DEQ under 9 VAC 25-770-120.

The liability of the Surety(ies) shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall amount in the penal sum shown on the face of the bond, but in no event shall the obligation of the Surety(ies) hereunder exceed the amount of said penal sum.

The Surety(ies) may cancel the bond by sending notice of cancellation by certified mail to the Principal and to the Director of the DEQ, Commonwealth of Virginia, P. O. Box 10009, Richmond, Virginia 23240-0009 provided, however, that cancellation shall not occur during the 120 days beginning on the date of receipt of the notice of cancellation by the Principal and Director of the DEQ as shown on the signed return receipt.

In Witness Whereof, the Principal and Surety(ies) have executed this Bond and have affixed their seals on the date set forth above.

The persons whose signatures appear below hereby certify that they are authorized to execute this surety bond on behalf

Emergency Regulations

of the Principal and Surety(ies) and that the wording of this surety bond is identical to the wording specified in 9 VAC 25-770-190 A as such regulations were constituted on the date this bond was executed.

PRINCIPAL

[Signature(s)]

[Name(s)]

[Title(s)]

[Corporate seal]

CORPORATE SURETY(IES)

[Name and address]

State of Incorporation:

Liability limit: \$ _____

[Signature(s)]

[Name(s) and title(s)]

[Corporate seal]

[For every co-surety, provide signature(s), corporate seal, and other information in the same manner as for Surety above.]

Bond premium: \$ _____

B. Wording of letter of credit

IRREVOCABLE STANDBY LETTER OF CREDIT

[Name and address of issuing institution]

Beneficiary:

Director
Department of Environmental Quality (DEQ)
P.O. Box 10009
629 E. Main Street
Richmond, Virginia 23240-0009

Dear Sir or Madam: We hereby establish our Irrevocable Standby Letter of Credit No. _____ in your favor, at the request and for the account of [permittee] of [address] up to the aggregate amount of [in words] U.S. dollars, (\$[insert dollar amount]), available upon presentation of

(1) your sight draft, bearing reference to this letter of credit, No. _____ and

(2) your signed statement reading as follows:

"I certify that the amount of the draft is payable pursuant to regulations issued under authority of § 62.1- 44.15:5c of the Code of Virginia."

This letter of credit may be drawn on to implement the compensatory mitigation plan for the project identified below in the amount of [in words] \$ [insert dollar amount]. [Name and physical address of the project assured by this mechanism and VWP permit number.]

This letter of credit is effective as of [date] and shall expire on [date], but such expiration date shall be automatically extended for a period of [at least the length of the original

term] on [expiration date] and on each successive expiration date, unless, at least 120 days before the current expiration date, we notify the Director of the DEQ and the permittee by certified mail that we have decided not to extend this letter of credit beyond the current expiration date. In the event that the permittee is so notified, any unused portion of the credit shall be available upon presentation of your sight draft for 120 days after the date of receipt by the Director of the DEQ and the permittee, as shown on the signed return receipt.

Whenever this letter of credit is drawn on under and in compliance with the terms of this credit, we shall duly honor such draft upon presentation to us, and we shall submit the amount of the draft directly to DEQ in accordance with your instructions.

I hereby certify that I am authorized to execute this letter of credit on behalf of (issuing institution) and I hereby certify that the wording of this letter of credit is identical to the wording required in 9 VAC 25-770-190 B as such regulations were constituted on the date shown immediately below.

Attest:

Signature Date

Name Title

This credit is subject to [insert "the most recent edition of the Uniform Customs and Practice for Documentary Credits, published by the International Chamber of Commerce," or "the Uniform Commercial Code"].

C. Wording of assignment of certificate of deposit

ASSIGNMENT OF CERTIFICATE OF DEPOSIT ACCOUNT

City _____, 20__

FOR VALUE RECEIVED, the undersigned assigns all right, title and interest to the Virginia Department of Environmental Quality (DEQ), Commonwealth of Virginia and its successors and assigns the Virginia DEQ the principal amount of the instrument, including all monies deposited now or in the future to that instrument, indicated below:

[] If checked here, this assignment includes all interest now and hereafter accrued.

Certificate of Deposit Account No.

This assignment is given as security to the Virginia DEQ in the amount of _____ Dollars (\$_____).

Continuing Assignment. This assignment shall continue to remain in effect for all subsequent terms of the automatically renewable certificate of deposit.

Assignment of Document. The undersigned also assigns any certificate or other document evidencing ownership to the Virginia DEQ.

Additional Security. This assignment shall secure the payment of any financial responsibility obligations of the [name of

permittee] to the Virginia DEQ for compensatory mitigation activities at the [project name and permit number] located at [physical address].

Application of Funds. The undersigned agrees that all or any part of the funds of the indicated account or instrument may be applied to the payment of any and all financial responsibility obligations of [name of permittee] to the Virginia DEQ for compensatory mitigation activities at the [project name and address]. The undersigned authorizes the Virginia DEQ to withdraw any principal amount on deposit in the indicated account or instrument including any interest, if indicated, and to apply it in the Virginia DEQ's discretion to fund compensatory mitigation at the [project name] in the event of [permittee name]'s failure to implement compensatory mitigation activities to the DEQ's satisfaction. The undersigned agrees that the Virginia DEQ may withdraw any principal and/or interest from the indicated account or instrument without demand or notice. The undersigned agrees to assume any and all loss of penalty due to federal regulations concerning the early withdrawal of funds. Any partial withdrawal of principal or interest shall not release this assignment.

The party or parties to this Assignment set their hand or seals, or if corporate, has caused this assignment to be signed in its corporate name by its duly authorized officers and its seal to be affixed by authority of its board of Directors the day and year above written.

[Owner] SEAL

[Print name]

[Owner] SEAL

[Print name]

THE FOLLOWING SECTION IS TO BE COMPLETED BY THE BRANCH OR LENDING OFFICE:

The signature(s) as shown above compare correctly with the name(s) as shown on record as owner(s) of the Certificate of Deposit indicated above. The above Assignment has been properly recorded by placing a hold in the amount of \$ _____

for the benefit of the Virginia DEQ.

[] If checked here, the accrued interest on the Certificate of Deposit indicated above has been maintained to capitalize versus being mailed by check or transferred to a deposit account.

I certify that the wording of this Assignment is identical to the wording required in 9 VAC 25-770-190.C as such regulations were constituted on the date shown immediately below.

[Signature] [Date]

[Print name]

[Title]

/s/ Mark R. Warner
Governor

Date: November 14, 2002

VA.R. Doc. No. R03-80; Filed December 2, 2002, 2:48 p.m.

◆ ————— ◆
TITLE 12. HEALTH

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Title of Regulation: 12 VAC 30-135. Demonstration Waiver Services (adding 12 VAC 30-135-10 through 12 VAC 30-135-80).

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

Effective Dates: December 4, 2002, through September 30, 2003.

Preamble:

DMAS' emergency regulations to implement the Family Planning Demonstration Waiver (waiver) (approved by CMS on July 22, 2002), were published in the Virginia Register on August 26, 2002. Item 325 M of the 2002 Acts of Assembly (Acts) requires DMAS to pay for extended family planning services within 90 days of federal approval of the waiver. Since service payments must begin less than 280 days from the effective date of the Acts, DMAS has the authority, pursuant to § 2.2-4011 of the Code of Virginia, to issue emergency regulations to implement the waiver. Upon review of the emergency regulations previously issued by DMAS, in part pursuant to comments from advocacy groups and other state agencies, DMAS is issuing revised emergency regulations to supersede the emergency regulations published in the Virginia Register on August 26, 2002.

Substance:

The purpose of the Family Planning Demonstration Waiver is to provide family planning waiver services for 24 months postpartum for women who received a Medicaid reimbursed pregnancy-related service (excluding aliens whose labor and deliveries were paid for by Medicaid as an emergency medical service). Absent the Family Planning Demonstration Waiver, DMAS is permitted by federal law to extend Medicaid eligibility to women who qualified for Medicaid solely due to pregnancy for a maximum of 60 days postpartum.

DMAS has reviewed the previously issued emergency regulations and has made certain changes for purposes of clarity as well as certain changes relating to eligibility. These changes include the following: (i) clarifying that women who were enrolled in Medicaid while pregnant and who received a Medicaid reimbursed pregnancy-related service are eligible for family planning waiver services; and

Emergency Regulations

(ii) clarifying that women who do not meet the alien eligibility requirements for full Medicaid coverage are not eligible to receive family planning waiver services.

The demonstration waiver regulations superseded by this action are 12 VAC 30-135.

Agency Contact: Deborah Sprang, Policy Analyst, Policy Division, Department of Medical Assistance Services, 600 East Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 225-2364, FAX (804) 786-1680 or e-mail dsprang@dmas.state.va.us.

CHAPTER 135. DEMONSTRATION WAIVER SERVICES.

PART I. FAMILY PLANNING WAIVER.

12 VAC 30-135-10. Definitions.

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

"Eligible family planning waiver recipient" means a woman of child bearing years (9 to 57 years of age) who received a Virginia Medicaid reimbursed pregnancy-related service on or after October 1, 2002, who is less than 24 months postpartum, who has income less than or equal to 133% of the Federal Poverty Level, and who is not otherwise eligible for Virginia Medicaid coverage.

"FDA" means the Food and Drug Administration.

"Family planning" means those services necessary to prevent or delay a pregnancy. It shall not include services to promote pregnancy such as infertility treatments. "Family planning" does not include counseling about recommendations for or performance of abortions, or hysterectomies or procedures performed for medical reasons such as removal of intrauterine devices due to infections.

"Pregnancy related service" means medical services rendered to monitor, manage, and treat issues related to pregnancy, labor, and delivery during the women's gestation.

"Third party" means any individual entity or program that is or may be liable to pay all or part of the expenditures for medical assistance furnished under the State Plan for Medical Assistance.

"Over-the-counter" means drugs and contraceptives that are available for purchase without requiring a physician's prescription.

12 VAC 30-135-20. Administration and eligibility determination.

A. The Department of Medical Assistance Services shall administer the family planning demonstration waiver services program under the authority of § 1115(a) of the Social Security Act and 42 United States Code § 1315.

B. Local departments of social services shall be responsible for determining eligibility of and for enrolling eligible woman in the family planning waiver. Local departments of social services shall conduct periodic reviews and redeterminations

of eligibility at least every twelve months while recipients are enrolled in the family planning waiver.

C. A recipient's enrollment in the family planning waiver shall be terminated if a reported change or annual redetermination results in the woman's categorical eligibility for Virginia Medicaid or ineligibility for the family planning waiver. A ten-day advance notice must be provided prior to cancellation of coverage under the family planning waiver.

D. Women enrolled in Virginia Medicaid as a pregnant woman will be notified during their 60-day postpartum period that their Medicaid benefits will be terminated effective the end of the month in which their 60-day postpartum period expires. The cancellation notice will include information about possible eligibility for extended coverage for the family planning waiver for 22-months following the end of their 60-day postpartum period. The notice will provide information about how to apply for services.

12 VAC 30-135-30. Eligibility.

A. Women enrolled in the waiver, but who subsequently fail to meet the requirements of an eligible family planning waiver recipient (for example, reach the age of 58), will no longer be eligible for the family planning waiver.

B. Women who do not meet the alien eligibility requirements for full Virginia Medicaid coverage and whose labor and delivery is paid as an emergency medical service under Medicaid shall not be eligible to participate in the family planning waiver.

12 VAC 30-135-40. Covered services.

A. Services provided under the family planning waiver are limited to:

1. Family planning office visits including annual gynecological exams (one per 12 months), sexually transmitted diseases ("STD") testing (limited to the initial family planning encounter), Pap tests (limited to one every six months);
2. Laboratory services for family planning and STD testing;
3. Family planning education and counseling;
4. FDA approved contraceptives, including diaphragms, contraceptive injectables, and contraceptive implants;
5. Over-the-counter contraceptives; and,
6. Sterilizations, not to include hysterectomies. A completed sterilization consent form, in accordance with the requirements of 42 CFR Part 441, Subpart F, must be submitted with all claims for payment for this service.

B. Services not covered under the family planning waiver include, but are not limited to:

1. Performance of, counseling for, or recommendations of abortions;
2. Infertility treatments;
3. Procedures performed for medical reasons;
4. Performance of a hysterectomy; and

5. Transportation to a family planning service.

12 VAC 30-135-50. Provider qualifications.

Services provided under this waiver must be ordered or prescribed and directed or performed within the scope of the licensed practitioner. Any appropriately licensed Medicaid enrolled physician, nurse practitioner, or medical clinic may provide services under this waiver.

12 VAC 30-135-60. Quality assurance.

The Department of Medical Assistance Services shall provide for continuing review and evaluation of the care and services paid by Medicaid under this waiver. To ensure a thorough review, trained professionals shall review cases either through desk audit or through on-site reviews of medical records. Providers shall be required to refund payments made by Medicaid if they are found to have billed Medicaid for services not covered under this waiver, if records or documentation supporting claims are not maintained, or if bills are submitted for medically unnecessary services.

12 VAC 30-135-70. Reimbursement.

Providers will be reimbursed on a fee-for-service basis.

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

12 VAC 30-135-80. Recipients rights and right to appeal.

Women found eligible for and enrolled in the family planning waiver shall have freedom of choice of providers. Women will be free from coercion or mental pressure and shall be free to choose their preferred methods of family planning. The client appeals process at 12 VAC 30-110-10 et seq. shall be applicable to applicants for and recipients of family planning services under this waiver.

/s/ Mark R. Warner
Governor
Date: December 3, 2002

VA.R. Doc. No. R02-316; Filed December 4, 2002, 2:35 p.m.



GENERAL NOTICES/ERRATA

DEPARTMENT OF ENVIRONMENTAL QUALITY

Total Maximum Daily Load (TMDL) for Aquatic Life on Hutton, Hall/Byers, and Cedar Creeks in the Middle Fork Holston River Watershed

The Department of Environmental Quality (DEQ) seeks written and oral comments from interested persons on the development of a Total Maximum Daily Load (TMDL) for aquatic life on Hutton, Hall/Byers, and Cedar Creeks in the Middle Fork Holston River Watershed. There will be a public meeting on the development of the aquatic life TMDL for Hutton, Hall/Byers, and Cedar Creeks. The meeting will be held on January 27, 2003, at 7 p.m., in the Patrick Henry High School Auditorium, 31437 Hillman Highway, Glade Spring, Virginia.

The impaired segments are located in Washington County. Hutton Creek flows through Glade Springs, Hall/Byers Creek flows through Emory and Cedar Creek flows through Meadowview. The segments, including all tributaries from headwaters to their confluences with Middle Fork Holston, were identified on Virginia's 1998 § 303(d) TMDL Priority List and Report as impaired due to violations of the state's General Standard for Aquatic Life.

Section 303(d) of the 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 purpose of the study is to identify sources and determine reductions of pollutants so that the streams can meet the water quality standard.

The public comment period will end on January 27, 2003. A fact sheet on the development of the TMDL for aquatic life on the impaired stream is available upon request or can be viewed at the DEQ website, www.deq.state.va.us. Questions or information requests should be addressed to Nancy T. Norton, P.E., Department of Environmental Quality. Written comments should include the name, address, and telephone

number of the person submitting the comments and be addressed to Nancy T. Norton, P.E., Department of Environmental Quality, 355 Deadmore Street, P.O. Box 1688, Abingdon, VA 24212, telephone (276) 676-4807, FAX (276) 676-4899, or e-mail ntnorton@deq.state.va.us.

Total Maximum Daily Load (TMDL) for the Blackwater River

The Department of Environmental Quality (DEQ) seeks written and oral comments from interested persons on the development of a Total Maximum Daily Load (TMDL) for the Blackwater River. Blackwater River 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 the General Standard (Benthic). The Blackwater River segment is located in Franklin County. The impairment is approximately 37 miles in length and begins at the headwaters of the North Fork of the Blackwater River and continues downstream until 1 mile below the Route 921 Bridge.

Section 303(d) of the 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 first public meeting on the development of the Blackwater River TMDL will be held on Tuesday, January 28, 2003, at 7 p.m. at The Community and Hospitality Center located at 52 Franklin Street in Rocky Mount, Virginia.

The public comment period for this phase of the TMDL development will end on February 28, 2003. A fact sheet on the development of the TMDL is available upon request. Questions or information requests should be addressed to Jason Hill. Written comments should include the name, address, and telephone number of the person submitting the comments and should be sent to Jason Hill, Department of Environmental Quality, 3019 Peters Creek Road, Roanoke, VA, 24019, telephone (540) 562-6724, FAX (540) 562-6860, or e-mail jrhil@deq.state.va.us.

COMMISSION ON LOCAL GOVERNMENT

Schedule for the Assessment of State and Federal Mandates on Local Governments

Pursuant to the provisions of §§ 2.2-613 and 15.2-2903(6) of the Code of Virginia, the following schedule, established by the Commission on Local Government and approved by the Secretary of Administration and Governor Warner, represents the timetable that the listed executive agencies will follow in conducting their assessments of certain state and federal mandates on local governments that they administer. Such mandates are either new (in effect for at least 24 months), newly identified, or have been previously assessed more than four years ago. In conducting these assessments, agencies will follow the process established by EXECUTIVE MEMORANDUM 1-98 which became effective October 13, 1998, succeeding EXECUTIVE MEMORANDUM 5-94. These mandates are abstracted in the CATALOG OF STATE AND FEDERAL MANDATES ON LOCAL GOVERNMENTS as published by the Commission on Local Government.

For further information contact Larry McMillan, Senior Policy Analyst, Commission on Local Government (email lmcmillan@clg.state.va.us or phone 786-6508) or visit the commission's website at <http://www.clg.state.va.us>.

General Notices/Errata

AGENCY/Mandate Short Title	CATALOG NUMBER	ASSESSMENT PERIOD
CONSERVATION AND RECREATION, DEPARTMENT OF		
Virginia Recreational Trails Fund	SNR.DCR009	6-1-03 to 8-31-03
CORRECTIONS, DEPARTMENT OF		
Correctional Facility Standards	SPS.DOC001	5-1-03 to 7-31-03
CRIMINAL JUSTICE SERVICES, DEPARTMENT OF		
Community Policing Fund	SPS.DCJS014	8-1-03 to 10-31-03
STOP Violence Against Women Grants	SPS.DCJS016	8-1-03 to 10-31-03
Pretrial Services Program	SPS.DCJS017	8-1-03 to 10-31-03
Drug Court Grants	SPS.DCJS026	9-1-03 to 11-30-03
EDUCATION, DEPARTMENT OF		
Employee Fingerprinting & Criminal History Records	SOE.DOE006	5-1-03 to 6-30-03
Management of Student Scholastic Records	SOE.DOE013	5-1-03 to 6-30-03
Reenrollment Plans	SOE.DOE082	8-1-03 to 9-30-03
Reports of Certain Acts in Schools	SOE.DOE083	4-1-03 to 5-31-03
Notice of Parental Involvement in Schools	SOE.DOE085	4-1-03 to 5-31-03
Prevention of Violence and Crime on School Property	SOE.DOE086	4-1-03 to 5-31-03
Identification of Children with Disabilities	SOE.DOE088	8-1-03 to 9-30-03
Sale of School Property	SOE.DOE089	8-1-03 to 9-30-03
School Safety Audit & Crisis and Emergency Management Plan	SOE.DOE090	4-1-03 to 5-31-03
Remediation Programs Evaluation and Reporting	SOE.DOE107	5-1-03 to 6-30-03
Asthma Medication Policy	SOE.DOE112	8-1-03 to 9-30-03
Student Searches	SOE.DOE113	5-1-03 to 6-30-03
EMERGENCY MANAGEMENT, DEPARTMENT OF		
Appoint Local Hazardous Materials Coordinator	SOS.VDEM009	6-1-03 to 8-31-03
ENVIRONMENTAL QUALITY, DEPARTMENT OF		
Water Withdrawal Report	SNR.DEQ001	8-1-03 to 9-30-03
Landfill Closures	SNR.DEQ032	9-1-03 to 10-31-03
FIRE PROGRAMS, DEPARTMENT OF		
Fire Programs Fund Monitoring	SPS.DFP001	2-1-03 to 4-30-03
Training Standards for Fire Marshals	SPS.DFP002	2-1-03 to 4-30-03
HEALTH, DEPARTMENT OF		
Maintain Local Health Department	SHHR.VDH001	9-1-03 to 11-30-03
Inspection of Local Correctional Facilities	SHHR.VDH022	2-1-04 to 4-30-04
JUVENILE JUSTICE, DEPARTMENT OF		
Mental Health Screening of Juveniles	SPS.DJJ008	4-1-03 to 6-30-03
MENTAL HEALTH, MENTAL RETARDATION AND SUBSTANCE ABUSE SERVICES, DEPARTMENT OF		
Human Research	SHHR.DMHM RSA S008	2-1-03 to 4-30-03
MOTOR VEHICLES, DEPARTMENT OF		
Abandoned Motor Vehicles	STO.DMV001	5-1-03 to 8-31-03
Unmarked Police Vehicle License Plates	STO.DMV002	5-1-03 to 8-31-03
Vehicle Registration Withholding Program	STO.DMV004	5-1-03 to 8-31-03
PROFESSIONAL AND OCCUPATIONAL REGULATION, DEPARTMENT OF		
Waterworks and Wastewater Works Operator's License	SCT.DPOR002	3-1-03 to 5-31-03

General Notices/Errata

RAIL AND PUBLIC TRANSPORTATION, DEPARTMENT OF

Transportation Services for People with Disabilities	STO.DRPT011	7-1-03 to 9-30-03
Drug and Alcohol Testing in Transit Operations	STO.DRPT012	7-1-03 to 9-30-03
Commonwealth Mass Transit Funds	STO.DRPT013	7-1-03 to 9-30-03
Rail Industrial Access Program	STO.DRPT014	7-1-03 to 9-30-03
Rail Preservation Program	STO.DRPT015	7-1-03 to 9-30-03
Alternative Fuel Bus Funds	STO.DRPT016	7-1-03 to 9-30-03
Federal Uniform Administrative Requirements	STO.DRPT017	7-1-03 to 9-30-03
Federal Highway Administration Grants	STO.DRPT018	7-1-03 to 9-30-03
Voter Registration Offices for Disabled Users of Transit	STO.DRPT019	7-1-03 to 9-30-03

SOCIAL SERVICES, DEPARTMENT OF

Adoption and Other Services	SHHR.DSS033	2-1-04 to 4-30-04
AmeriCorps Grant	SHHR.DSS057	2-1-04 to 4-30-04
Local Board and Superintendent of Public Welfare	SHHR.DSS061	7-1-03 to 9-30-03
Annual Reports by Guardians	SHHR.DSS067	1-1-04 to 3-31-04
State/Local Hospitalization Program Eligibility	SHHR.DSS068	2-1-04 to 4-31-04

STATE POLICE, DEPARTMENT OF

Arrest Report	SPS.VSP001	4-1-03 to 6-30-03
Vehicle Inspection Station Standards	SPS.VSP002	6-1-03 to 8-30-03
Virginia Criminal Information Network	SPS.VSP003	8-1-03 to 10-30-03
Terrorist Acts Report	SPS.VSP007	2-1-04 to 4-30-04
Motor Carrier Safety Training	SPS.VSP014	2-1-03 to 4-30-03

TAXATION, DEPARTMENT OF

Banks' Return on Net Capital	SFIN.TAX001	6-1-03 to 8-31-03
Annual Assessment/Sales Ratio Study	SFIN.TAX003	6-1-03 to 8-31-03
Tax-Exempt Real Property Inventory	SFIN.TAX008	6-1-03 to 8-31-03

TECHNOLOGY PLANNING, DEPARTMENT OF

Internet Privacy Policy	SOTECH.DTP002	8-1-03 to 10-31-03
Implementation of E-911 Services	SOTECH.DTP003	8-1-03 to 8-31-03

TRANSPORTATION, DEPARTMENT OF

Metropolitan Transportation Planning	STO.VDOT001	4-1-03 to 6-30-03
Statewide Transportation Planning	STO.VDOT002	9-1-03 to 11-30-03
VDOT Revenue Sharing Program	STO.VDOT003	7-1-03 to 9-30-03
Sidewalk and Storm Sewer Cost-Sharing	STO.VDOT004	4-1-03 to 6-30-03
Residential Cut-Through Traffic Policy	STO.VDOT005	9-1-03 to 11-30-03
Industrial Access Road	STO.VDOT006	7-1-03 to 9-30-03
Airport Access Road	STO.VDOT007	7-1-03 to 9-30-03
Recreational Access Road	STO.VDOT008	7-1-03 to 9-30-03
Subdivision Street Development Control	STO.VDOT009	7-1-03 to 9-30-03
Urban Street Construction	STO.VDOT010	4-1-03 to 6-30-03
Urban Street Payments	STO.VDOT011	4-1-03 to 6-30-03
Removal of Outdoor Advertising	STO.VDOT015	9-1-03 to 11-30-03
Annual Mileage Report	STO.VDOT025	4-1-03 to 6-30-03

TREASURY, DEPARTMENT OF

Federal Tax Law Compliance for Bond Sale	SFIN.TD002	7-1-03 to 9-30-03
Investment of VPSA Bond Proceeds	SFIN.TD003	7-1-03 to 9-30-03
Va. Public Building Authority Jail Construction Reimbursement	SFIN.TD004	7-1-03 to 9-30-03
Depositing Requirements for State Funds	SFIN.TD006	7-1-03 to 9-30-03
Exception Reporting by Public Depositor	SFIN.TD007	7-1-03 to 9-30-03
Uniform Disposition of Unclaimed Property	SFIN.TD008	7-1-03 to 9-30-03
Abandoned Property	SFIN.TD009	7-1-03 to 9-30-03
Blanket Surety Bond Program	SFIN.TD010	7-1-03 to 9-30-03

ERRATA

**DEPARTMENT OF MENTAL HEALTH, MENTAL
RETARDATION AND SUBSTANCE ABUSE
SERVICES**

BOARD OF NURSING

**Local Contract for Continuing Participation in Part C
Early Intervention for Infants and Toddlers with
Disabilities and Their Families**

Title of Regulation: **18 VAC 90-50. Regulations Governing
the Certification of Massage Therapists.**

Publication: 19:7 VA.R. 1084-1093 December 16, 2002.

Correction to Final Publication:

Page 1084, change effective date to January 15, 2003.

Public comment will be accepted in writing beginning December 30, 2002, through February 28, 2003, on the Commonwealth of Virginia Public Comment Exposure Draft State Fiscal Year (SFY) 2004 Local Contract for Continuing Participation in Part C Early Intervention for Infants and Toddlers with Disabilities and Their Families.

For a copy of the Commonwealth of Virginia Public Comment Exposure Draft State Fiscal Year (SFY) 2004 Local Contract for Continuing Participation in Part C Early Intervention for Infants and Toddlers with Disabilities and Their Families, to obtain additional information, and/or to submit public comment, contact:

David Mills, Part C Administrative Consultant
Early Intervention Office, 9th Floor
P.O. Box 1797
Richmond, VA 23218-1797
Telephone (804) 371-6593
FAX (804) 371-7959
dmills@dmhmrsas.state.va.us

VIRGINIA CODE COMMISSION

Notice to State Agencies

Mailing Address: Virginia Code Commission, 910 Capitol Street, General Assembly Building, 2nd Floor, Richmond, VA 23219, FAX (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://register.state.va.us>

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
PETITION FOR RULEMAKING - RR13

CALENDAR OF EVENTS

Symbol Key

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

♿ Location accessible to persons with disabilities

☎ 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. If you are unable to find a meeting notice for an organization in which you are interested, please check the Commonwealth Calendar at www.vipnet.org or contact the organization directly.

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

BOARD OF ACCOUNTANCY

† **January 8, 2003 - 10 a.m.** -- Open Meeting

The Manor House, 9400 Charter Crossing, Mechanicsville, Virginia.♿ (Interpreter for the deaf provided upon request)

A meeting to discuss matters requiring board action including regulatory review. 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 person desiring to attend the meeting and requiring special accommodations or interpreter services should contact the board at (804) 367-8505 or (804) 367-9753/TTY at least 10 days prior to the meeting so suitable arrangements can be made. The board fully complies with the American with Disabilities Act.

Contact: Nancy Taylor Feldman, Executive Director, Board of Accountancy, 3600 W. Broad St., Suite 696, Richmond, VA 23230-4916, telephone (804) 367-8505, FAX (804) 367-2174, (804) 367-9753/TTY ☎, e-mail boa@boa.state.va.us.

COMMONWEALTH COUNCIL ON AGING

† **January 15, 2003 - 11 a.m.** -- Open Meeting

Virginia Department for the Aging, 1600 Forest Avenue, Suite 102, Richmond, Virginia.♿ (Interpreter for the deaf provided upon request)

A regular business meeting. Public comments will be received.

Contact: Marsha Mucha, Virginia Department for the Aging, 1600 Forest Ave., Suite 102, Richmond, VA 23229, telephone (804) 662-9312.

STATE BOARD OF AGRICULTURE AND CONSUMER SERVICES

March 13, 2003 - 10 a.m. -- Public Hearing

Washington Building, 1100 Bank Street, 2nd Floor Board Room, Richmond, Virginia.

NOTE: EXTENSION OF PUBLIC COMMENT PERIOD

January 15, 2003 -- Public comments may be submitted until this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the State Board of Agriculture and Consumer Services intends to amend regulations entitled: **2 VAC 5-320. Rules and Regulations for the Enforcement of the Endangered Plant and Insect Species Act.** The purpose of the proposed action is to review the regulation for effectiveness and continued need, including the following: amending the regulation to (i) remove the currently named plants that are no longer considered globally rare and (ii) add those threatened or endangered plant and insect species that are considered rare both globally and in Virginia.

Statutory Authority: § 3.1-1025 of the Code of Virginia.

Contact: Frank M. Fulgham, Program Manager, Department of Agriculture and Consumer Services, 1100 Bank St., Room 703, Richmond, VA 23219, telephone (804) 786-3515, FAX (804) 371-7793 or e-mail ffulgham@vdacs.state.va.us.

* * * * *

March 13, 2003 - 10 a.m. -- Public Hearing

Washington Building, 1100 Bank Street, 2nd Floor Board Room, Richmond, Virginia.

NOTE: EXTENSION OF PUBLIC COMMENT PERIOD

January 15, 2003 -- Public comments may be submitted until this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the State Board of Agriculture and Consumer Services intends to amend regulations entitled: **2 VAC 5-360. Regulations for the Enforcement of the**

Virginia Commercial Feed Act. The purpose of the proposed action is to amend the current regulation to incorporate the changes made to the commercial feed industry standards by the Association of American Feed Control Officials in the last decade and statutory changes made to Virginia's Commercial Feed Law in 1994.

Statutory Authority: § 3.1-828.4 of the Code of Virginia.

Contact: J. Alan Rogers, Program Manager, Department of Agriculture and Consumer Services, 1100 Bank St., Room 402, Richmond, VA 23219, telephone (804) 786-2476, FAX (804) 371-1571 or e-mail jrogers@vdacs.state.va.us.

March 13, 2003 - 10 a.m. -- Public Hearing
Washington Building, 1100 Bank Street, 2nd Floor Board Room, Richmond, Virginia.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the State Board of Agriculture and Consumer Services intends to amend regulations entitled: **2 VAC 5-440. Rules and Regulations for Enforcement of the Virginia Pest Law - Cotton Boll Weevil Quarantine.** The purpose of the proposed regulatory action is to amend the regulation to (i) establish the fixed date of July 1 as the official reporting and payment date for acreage assessment, (ii) reduce penalties assessed on farm operators for the late payment or nonpayment of fees from \$10 to \$5.00 per acre, and (iii) eliminate the mandate for destruction of the cotton crop for nonpayment of fees and assessments by farm operators.

Statutory Authority: § 3.1-188.23 of the Code of Virginia.

Contact: Frank M. Fulgham, Program Manager, Department of Agriculture and Consumer Services, 1100 Bank St., Room 703, Richmond, VA 23219, telephone (804) 786-3515, FAX (804) 371-7793 or e-mail ffulgham@vdacs.state.va.us.

March 13, 2003 - 10 a.m. -- Public Hearing
Washington Building, 1100 Bank Street, 2nd Floor Board Room, Richmond, Virginia.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the State Board of Agriculture and Consumer Services intends to **repeal** regulations entitled: **2 VAC 5-500. Rules and Regulations Governing the Cooling, Storing, Sampling, and Transporting of Milk or Milk Samples from the Farm to the Processing Plant or Laboratory** and **adopt** regulations entitled: **2 VAC 5-501. Regulations Governing the Cooling, Storing, Sampling, and Transporting of Milk.** The purpose of the proposed action is to (i) make the regulations applicable to the milk of goats, sheep, water buffalo, and other mammals if the milk or dairy products are intended for human consumption and (ii) require permits for milk pickup trucks, milk transport tanks, laboratories, persons testing milk samples for pay purposes, persons collecting official milk samples in dairy plants, and milk tank truck cleaning facilities.

Statutory Authority: §§ 3.1-530.1, 3.1-530.2, 3.1-535, and 3.1-535.1 of the Code of Virginia.

Contact: John A. Beers, Program Supervisor, Department of Agriculture and Consumer Services, 1100 Bank St., Room 505, Richmond, VA 23219, telephone (804) 786-1453, FAX (804) 371-7792 or e-mail jbeers@vdacs.state.va.us.

March 13, 2003 - 10 a.m. -- Public Hearing
Washington Building, 1100 Bank Street, 2nd Floor Board Room, Richmond, Virginia.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the State Board of Agriculture and Consumer Services intends to **repeal** regulations entitled: **2 VAC 5-530. Rules and Regulations Governing the Production, Handling and Processing of Milk for Manufacturing Purposes and Establishing Minimum Standards for Certain Dairy Products to be Used for Human Food** and **adopt** regulations entitled: **2 VAC 5-531. Regulations Governing Milk for Manufacturing Purposes.** The purpose of the proposed action is to adopt regulations consistent with the most recent USDA recommendations on milk for manufacturing purposes and regulate manufactured milk and milk products from goats, sheep, water buffalo and other noncow sources in the interest of public health and safety.

Statutory Authority: §§ 3.1-530.1 and 3.1-530.2 of the Code of Virginia.

Contact: John A. Beers, Program Supervisor, Department of Agriculture and Consumer Services, 1100 Bank St., Room 505, Richmond, VA 23219, telephone (804) 786-1453, FAX (804) 371-7792 or e-mail jbeers@vdacs.state.va.us.

DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

Virginia Charity Food Assistance Advisory Board


January 9, 2003 - 10 a.m. -- Open Meeting
Washington Building, 1100 Bank Street, Second Floor Board Room, Richmond, Virginia. ☎

A routine meeting of the board to discuss issues related to hunger, malnutrition, and food insecurity in the Commonwealth, and potential opportunities to alleviate the problem. 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 Secretary, Department of Agriculture and Consumer Services, 1100 Bank St., Room 809, Richmond, VA 23219, telephone (804) 786-3936, FAX (804) 371-7788, e-mail sthomas@vdacs.state.va.us.

Calendar of Events


Virginia Cotton Board

† **March 10, 2003 - 9:15 a.m.** -- Open Meeting
Tidewater Agriculture Research and Extension Center, 6321
Holland Road, Suffolk, Virginia. 

The board's agenda will include discussions and approval of contractual arrangements with national and regional organizations, reports of programs and projects funded over the past year, hearing of Project Proposal Grant Requests on cotton by VPIandSU, VSU, and other groups for the year 2003-04. During the meeting, financial reports will be heard and approved. 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 Gail Moody Milteer at least five days before the meeting date so that suitable arrangements can be made.

Contact: Gail Moody Milteer, Program Director, Virginia Cotton Board, Department of Agriculture and Consumer Services, 1100 Armory Dr., Suite 120, Franklin, VA 23851, telephone (757) 569-1100, FAX (757) 562-6104.

Virginia Horse Industry Board

† **February 4, 2003 - 9 a.m.** -- Open Meeting
Virginia Department of Forestry, 900 Natural Resources Drive,
Second Floor, Charlottesville, Virginia. 

The board will review the minutes of the last meeting, the board's current financial status, and on-going projects. The board will also discuss the printing of promotional materials for 2003 and hear presentations from several guest speakers. 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 Andrea S. Heid at least five days before the meeting date so that suitable arrangements can be made.

Contact: Andrea S. Heid, Equine Marketing Specialist/Program Manager, Department of Agriculture and Consumer Services, 1100 Bank St., 9th Floor, Richmond, VA 23219, telephone (804) 786-5842, FAX (804) 371-7786, e-mail aheid@vdacs.state.va.us.

Pesticide Control Board


† **January 16, 2003 - 9 a.m.** -- Open Meeting
Washington Building, 1100 Bank Street, Second Floor Board
Room, Richmond, Virginia. 

A general business meeting. Portions of the meeting may be held in closed session pursuant to § 2.2-3711 of the Code of Virginia. 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 Dr. Marvin A. Lawson at least five days before the meeting date so that suitable arrangements can be made.

Contact: Dr. Marvin A. Lawson, Program Manager/Office of Pesticide Services, Department of Agriculture and Consumer Services, Washington Bldg., 1100 Bank St., Richmond, VA

23219, telephone (804) 371-6558, FAX (804) 371-8598, toll-free (800) 552-9963, e-mail mlawson@vdacs.state.va.us.


Virginia Sheep Industry Board

† **January 10, 2003 - 10 a.m.** -- Open Meeting
Sheraton Four Points Hotel, 1400 East Market Street,
Harrisonburg, Virginia. 

The board will review, and if appropriate, approve the minutes of the February 27, 2002, meeting. The board will hear reports from the USDA Wildlife Services, Virginia Food Festival, Virginia FFA Foundation, Chesapeake Heritage Arts and Fiber Festival, Virginia Highlands Festival, Virginia State Fair, and Virginia Junior Show Lamb Association. 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 Michael Carpenter at least five days before the meeting date so that suitable arrangements can be made.


Contact: Michael Carpenter, Program Manager, Department of Agriculture and Consumer Services, Livestock Marketing Services, 116 Reservoir St., Harrisonburg, VA 22801, telephone (540) 434-2585.

STATE AIR POLLUTION CONTROL BOARD


† **January 9, 2003 - 7 p.m.** -- Public Hearing
Liberty High School, 6300 Independence Avenue, Auditorium,
Bealeton, Virginia. 

A public hearing to receive comments on an application from Old Dominion Electric Cooperative to construct and operate a simple cycle combustion turbine station approximately 1.5 miles east of the Town of Remington in Fauquier County. The public comment period will close on January 24, 2003.


Contact: Sharon Cregger, Department of Environmental Quality, 806 Westwood Office Park, Fredericksburg, VA 22401, telephone (540) 899-4600, e-mail sscregger@deq.state.va.us.

January 10, 2003 - 10 a.m. -- Open Meeting
Department of Environmental Quality, Tidewater Regional
Office, 5636 Southern Boulevard, Virginia Beach, Virginia. 

A public meeting to receive comments on the notice of intended regulatory action to amend the regulations for the control and abatement of air pollution to enlarge the scope of the Hampton Roads Emissions Control Area in order to include four previously exempt jurisdictions subject to the VOC emission standards for existing sources.

Contact: Kathleen R. Sands, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4413, FAX (804) 698-4510, (804) 698-4021/TTY , e-mail krsands@deq.state.va.us.


BOARD FOR ARCHITECTS, PROFESSIONAL ENGINEERS, LAND SURVEYORS, CERTIFIED INTERIOR DESIGNERS AND LANDSCAPE ARCHITECTS

† **January 29, 2003 - 9 a.m.** -- Open Meeting
Department of Professional and Occupational Regulation
3600 W. Broad Street Richmond, Virginia. 


A meeting of the Architects Section to conduct board business.

Contact: Mark N. Courtney, Assistant Director, Board for Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8537, FAX (804) 367-2475, (804) 367-9753/TTY , e-mail courtney@dpor.state.va.us.

AUCTIONEERS BOARD

† **January 9, 2003 - 10 a.m.** -- Open Meeting
Department of Professional and Occupational Regulation,
3600 West Broad Street, Richmond, Virginia. 

A meeting to conduct board business.

Contact: Mark N. Courtney, Assistant Director, Auctioneers Board, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8514, FAX (804) 367-2475, (804) 367-9753/TTY , e-mail courtney@dpor.state.va.us.

BOARD OF AUDIOLOGY AND SPEECH-LANGUAGE PATHOLOGY

January 31, 2003 - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Board of Audiology and Speech-Language Pathology intends to amend regulations entitled: **18 VAC 30-20. Regulations Governing the Practice of Audiology and Speech-Language Pathology.** The purpose of the amended regulation is to revise certain prerequisites for licensure that may be unnecessarily restrictive and adopt requirements that are reasonable and essential to protect the public health, safety and welfare. The intent of the changes is to eliminate barriers to licensure, such as the requirement that an applicant who passed the qualifying examination more than three years ago be engaged in active practice for the 24 months immediately preceding application. The amendments will also update the unprofessional conduct section to ensure that a practitioner can use electronic communication in the follow-up with a patient or another practitioner.


Statutory Authority: § 54.1-2400 and Chapter 26 (§ 54.1-2600 et seq.) of Title 54.1 of the Code of Virginia.

Public comments may be submitted until January 31, 2003, to Elizabeth Young, Executive Director, Board of Audiology and


Speech-Language Pathology, 6603 W. Broad St., Richmond, VA 23230.

Contact: Elaine J. Yeatts, Regulatory Coordinator, Department of Health Professions, 6603 W. Broad St., Richmond, VA 23230, telephone (804) 662-9918, FAX (804) 662-9114 or e-mail elaine.yeatts@dhp.state.va.us.


CEMETERY BOARD

† **February 26, 2003 - 9:30 a.m.** -- Open Meeting
Department of Professional and Occupational Regulation,
3600 West Broad Street, Richmond, Virginia. 


A meeting to conduct board business.

Contact: Christine Martine, Assistant Director, Cemetery Board, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8552, FAX (804) 367-2475, (804) 367-9753/TTY , e-mail cemetery@dpor.state.va.us.


CHILD DAY-CARE COUNCIL

† **January 9, 2003 - 8:30 a.m.** -- Open Meeting
Theater Row Building, 730 East Broad Street, Richmond, Virginia.  (Interpreter for the deaf provided upon request)

A meeting to discuss issues and concerns that impact child day centers, camps, school age programs and preschool/nursery schools. Public comment period time has not been determined. Please call Cynthia Clark at 804-692-1734 for possible changes in meeting time and public comment period.

Contact: Arlene Kasper, Program Development Consultant, Child Day-Care Council, Division of Licensing Programs, 730 E. Broad St., Richmond, VA 23219 Richmond, VA 23219, telephone (804) 692-1791, FAX (804) 692-2370, (800) 828-1120/TTY 


STATE CHILD FATALITY REVIEW TEAM

† **January 10, 2003 - 10 a.m.** -- Open Meeting
Office of the Chief Medical Examiner, 400 East Jackson Street, Richmond, Virginia. 

The business portion of the meeting, from 10 a.m. to 10:30 a.m., is open to the public. At the conclusion of the open meeting, the team will go into closed session for confidential case review.

Contact: Virginia Powell, Coordinator, State Child Fatality Review Team, 400 East Jackson St., Richmond, VA 23219, telephone (804) 786-6047, FAX (804) 371-8595, toll-free (800) 447-1708, e-mail vpowell@vdh.state.va.us.

STATE BOARD FOR COMMUNITY COLLEGES

† **January 29, 2003 - 12:30 p.m.** -- Open Meeting
Godwin-Hamel Board Room, James Monroe Building, 101 North 14th Street, 15th Floor, Richmond, Virginia.  (Interpreter for the deaf provided upon request)

Calendar of Events

The State Board for Community Colleges will hold a seminar for its members on public and media relations. This is a working session and no board action will be taken.

Contact: D. Susan Hayden, Public Relations Manager, State Board for Community Colleges, James Monroe Bldg., 101 N. 14th St., Richmond, VA 23219, telephone (804) 819-4961, FAX (804) 819-4768, (804) 371-8504/TTY ☎

† **January 29, 2003 - 1:30 p.m.** -- Open Meeting
Godwin-Hamel Board Room, James Monroe Building, 101 North 14th Street, 15th Floor, Richmond, Virginia. ♿
(Interpreter for the deaf provided upon request)

The following committees will meet:

- Academic and Student Affairs Committee - 1:30 p.m.
- Audit Committee - 1:30 p.m.
- Budget and Finance Committee - 1:30 p.m.
- Facilities and the Personnel Committees - 3 p.m.
- Executive Committee - 4:30 p.m.

Contact: D. Susan Hayden, Public Relations Manager, State Board for Community Colleges, James Monroe Building, 101 N. 14th St., Richmond, VA 23219, telephone (804) 819-4961, FAX (804) 819-4768, (804) 371-8504/TTY ☎, homepage <http://www.vccs.edu>.

† **January 30, 2003 - 9 a.m.** -- Open Meeting
Godwin-Hamel Board Room, James Monroe Building, 101 North 14th Street, 15th Floor, Richmond, Virginia. ♿
(Interpreter for the deaf provided upon request)

A regular meeting. Public comment may be received at the beginning of the meeting upon notification of at least five working days prior to the meeting.

Contact: D. Susan Hayden, Public Relations Manager, State Board for Community Colleges, James Monroe Bldg., 101 N. 14th St., Richmond, VA 23219, telephone (804) 819-4961, FAX (804) 819-4768, (804) 371-8504/TTY ☎

COMPENSATION BOARD

† **January 7, 2003 - 2 p.m.** -- Open Meeting
Compensation Board, 202 North 9th Street, 10th Floor, Richmond, Virginia. ♿

A board meeting with Constitutional Officer Association Presidents regarding upcoming legislation.

Contact: Cindy P. Waddell, Administrative Staff Assistant, Compensation Board, P.O. Box 710, Richmond, VA 23218, telephone (804) 786-0786, FAX (804) 371-0235, e-mail cwaddell@scb.state.va.us.

† **January 21, 2003 - 11 a.m.** -- Open Meeting
Compensation Board, 202 North 9th Street, 10th Floor, Richmond, Virginia. ♿

A monthly board meeting.

Contact: Cindy P. Waddell, Administrative Staff Assistant, Compensation Board, P.O. Box 710, Richmond, VA 23218, telephone (804) 786-0786, FAX (804) 371-0235, e-mail cwaddell@scb.state.va.us.

DEPARTMENT OF CONSERVATION AND RECREATION

Virginia Cave Board

† **February 22, 2003 - 11 a.m.** -- Open Meeting
Endless Caverns, New Market, Virginia. ♿ (Interpreter for the deaf provided upon request)

Committee meetings will begin at 11 a.m. A regular meeting of the board will begin at 1 p.m.

Contact: Larry Smith, Natural Area Protection Manager, Department of Conservation and Recreation, 203 Governor St., Richmond, VA 23219, telephone (804) 371-6205, FAX (804) 371-2674, e-mail lsmith@dcr.state.va.us.

Falls of the James Scenic River Advisory Board

† **January 9, 2003 - Noon** -- Open Meeting
† **February 13, 2003 - Noon** -- Open Meeting
Richmond City Hall, 900 East Broad Street, 5th Floor, Planning Commission Conference Room, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

A regular business meeting.

Contact: Derral Jones, Planning Bureau Manager, Department of Conservation and Recreation, 203 Governor St., Suite 326, Richmond, VA 23219, telephone (804) 786-9042, FAX (804) 371-7899, e-mail djones@dcr.state.va.us.

BOARD FOR CONTRACTORS

January 22, 2003 - 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 regularly scheduled meeting to address policy and procedural issues; review and render decisions on applications for contractors' licenses, and review and render case decisions on matured complaints against licensees. The meeting is open to the public; however, a portion of the board's business may be discussed in closed session.

Contact: Eric L. Olson, Assistant Director, Board for Contractors, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-2785, FAX (804) 367-2474, (804) 367-9753/TTY ☎, e-mail olsone@dpor.state.va.us.

BOARD OF CORRECTIONS

† **January 14, 2003 - 10 a.m.** -- Open Meeting
Board Room, 6900 Atmore Drive, Richmond, Virginia. ♿

The Liaison Committee will meet at 10 a.m. and the Correctional Services Committee will meet at 1 p.m. to discuss correctional matters that may be brought before the full board.

Contact: Barbara Woodhouse, Administrative Staff Assistant, Board of Corrections, 6900 Atmore Dr., Richmond, VA 23225, telephone (804) 674-3124, FAX (804) 674-3605, e-mail woodhousebl@vadoc.state.va.us.

† **January 15, 2003 - 8:30 a.m.** -- Open Meeting
Department of Corrections, 6900 Atmore Drive, Board Room,
Richmond, Virginia. ♿

The Administration Committee will meet at 8:30 a.m. to discuss correctional matters that may be brought before the full board. The full board will meet at 10 a.m.

Contact: Barbara Woodhouse, Administrative Staff Assistant, Board of Corrections, 6900 Atmore Dr., Richmond, VA 23225, telephone (804) 674-3124, FAX (804) 674-3605, e-mail woodhousebl@vadoc.state.va.us.

BOARD OF COUNSELING

January 24, 2003 - 10 a.m. -- Public Hearing
Department of Health Professions, 6603 West Broad Street, 5th Floor, Board Room 1, Richmond, Virginia.

January 31, 2003 - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Board of Counseling intends to amend regulations entitled: **18 VAC 115-30. Regulations Governing the Certification of Substance Abuse Counselors and Assistants.** The purpose of the proposed action is to comply with House Bill 2095 (Chapter 460 of the 2001 Acts of the Assembly) to promulgate regulations for certification of substance abuse counselors and assistants. Two new sections of the Code of Virginia (§§ 54.1-3507.1 and 54.1-3507.2) require the board to establish in regulation a specific number of hours of substance abuse education and supervised experience for both levels of certification.

Statutory Authority: §§ 54.1-2400 and 54.1-3505 of the Code of Virginia.

Public comments may be submitted until January 31, 2003, to Evelyn B. Brown, Executive Director, Board of Counseling, 6603 W. Broad St., Richmond, VA 23230.

Contact: Elaine J. Yeatts, Regulatory Coordinator, Department of Health Professions, 6603 W. Broad St., Richmond, VA 23230, telephone (804) 662-9918, FAX (804) 662-9114 or e-mail elaine.yeatts@dhp.state.va.us.

BOARD OF DENTISTRY

† **January 9, 2003 - 9 a.m.** -- Open Meeting
Department of Health Professions, 6603 West Broad Street, 5th Floor, Conference Room 1, Richmond, Virginia. ♿

A meeting to conduct formal hearings. There will not be a public comment period.

Contact: Cheri Emma-Leigh, Operations Manager, Board of Dentistry, 6603 W. Broad St., 5th Floor, Richmond, VA 23230, telephone (804) 662-9906, FAX (804) 662-7246, (804) 662-7197/TTY ♿, e-mail CEmma-Leigh@dhp.state.va.us.

* * * * *

† **January 10, 2003 - 9 a.m.** -- Public Hearing
Department of Health Professions, 6603 West Broad Street, 5th Floor, Conference Room 3, Richmond, Virginia. ♿

February 28, 2003 - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Board of Dentistry intends to amend regulations entitled: **18 VAC 60-20. Regulations Governing the Practice of Dentistry and Dental Hygiene.** The purpose of the proposed action is to replace emergency regulations for voluntary practice by out-of-state dentists or dental hygienists and for temporary permits for dentists.

Statutory Authority: § 54.1-2400 of the Code of Virginia.

Public comments may be submitted until February 28, 2003, to Sandra K. Reen, Executive Director, Board of Dentistry, 6603 W. Broad St., Richmond, VA 23230-1712.

Contact: Elaine J. Yeatts, Regulatory Coordinator, Department of Health Professions, 6603 W. Broad St., Richmond, VA 23230, telephone (804) 662-9918, FAX (804) 662-9114, or e-mail elaine.yeatts@dhp.state.va.us.

† **January 10, 2003 - 9:15 a.m.** -- Open Meeting
Department of Health Professions, 6603 West Broad Street, 5th Floor, Conference Room 3, Richmond, Virginia. ♿

A general business meeting including consideration of regulatory, legislative and disciplinary issues as may be presented on the agenda. Public comment will be received at the beginning of the meeting.

Contact: Sandra Reen, Executive Director, Board of Dentistry, Alcoa Bldg., 6603 W. Broad St., 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-9906, FAX (804) 662-9943, (804) 662-7197/TTY ♿, e-mail sandra_reen@dhp.state.va.us.

† **January 17, 2003 - 9 a.m.** -- Open Meeting

† **January 31, 2003 - 9 :30 a.m.** -- Open Meeting
Department of Health Professions, 6603 West Broad Street, 5th Floor, Conference Room 1, Richmond, Virginia. ♿

The Special Conference Committee will hold informal hearings. There will not be a public comment period.

Contact: Cheri Emma-Leigh, Operations Manager, Board of Dentistry, 6603 W. Broad St., 5th Floor, Richmond, VA 23230, telephone (804) 662-9906, FAX (804) 662-7246, (804) 662-7197/TTY ♿, e-mail CEmma-Leigh@dhp.state.va.us.

BOARD OF EDUCATION

January 6, 2003 - 9 a.m. -- Open Meeting

February 26, 2003 - 9 a.m. -- Open Meeting

† **March 26, 2003 - 9 a.m.** -- Open Meeting
James Monroe Building, 101 N. 14th Street, Rooms C and D, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

Calendar of Events

A regular business meeting of the board. Persons who wish to speak or who require the services of an interpreter for the deaf should contact the agency 72 hours in advance. Public comment will be received.

Contact: Dr. Margaret N. Roberts, Office of Policy and Public Affairs, Department of Education, P.O. Box 2120, James Monroe Bldg., 101 N. 14th St., 25th Floor, Richmond, VA 23219, telephone (804) 225-2540, FAX (804) 225-2524, e-mail mroberts@mail.vak12ed.edu.

NOTE: CHANGE IN MEETING TIME

January 9, 2003 - 8 a.m. -- Open Meeting

January 10, 2003 - 8:30 a.m. -- Open Meeting

Radisson Hotel Historic Richmond, 301 West Franklin Street, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A working session of the State Special Education Advisory Committee. Public comment will not be received. Persons requesting the services of an interpreter for the deaf should do so in advance.

Contact: Dr. Margaret N. Roberts, Office of Policy and Public Affairs, Department of Education, P.O. Box 2120, James Monroe Bldg., 101 N. 14th St., 25th Floor, Richmond, VA 23219, telephone (804) 225-2540, FAX (804) 225-2524, e-mail mroberts@mail.vak12ed.edu.

January 27, 2003 - 9 a.m. -- Open Meeting

Hilton Garden Inn, Richmond Innsbrook, 4050 Cox Road, Glen Allen, Virginia. (Interpreter for the deaf provided upon request)

† March 17, 2003 - 9 a.m. -- Open Meeting

George Mason University, Fairfax, Virginia.

A meeting of the Advisory Board for Teacher Education and Licensure. Persons requesting the services of an interpreter for the deaf should do so at least 72 hours in advance. This will be a work session and public comment will not be received.

Contact: Dr. Margaret N. Roberts, Office of Policy and Public Affairs, Department of Education, P.O. Box 2120, 101 N. 14th St., 25th Floor, Richmond, VA 23219, telephone (804) 225-2540, FAX (804) 225-2524, e-mail mroberts@mail.vak12ed.edu.

DEPARTMENT OF ENVIRONMENTAL QUALITY

† January 27, 2003 - 7 p.m. -- Open Meeting

Patrick Henry High School, 31437 Hillman Highway, Auditorium, Glade Spring, Virginia. (Interpreter for the deaf provided upon request)

A public meeting on the development of a TMDL for aquatic life on Hutton, Hall/Byers and Cedar Creeks. The creeks are located in Washington County and are part of the Middle Fork Holston River Watershed. The public comment period ends on January 27, 2003.

Contact: Nancy T. Norton, Department of Environmental Quality, 355 Deadmore St., Abingdon, VA 24210, telephone (276) 676-4807, FAX (276) 676-4899, e-mail ntnorton@deq.state.va.us.

† January 28, 2003 - 7 p.m. -- Open Meeting

The Community and Hospitality Center, 52 Franklin Street, Rocky Mount, Virginia. (Interpreter for the deaf provided upon request)

The first public meeting on the development of a TMDL for approximately 37 miles of the Blackwater River in Franklin County. The public comment period closes on January 28, 2003.

Contact: Jason Hill, Department of Environmental Quality, 3019 Peters Creek Rd., Roanoke, VA 24019, telephone (540) 562-6724, e-mail jrhill@deq.state.va.us.

Ground Water Protection Steering Committee

January 7, 2003 - 9 a.m. -- Open Meeting

Department of Environmental Quality, 629 East Main Street, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A regular meeting of the Ground Water Protection Steering Committee, an interagency advisory committee formed to stimulate, strengthen and coordinate ground water protection activities in the Commonwealth. Additional information is available from the contact listed below.

Contact: Mary Ann Massie, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4042, e-mail mamassie@deq.state.va.us.

BOARD OF FUNERAL DIRECTORS AND EMBALMERS

† January 21, 2003 - 9 a.m. -- Public Hearing

Department of Health Professions, 6603 West Broad Street, 5th Floor, Conference Room 1, Richmond, Virginia. (Interpreter for the deaf provided upon request)

February 28, 2003 - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Board of Funeral Directors and Embalmers intends to amend regulations entitled: **18 VAC 65-20. Regulations of the Board of Funeral Directors and Embalmers.** The purpose of the proposed action is to comply with Chapter 270 of the 2002 Acts of the Assembly mandating the board to promulgate regulations to establish continuing education requirements for renewal of a license to ensure competency of the practitioners.

Statutory Authority: § 54.1-2400 of the Code of Virginia.

Public comments may be submitted until February 28, 2003, to Elizabeth Young, Executive Director, Board of Funeral Directors and Embalmers, 6603 West Broad Street, Richmond, VA 23230-1717.

Contact: Elaine J. Yeatts, Regulatory Coordinator, Department of Health Professions, 6603 W. Broad St., Richmond, VA 23230, telephone (804) 662-9918, FAX (804) 662-9114 or e-mail elaine.yeatts@dhp.state.va.us.

† January 28, 2003 - 9 a.m. -- Open Meeting

Department of Health Professions, 6603 West Broad Street, 5th Floor, Richmond, Virginia. (Interpreter for the deaf provided upon request)

The Board of Funeral Directors and Embalmers will convene to hear possible violations of the laws and regulations governing the practice of funeral service.

Contact: Elizabeth Young, Executive Director, Board of Funeral Directors and Embalmers, 6603 W. Broad St., 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-9907, FAX (804) 662-9523, (804) 662-7197/TTY ☎, e-mail elizabeth.young@dhp.state.va.us.

† **February 4, 2003 - 9 a.m.** -- Public Hearing
Department of Health Professions, 6603 West Broad Street, 5th Floor, Conference Room 1, Richmond, Virginia. ♿

February 28, 2003 - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Board of Funeral Directors and Embalmers intends to amend regulations entitled: **18 VAC 65-20. Regulations of the Board of Funeral Directors and Embalmers.** The purpose of the proposed action is to establish criteria for locating a branch establishment, to update requirements for a preparation room, and to provide greater assurance that all state and federal rules related to the provision of funeral services are being followed.

Statutory Authority: § 54.1-2400 of the Code of Virginia.

Public comments may be submitted until February 28, 2003, to Elizabeth Young, Executive Director, Board of Funeral Directors and Embalmers, 6603 West Broad Street, Richmond, VA 23230-1717.

Contact: Elaine J. Yeatts, Regulatory Coordinator, Department of Health Professions, 6603 W. Broad St., Richmond, VA 23230, telephone (804) 662-9918, FAX (804) 662-9114 or e-mail elaine.yeatts@dhp.state.va.us.

GEORGE MASON UNIVERSITY

January 30, 2003 - 9 a.m. -- Open Meeting
George Mason University, Mason Hall, Lower Level, Room D23, Fairfax, Virginia. ♿

A meeting of the Board of Visitors. Agenda to be announced.

Contact: Mary Roper, Secretary Pro Tem, George Mason University, MSN 3A1, 4400 University Dr., Fairfax, VA 22030, telephone (703) 993-8703, FAX (703) 993-8707, e-mail mroper@gmu.edu.

DEPARTMENT OF HEALTH

† **February 7, 2003 - 1 p.m.** -- Open Meeting
The Place at Innsbrook, 4036-C Cox Road, Glen Allen, Virginia. ♿

A quarterly meeting of the State Emergency Medical Services Advisory Board.

Contact: Gary R. Brown, Director, Department of Health, 1538 E. Parham Rd., Richmond, VA 23228, telephone (804) 371-3500, FAX (804) 371-3543, toll-free (800) 523-6019, e-mail gbrown@vdh.state.va.us.

STATE BOARD OF HEALTH

January 6, 2003 - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the State Board of Health intends to amend regulations entitled: **12 VAC 5-585. Biosolids Use Regulations.** The purpose of the proposed action is to adopt regulations requiring the payment of fees for the land application of biosolids within local jurisdictions with adopted ordinances providing for such monitoring to ensure compliance with applicable laws and regulations.

Statutory Authority: §§ 32.1-164.5 and 62.1-44.19:3 of the Code of Virginia.

Contact: C.M. Sawyer, Division Director, Division of Wastewater Engineering, Department of Health, 1500 E. Main St., Room 109, Richmond, VA 23219, telephone (804) 786-1755 or FAX (804) 786-5567.

NOTE: CHANGE IN MEETING DATE

January 31, 2003 - 9 a.m. -- Open Meeting
Department of Health, Main Street Station, 1500 East Main Street, 3rd Floor Conference Room, Richmond, Virginia. ♿

A general business and working meeting.

Contact: Rene Cabral-Daniels, Director, Office of Health Policy, Department of Health, 1500 E. Main St., Richmond, VA 23219, telephone (804) 786-3561.

February 3, 2003 - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the State Board of Health intends to amend regulations entitled: **12 VAC 5-550. Regulations Governing Vital Records.** The purpose of the proposed action is to amend the regulations to ensure the accurate, uniform, efficient and confidential administration of Virginia's system for maintaining vital records.

Statutory Authority: §§ 32.1-12 and 32.1-250 of the Code of Virginia.

Contact: Deborah Little-Bowser, State Registrar of Regulations, Department of Health, 1601 Willow Lawn Dr., Richmond, VA 23220, telephone (804) 662-6600, FAX (804) 786-0648, or e-mail dlittle@vdh.state.va.us.

DEPARTMENT OF HEALTH PROFESSIONS

February 21, 2003 - 9 a.m. -- Open Meeting
Department of Health Professions, 6603 West Broad Street, 5th Floor, Conference Room 3, Richmond, Virginia. ♿

Calendar of Events

A bimonthly meeting of the Intervention Program Committee for the Health Practitioners' Intervention Program.

Contact: Donna P. Whitney, Intervention Program Manager, Department of Health Professions, 6603 W. Broad St., 5th Floor, Richmond, VA 23230, telephone (804) 662-9424, FAX (804) 662-7358, e-mail donna.whitney@dhp.state.va.us.

* * * * *

† **January 7, 2003 - 8:30 a.m.** -- Public Hearing
Department of Health Professions, 6603 West Broad Street, Richmond, Virginia. ☎

February 28, 2003 - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Department of Health Professions intends to adopt regulations entitled: **18 VAC 76-30. Public Participation Guidelines.** The purpose of the proposed action is to provide guidelines for public participation in the process of developing and promulgating regulations to implement programs under the authority of the Director of the Department of Health Professions. These regulations are also intended to enable electronic communication, notification and comment in the development of regulations and to provide for involvement and advice from persons with specialized interest and knowledge.

Statutory Authority: § 2.2-4007 of the Code of Virginia.

Contact: Elaine J. Yeatts, Regulatory Coordinator, Department of Health Professions, 6603 W. Broad St., Richmond, VA 23230, telephone (804) 662-9918, FAX (804) 662-9114 or e-mail elaine.yeatts@dhp.state.va.us.

STATE COUNCIL OF HIGHER EDUCATION FOR VIRGINIA

† **January 15, 2003 - 2 p.m.** -- Open Meeting
James Monroe Building, 101 North 14th Street, 9th Floor, Richmond, Virginia.

Agenda materials will be available on the website at www.schev.edu approximately one week prior to the meeting. A public comment period will be allocated on the meeting agenda. To be scheduled, those interested in making public comment should contact the person listed below no later than 5 p.m. three business days prior to the meeting date. At the time of the request, the speaker's name, address and topic must be provided. Each speaker will be given up to three minutes to address SCHEV. Speakers are asked to submit a written copy of their remarks at the time of comment.

Contact: Lee Ann Rung, State Council of Higher Education for Virginia, 101 N. 14th St., Richmond, VA 23219, telephone (804) 225-2602, FAX (804) 371-7911, e-mail lrung@schev.edu.

BOARD OF HOUSING AND COMMUNITY DEVELOPMENT

January 21, 2003 - 10 a.m. -- Open Meeting
The Jackson Center, 501 North Second Street, Richmond, Virginia. ☎

A regular business meeting.

Contact: Steve Calhoun, Senior Policy Analyst, Department of Housing and Community Development, The Jackson Center, 501 N. 2nd St., Richmond, VA 23219-1321, telephone (804) 371-7015, FAX (804) 371-7090, (804) 371-7089/TTY ☎, e-mail scalhoun@dhcd.state.va.us.

* * * * *

January 31, 2003 - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Board of Housing and Community Development intends to amend regulations entitled: **13 VAC 5-21. Virginia Certification Standards.** The purpose of the proposed action is to (i) add the following definitions: "certificate," "guidance document," and "training"; (ii) delete the list of categories of BHCD certificates and the list of approved testing agencies and examinations; (iii) require the Department of Housing and Community Development to develop a training and certification guidance document that lists the approved testing agencies and examinations that meet nationally accepted standards for each type of certificate and the categories of board certificates; and (iv) establish circumstances and conditions under which a person may be issued a board provisional certificate.

Statutory Authority: § 36-137 of the Code of Virginia.

Contact: Steve Calhoun, Senior Policy Analyst, Department of Housing and Community Development, 501 N. 2nd St., Richmond, VA 23219, telephone (804) 371-7015, FAX (804) 371-7091, or e-mail scalhoun@dhcd.state.va.us.

* * * * *

January 31, 2003 - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Board of Housing and Community Development intends to amend regulations entitled: **13 VAC 5-31. Virginia Amusement Device Regulations.** The purpose of the proposed action is to (i) clarify that the provisions of the Uniform Statewide Building Code, including but not limited to all administrative procedures, shall apply in the administration and enforcement of this chapter and to amusement devices to the extent such provisions are not superseded by the provisions of this regulation and § 36-98.3 of the Code of Virginia; (ii) update the incorporated-by-reference standards to the latest editions of the American National Standards Institute (ANSI) for the regulation of passenger tramways and the American Society for Testing and Materials (ASTM) for the regulation of amusement devices; (iii) to regulate "go-karts" by the adoption of the new referenced standards; (iv) limit the

permit fee charged by the local building and department to operate an amusement device to a "maximum of \$150 for one site" when the inspection for obtaining a certificate of inspection for that device is conducted by a private inspector; and (v) allow appeals to the State Building Code Technical Review Board following a final determination by the local board of building code appeals.

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

Contact: Steve Calhoun, Senior Policy Analyst, Department of Housing and Community Development, 501 N. 2nd St., Richmond, VA 23219, telephone (804) 371-7015, FAX (804) 371-7091, or e-mail scalhoun@dhcd.state.va.us.

January 31, 2003 - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Board of Housing and Community Development intends to amend regulations entitled: **13 VAC 5-51. Virginia Statewide Fire Prevention Code Regulations**. The major substantive amendments to this regulation proposed by the Board of Housing and Community Development are to: (i) update the referenced model codes and standards; (ii) add that the official must notify the Department of Housing and Community Development (department) of the employment of assistants; (iii) change from three years to one and a half years the time allowed for enforcement personnel to become certified; (iv) add that officials and assistants may be held responsible for failure to discharge any duty required by law; (v) add that fire apparatus access roads be identified to the owner prior to the issuance of the building permit and (vi) amend the permit fees of the State Fire Marshal's office for the storage, use, sale or manufacture of explosives or blasting agents, and for the display of fireworks on state-owned property; (vii) add a fee for obtaining or renewing a background clearance card from the department; and (viii) amend the fee for obtaining or renewing a blaster certificate from the department.

Statutory Authority: § 37-97 of the Code of Virginia.

Contact: Steve Calhoun, Senior Policy Analyst, Department of Housing and Community Development, 501 N. 2nd St., Richmond, VA 23219, telephone (804) 371-7015, FAX (804) 371-7091, or e-mail scalhoun@dhcd.state.va.us.

January 31, 2003 - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Board of Housing and Community Development intends to repeal regulations entitled: **13 VAC 5-61. Virginia Uniform Statewide Building Code Regulations** and adopt regulations entitled: **13 VAC 5-62. Virginia Uniform Statewide Building Code Regulations**. The major substantive amendments to this regulation proposed by the Board of Housing and Community Development are to: (i) update the referenced model codes

and standards; (ii) add that the USBC applies to amusement devices; (iii) add that officials and assistants may be held responsible for failure to discharge any duty required by law; (iv) add that the official must notify the Department of Housing and Community Development (department) of the employment of assistants; (v) change from three years to one and a half years the time allowed for a person to become certified; (vi) add that fire apparatus access road requirements be identified to the owner prior to the issuance of a building permit; (vii) add that when the fuel source is changed the chimney be certified safe; (viii) amend the time limits for certain reviews and issuance of building permits; and (ix) add annual testing of certain plumbing devices.

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

Contact: Steve Calhoun, Senior Policy Analyst, Department of Housing and Community Development, 501 N. 2nd St., Richmond, VA 23219, telephone (804) 371-7015, FAX (804) 371-7091, or e-mail scalhoun@dhcd.state.va.us.

January 31, 2003 - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Board of Housing and Community Development intends to amend regulations entitled: **13 VAC 5-80. Virginia Standards for Individual and Regional Code Academies**. The purpose of the proposed action is to bring the Virginia Standards for Individual and Regional Code Academies into line with the other building- and fire-related regulations promulgated by the board. The only substantive change is the deletion of the maximum amount of levy funds that may be carried over to the next fiscal year for operation of the individual or regional, training academies.

Statutory Authority: § 36-137 of the Code of Virginia.

Contact: Steve Calhoun, Senior Policy Analyst, Department of Housing and Community Development, 501 N. 2nd St., Richmond, VA 23219, telephone (804) 371-7015, FAX (804) 371-7091, or e-mail scalhoun@dhcd.state.va.us.

January 31, 2003 - Public comments may be submitted until this date.


Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Board of Housing and Community Development intends to amend regulations entitled: **13 VAC 5-91. Virginia Industrialized Building Safety Regulations**. The purpose of the proposed action is to update the construction model codes and standards to the same editions of the International Code Council (ICC) and National Fire Protection Association (NFPA) codes and standards being proposed for the Uniform Statewide Building Code (USBC), and to increase the registration seal fee for an industrialized building from \$50 to \$75 per seal.

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

Calendar of Events


Contact: Steve Calhoun, Senior Policy Analyst, Department of Housing and Community Development, 501 N. 2nd St., Richmond, VA 23219, telephone (804) 371-7015, FAX (804) 371-7091, or e-mail scalhoun@dhcd.state.va.us.

STATE BOARD OF JUVENILE JUSTICE

† **January 8, 2003 - 9 a.m.** -- Open Meeting
Department of Juvenile Justice, 700 East Franklin Street, 4th Floor, Richmond, Virginia. 

Committees of the board will receive certification audit reports concerning residential and nonresidential programs. The full board meets at 10 a.m. to take certification action on audited programs and to receive comments from the public on proposed regulations governing juvenile record information and the Virginia Juvenile Justice Information System (6 VAC 35-160).


Contact: Donald Carignan, Regulatory Coordinator, State Board of Juvenile Justice, 700 Centre, 700 E. Franklin St., 4th Floor, Richmond, VA 23219, telephone (804) 371-0743, FAX (804) 371-0773, e-mail carigndr@djj.state.va.us.

† **January 8, 2003 - 9 a.m.** -- Open Meeting
Department of Juvenile Justice, 700 East Franklin Street, 4th Floor, Richmond, Virginia. 

The full board will meet to take certification action on audited programs.

Contact: Donald Carignan, Regulatory Coordinator, State Board of Juvenile Justice, 700 Centre, 700 E. Franklin St., 4th Floor, Richmond, VA 23219, telephone (804) 371-0743, FAX (804) 371-0773, e-mail carigndr@djj.state.va.us.

* * * * *

† **January 8, 2003 - 10 a.m.** - Public Hearing
Department of Juvenile Justice, 700 East Franklin Street, 4th Floor, Richmond, Virginia. 


February 28, 2003 - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the State Board of Juvenile Justice intends to adopt regulations entitled: **6 VAC 35-160. Regulations Governing Juvenile Record Information and the Virginia Juvenile Justice Information System.** The purpose of the proposed action is to establish standards governing the form and content of juvenile record information submitted to the Virginia Juvenile Justice Information System, ensuring the integrity of the data, protecting the confidentiality of the juvenile record information, and governing the dissemination of information in accordance with law.

Statutory Authority: §§ 16.1-223 and 66-10 of the Code of Virginia.

Contact: Donald Carignan, Regulatory Coordinator, Department of Juvenile Justice, 700 Centre, 700 E. Franklin St., 4th Floor, Richmond, VA 23219, telephone (804) 371-0743, FAX (804) 371-0773 or e-mail carigndr@djj.state.va.us.

STATE LIBRARY BOARD


January 17, 2003 - 8:15 a.m. -- Open Meeting
The Library of Virginia, 800 East Broad Street, Richmond, Virginia. 

Meetings of the board to discuss matters pertaining to The Library of Virginia and the board. Committees of the board will meet as follows:


8:15 a.m. - Public Library Development Committee, Orientation Room;
Publications and Educational Services Committee, Conference Room B;
Records Management Committee, Conference Room C.

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.


10:30 a.m. - Library Board, Conference Room 2M.

Contact: Jean H. Taylor, Executive Secretary to the Librarian, The Library of Virginia, 800 E. Broad St., Richmond, VA 23219-2000, telephone (804) 692-3535, FAX (804) 692-3594, (804) 692-3976/TTY , e-mail jtaylor@lva.lib.va.us.


COMMISSION ON LOCAL GOVERNMENT

January 13, 2003 - 10 a.m. -- Open Meeting
Pocahontas Building, 900 East Main Street, Suite 103, Richmond, Virginia.  (Interpreter for the deaf provided upon request)


A regular meeting to consider such matters as may be presented.

Contact: Barbara W. Bingham, Administrative Assistant, Commission on Local Government, Pocahontas Building, 900 E. Main St., 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.

VIRGINIA MANUFACTURED HOUSING BOARD

† **January 16, 2003 - 10 a.m.** -- Open Meeting
The Jackson Center, 501 North 2nd Street, Richmond, Virginia.  (Interpreter for the deaf provided upon request)

A regular meeting to review manufactured home license applications, address manufactured home consumer complaints, and administer the Manufactured Housing Licensing and Transaction Recovery Fund Regulations.

Contact: Curtis L. McIver, State Building Code Administrator, Virginia Manufactured Housing Board, The Jackson Center, 501 N. 2nd St., Richmond, VA 23219, telephone (804) 371-7160, FAX (804) 371-7092, (804) 371-7089/TTY , e-mail cmciver@dhcd.state.va.us.

MARINE RESOURCES COMMISSION

† **January 28, 2003 - 9:30 a.m.** -- Open Meeting
† **February 25, 2003 - 9:30 a.m.** -- Open Meeting
Marine Resources Commission, 2600 Washington Avenue,
4th Floor, Newport News, Virginia. (Interpreter for the deaf
provided upon request)

A monthly commission meeting.

Contact: Ginny Chappell, Commissioner's Secretary, Marine Resources Commission, 2600 Washington Ave., 1st Floor, Newport News, VA 23607, telephone (757) 247-2206, FAX (757) 247-2020, toll-free (800) 541-4646, (757) 247-2292/TTY, e-mail gchappell@mrc.state.va.us.

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

February 14, 2003 - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Department of Medical Assistance Services intends to adopt regulations entitled: **12 VAC 30-110. Eligibility and Appeals.** The purpose of the proposed action is to promulgate state regulations concerning which individuals are authorized to sign Medicaid applications to ensure that applications are only filed with the full knowledge and consent of the applicant or be someone legally acting on his behalf.

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

Contact: Pat Sykes, Policy Division, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 786-7958, FAX (804) 786-1680, or e-mail psykes@dmass.state.va.us.

BOARD OF MEDICINE

† **January 7, 2003 - 9 a.m.** -- Open Meeting
Department of Health Professions, 6603 West Broad Street,
5th Floor, Board Room 4, Richmond, Virginia.

The Advisory Board for Athletic Training will consider regulatory, legislative and disciplinary matters as may be presented on the agenda. Public comment will be received at the beginning of the meeting.

Contact: William L. Harp, M.D., Executive Director, Board of Medicine, Alcoa Bldg., 6603 W. Broad St., 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-9908, FAX (804) 662-9943, (804) 662-7197/TTY, e-mail william.harp@dhp.state.va.us.

† **January 8, 2003 - 9 a.m.** -- Open Meeting
Department of Health Professions, 6603 West Broad Street,
5th Floor, Board Room 4, Richmond, Virginia.

The Advisory Board on Acupuncture will consider regulatory, legislative and disciplinary matters as may be presented on the agenda. Public comment will be received at the beginning of the meeting.

Contact: William L. Harp, M.D., Executive Director, Board of Medicine, Alcoa Bldg., 6603 W. Broad St., 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-9908, FAX (804) 662-9943, (804) 662-7197/TTY, e-mail william.harp@dhp.state.va.us.

January 8, 2003 - 1:15 p.m. -- Public Hearing
Department of Health Professions, 6603 West Broad Street,
5th Floor, Board Room 4, Richmond, Virginia.

January 31, 2003 - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Board of Medicine intends to amend regulations entitled: **18 VAC 85-101. Regulations Governing the Licensure of Radiologic Technologists and Radiologic Technologists-Limited.** The purpose of the proposed action is to require persons training as a radiologic technologist-limited to gain practical experience in the radiologic procedures for which they are seeking licensure, and provisions that are established for a traineeship similar to that currently in effect for the radiologic technologists. In addition, the scope of practice for the limited licensee is further specified to exclude certain procedures for which they are not trained or tested. Regulations for endorsement are eliminated since the grandfathering provisions expired in 1999; persons licensed in other states who are seeking licensure in Virginia are licensed based on passage of the national examination. Finally, the provisions for the implementation of continuing education requirements are added.

Statutory Authority: § 54.1-2400 and Chapter 29 (§ 54.1-2900 et seq.) of Title 54.1 of the Code of Virginia..

Public comments may be submitted until January 31, 2003, to William L. Harp, M.D., Executive Director, Board of Medicine, 6603 West Broad Street, Richmond, VA 23230.

Contact: Elaine J. Yeatts, Regulatory Coordinator, Department of Health Professions, 6603 W. Broad St., Richmond, VA 23230, telephone (804) 662-9918, FAX (804) 662-9114 or e-mail elaine.yeatts@dhp.state.va.us.

January 31, 2003 - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Board of Medicine intends to amend regulations entitled: **18 VAC 85-20. Regulations Governing the Practice of Medicine, Osteopathy, Podiatry, and Chiropractic.** The purpose of the proposed action is to clarify the board policies on (i) payment of late fees for failure to renew a license; (ii) advertising ethics; and (iii) utilization of acupuncture as a treatment modality. Amendments will also reduce the regulatory burden for applicants discharged from the military, for foreign medical graduates seeking a limited license, and for practitioners seeking to return to reinstate or reactive a license.

Calendar of Events

Statutory Authority: Chapter 29 of Title 54.1 of the Code of Virginia.

Public comments may be submitted until January 31, 2003, to William L. Harp, M.D., Executive Director, Board of Medicine, 6603 West Broad Street, Richmond, VA 23230.

Contact: Elaine J. Yeatts, Regulatory Coordinator, Department of Health Professions, 6603 W. Broad St., Richmond, VA 23230, telephone (804) 662-9918, FAX (804) 662-9114 or e-mail elaine.yeatts@dhp.state.va.us.

* * * * *

† **February 6, 2003 - 8:15 a.m.** -- Public Hearing
Department of Health Professions, 6603 West Broad Street,
5th Floor, Board Room 2, Richmond, Virginia.

February 28, 2003 - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Board of Medicine intends to amend regulations entitled: **18 VAC 85-20. Regulations Governing the Practice of Medicine, Osteopathy, Podiatry, and Chiropractic; 18 VAC 85-40. Regulations Governing the Practice of Respiratory Care Practitioners; 18 VAC 85-80. Regulations Governing the Practice of Occupational Therapy; 18 VAC 85-101. Regulations Governing the Practice of Radiologic Technology; 18 VAC 85-110. Regulations Governing the Practice of Licensed Acupuncturists; and 18 VAC 85-120. Regulations Governing the Certification of Athletic Trainers.** The purpose of the proposed action is to establish criteria for registration of out-of-state practitioners to practice in Virginia on a voluntary basis.

Statutory Authority: § 54.1-2400 of the Code of Virginia..

Public comments may be submitted until February 28, 2003, to William L. Harp, M.D., Executive Director, Board of Medicine, 6603 West Broad Street, Richmond, VA 23230.

Contact: Elaine J. Yeatts, Regulatory Coordinator, Department of Health Professions, 6603 W. Broad St., Richmond, VA 23230, telephone (804) 662-9918, FAX (804) 662-9114 or e-mail elaine.yeatts@dhp.state.va.us.

Informal Conference Committee

January 15, 2003 - 8:45 a.m. -- Open Meeting
Department of Health Professions, 6603 West Broad Street,
Richmond, Virginia.

January 22, 2003 - 9:30 a.m. -- Open Meeting
Williamsburg Marriott, 50 Kingsmill Road, Williamsburg,
Virginia.

January 29, 2003 - 9:30 a.m. -- Open Meeting
Clarion Hotel, 3315 Ordway Drive, Roanoke, Virginia.

January 30, 2003 - 9 a.m. -- Open Meeting
February 27, 2003 - 9:15 a.m. -- Open Meeting
Holiday Inn Select, 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 the Code of Virginia. Public comment will not be received.

Contact: Peggy Sadler or Renee Dixon, Staff, Department of Health Professions, 6603 W. Broad St., Richmond, VA 23230, telephone (804) 662-7332, FAX (804) 662-9517, (804) 662-7197/TTY ☎, e-mail Peggy.Sadler@dhp.state.va.us.

STATE MENTAL HEALTH, MENTAL RETARDATION AND SUBSTANCE ABUSE SERVICES BOARD

January 17, 2003 - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the State Mental Health, Mental Retardation and Substance Abuse Services Board intends to amend regulations entitled: **12 VAC 35-11. Public Participation Guidelines.** The purpose of the proposed action is to update and revise the regulations to be consistent with the current law.

Statutory Authority: §§ 2.2-4007 and 37.1-10 of the Code of Virginia.

Contact: Wendy V. Brown, Policy Analyst, Department of Mental Health, Mental Retardation and Substance Abuse Services, P.O. Box 1797, Richmond, VA 23218-1797, telephone (804) 225-2252, FAX (804) 371-0092 or e-mail wbrown@dmhmrsas.state.va.us.

DEPARTMENT OF MENTAL HEALTH, MENTAL RETARDATION AND SUBSTANCE ABUSE SERVICES

† **December 30, 2002 - Noon** -- Open Meeting
Disability Resource Center, 409 Progress Street,
Fredericksburg, Virginia. ♿ (Interpreter for the deaf provided upon request)

The sixth meeting of the Housing Issues Team of the Olmstead Task Force.

Contact: Fran M. Sadler, Administrative Specialist, Department of Mental Health, Mental Retardation and Substance Abuse Services, P.O. Box 1797, Richmond, VA 23218, telephone (804) 786-8019, FAX (804) 786-9248, (804) 371-8977/TTY ☎, e-mail fsadler@dmhmrsas.state.va.us.

January 7, 2003 - 10 a.m. -- Open Meeting
Virginia Housing Development Authority, 601 South Belvidere Street, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

The fourth meeting of the Olmstead Task Force. Video conferencing will be available from the Central Virginia Training Center, Northern Virginia Training Center, and Southwestern Virginia Mental Health Institute.

Contact: Fran M. Sadler, Administrative Specialist, Department of Mental Health, Mental Retardation and Substance Abuse Services, P.O. Box 1797, Richmond, VA 23218, telephone (804) 786-8019, FAX (804) 786-9248, (804) 371-8977/TTY ☎, e-mail fsadler@dmhmrsas.state.va.us.

† **January 9, 2003 - 10 a.m.** -- Open Meeting
Community Services Board, Region 10, 2000 Michie Drive, Charlottesville, Virginia. ♿ (Interpreter for the deaf provided upon request)

The fifth meeting of the Accountability Issues Team of the Olmstead Task Force will be held in the Meadowcreek Center.

Contact: Fran M. Sadler, Administrative Specialist, Department of Mental Health, Mental Retardation and Substance Abuse Services, P.O. Box 1797, Richmond, VA 23218, telephone (804) 786-8019, FAX (804) 786-9248, (804) 371-8977/TTY ☎, e-mail fsadler@dmhmrsas.state.va.us.

† **January 10, 2003 - 11 a.m.** -- Open Meeting
Department of Medical Assistance Services, 600 East Broad Street, 13th Floor, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

The fifth meeting of the Waivers Issues Team of the Olmstead Task Force.

Contact: Fran M. Sadler, Administrative Specialist, Department of Mental Health, Mental Retardation and Substance Abuse Services, P.O. Box 1797, Richmond, VA 23218, telephone (804) 786-8019, FAX (804) 786-9248, (804) 371-8977/TTY ☎, e-mail fsadler@dmhmrsas.state.va.us.

STATE MILK COMMISSION

† **February 12, 2003 - 10:30 p.m.** -- Open Meeting
Compensation Board, 200 North 9th Street, 9th Street Office Building, 10th Floor Conference Room, Richmond, Virginia

A regular meeting to consider industry issues, distributor licensing, base transfers, and reports from staff. The commission offers anyone in attendance an opportunity to speak at the conclusion of the agenda. Those persons requiring special accommodations should notify the agency meeting contact at least five working days prior to the meeting date so that suitable arrangements can be made.

Contact: Edward C. Wilson, Jr., Deputy Administrator, State Milk Commission, Ninth St. Office Bldg., 202 N. Ninth St., Room 915, Richmond, VA 23219, telephone (804) 786-2013, FAX (804) 786-3779, e-mail ewilson@smc.state.va.us.

MOTOR VEHICLE DEALER BOARD

† **January 13, 2003 - 8:30 a.m.** -- Open Meeting
Department of Motor Vehicles, 2300 West Broad Street, Room 702, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

Committees will meet as follows:

- Dealer Practices Committee - 8:30 a.m.
- Licensing Committee - Immediately following Dealer Practices Committee
- Advertising Committee - 9:30 a.m. or five minutes after Licensing Committee.
- Transaction Recovery Fund Committee - Immediately following Advertising Committee
- Franchise Law Committee - To be scheduled as needed

The full board will meet at 10:30 a.m. or five to 45 minutes following the Transaction Recovery Fund Committee. Meetings may begin later, but not earlier than scheduled. Meeting end times are approximate. Any person who needs any accommodation in order to participate in the meeting should contact the board at least 10 days before the meeting so that suitable arrangements can be made.

Contact: Alice R. Weedon, Administrative Assistant, Motor Vehicle Dealer Board, 2201 W. Broad St., Suite 104, Richmond, VA 23220, telephone (804) 367-1100, FAX (804) 367-1053, toll-free (877) 270-0203, e-mail dboard@mva.state.va.us.

VIRGINIA MUSEUM OF FINE ARTS

January 7, 2003 - 8 a.m. -- Open Meeting
February 4, 2003 - 8 a.m. -- Open Meeting
Virginia Museum of Fine Arts, 2800 Grove Avenue, Main Lobby Conference Room, Richmond, Virginia. ♿

A monthly meeting for staff to update the Executive Committee. Public comment will not be received.

Contact: Suzanne Broyles, Secretary of the Museum, Virginia Museum of Fine Arts, 2800 Grove Ave., Richmond, Virginia 23221, telephone (804) 340-1503, FAX (804) 340-1502, (804) 340-1401/TTY ☎, e-mail sbroyles@vmfa.state.va.us.

BOARD OF NURSING

January 27, 2003 - 9 a.m. -- Open Meeting
January 29, 2003 - 9 a.m. -- Open Meeting
January 30, 2003 - 9 a.m. -- Open Meeting
† **March 17, 2003 - 9 a.m.** -- Open Meeting
† **March 19, 2003 - 9 a.m.** -- Open Meeting
† **March 20, 2003 - 9 a.m.** -- Open Meeting
Department of Health Professions, 6603 West Broad Street, 5th Floor, Conference Room 2, Richmond, Virginia. ♿

A panel of the board will conduct formal hearings with licensees or certificate holders. Public comment will not be received.

Contact: Nancy K. Durrett, R.N., Executive Director, Board of Nursing, 6603 W. Broad St., 5th Floor, Richmond, VA 23230, telephone (804) 662-9909, FAX (804) 662-9512, (804) 662-7197/TTY ☎, e-mail nursebd@dhp.state.va.us.

Calendar of Events

† **January 28, 2003 - 9 a.m.** -- Open Meeting
Department of Health Professions, 6603 West Broad Street,
5th Floor, Conference Room 2, Richmond, Virginia. ♿

A general business meeting, including consideration of regulations and disciplinary matters as may be presented on the agenda. Public comment will be received at the open forum scheduled at 11 a.m.

Contact: Nancy K. Durrett, R.N., Executive Director, Board of Nursing, Alcoa Bldg., 6603 W. Broad St., 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-9909, FAX (804) 662-9512, (804) 662-7197/TTY ☎, e-mail nancy.durrett@dhp.state.va.us.

† **January 28, 2003 - 1:30 p.m.** -- Public Hearing
Department of Health Professions, 6603 West Broad Street,
5th Floor, Conference Room 2, Richmond, Virginia. ♿

February 28, 2003 - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Board of Nursing intends to amend regulations entitled: **18 VAC 90-20. Regulations Governing the Practice of Nursing.** The purpose of the proposed action is to replace emergency regulations for voluntary practice by out-of-state nurses.

Statutory Authority: § 54.1-2400 of the Code of Virginia.

Public comments may be submitted until February 28, 2003, to Jay Douglas, R.N., Deputy Executive Director, Board of Nursing, 6603 West Broad Street, Richmond, VA 23230.

Contact: Elaine J. Yeatts, Regulatory Coordinator, Department of Health Professions, 6603 W. Broad St., Richmond, VA 23230, telephone (804) 662-9918, FAX (804) 662-9114 or e-mail elaine.yeatts@dhp.state.va.us.

BOARD OF NURSING HOME ADMINISTRATORS

January 15, 2003 - 9:30 a.m. -- Public Hearing
Department of Health Professions, 6603 West Broad Street,
Richmond, Virginia.

January 31, 2003 - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Board of Nursing Home Administrators intends to amend regulations entitled: **18 VAC 95-20. Regulations Governing the Practice of Nursing Home Administrators.** The purpose of the proposed action is to allow additional hours of credit in an administrator in training program for persons with certain educational or professional credentials, to clarify certain sections and to enable a trainee to work in a practicum or administrator-in-training program outside of Virginia in a licensed nursing care facility under the supervision of a nursing home administrator licensed in that jurisdiction.

Statutory Authority: § 54.1-2400 of the Code of Virginia.

Public comments may be submitted until January 31, 2003, to Sandra K. Reen, Executive Director, Board of Nursing Home Administrators, 6603 West Broad Street, Richmond, VA 23230.

Contact: Elaine J. Yeatts, Regulatory Coordinator, Department of Health Professions, 6603 W. Broad St., Richmond, VA 23230, telephone (804) 662-9918, FAX (804) 662-9114 or e-mail elaine.yeatts@dhp.state.va.us.

† **January 15, 2003 - 1 p.m.** -- Open Meeting
Department of Health Professions, 6603 West Broad Street,
5th Floor, Conference Room 1, Richmond, Virginia. ♿

The board will hold a formal hearing. There will not be a public comment period.

Contact: Cheri Emma-Leigh, Operations Manager, Board of Nursing Home Administrators, 6603 W. Broad St., 5th Floor, Richmond, VA 23230, telephone (804) 662-9906, FAX (804) 662-7246, (804) 662-7197/TTY ☎, e-mail CEmma-Leigh@dhp.state.va.us.

BOARD FOR OPTICIANS

† **January 10, 2003 - 9:30 a.m.** -- Open Meeting
Department of Professional and Occupational Regulation,
3600 West Broad Street, Richmond, Virginia. ♿

A general business meeting including adoption of emergency regulations.

Contact: William H. Ferguson, II, Assistant Director, Board for Opticians, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8590, FAX (804) 367-6295, (804) 367-9753/TTY ☎, e-mail opticians@dpor.state.va.us.

BOARD OF OPTOMETRY

† **January 24, 2003 - Noon** -- Public Hearing
Department of Health Professions, 6603 West Broad Street,
5th Floor, Conference Room 3, Richmond, Virginia. ♿

February 28, 2003 - Public comments may be submitted until this date.


Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Board of Optometry intends to amend regulations entitled: **18 VAC 105-20. Regulations Governing the Practice of Optometry.** The purpose of the proposed action is to replace emergency regulations for voluntary practice by out-of-state optometrists.

Statutory Authority: §§ 54.1-2400 and 54.1-3202 of the Code of Virginia.

Public comments may be submitted until February 28, 2003, to Elizabeth A. Carter, Ph.D., Executive Director, Board of Optometry, 6603 West Broad Street, Richmond, VA 23230.

Contact: Elaine J. Yeatts, Regulatory Coordinator, Department of Health Professions, 6603 W. Broad St., Richmond, VA 23230, telephone (804) 662-9918, FAX (804) 662-9114 or e-mail elaine.yeatts@dhp.state.va.us.


BOARD OF PHARMACY

† **January 9, 2003 - 9 a.m.** -- Open Meeting
† **January 24, 2003 - 9 a.m.** -- Open Meeting
Department of Health Professions, 6603 West Broad Street,
5th Floor, Richmond, Virginia. 

The Special Conference Committee will discuss disciplinary matters. Public comments will not be received. The January 9 meeting will be held in Conference Room 3. The January 24 meeting will be held in Conference Room 4.

Contact: Elizabeth Scott Russell, Executive Director, Board of Pharmacy, 6603 W. Broad St., 5th Floor, Richmond, VA 23230, telephone (804) 662-9911, FAX (804) 662-9313.

* * * * *

† **February 10, 2003 - 9 a.m.** -- Public Hearing
Department of Health Professions, 6603 West Broad Street,
5th Floor, Conference Room 2, Richmond, Virginia. 


February 28, 2003 - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Board of Pharmacy intends to amend regulations entitled: **18 VAC 110-20. Regulations Governing the Practice of Pharmacy.** The purpose of the proposed action is to replace emergency regulations for voluntary practice by out-of-state pharmacists.


Statutory Authority: § 54.1-2400 of the Code of Virginia.

Public comments may be submitted until February 28, 2003, to Elizabeth Scott Russell, Executive Director, Board of Pharmacy, 6603 West Broad Street, Richmond, VA 23230.


Contact: Elaine J. Yeatts, Regulatory Coordinator, Department of Health Professions, 6603 W. Broad St., Richmond, VA 23230, telephone (804) 662-9918, FAX (804) 662-9114 or e-mail elaine.yeatts@dhp.state.va.us.

† **February 10, 2003 - 9:15 a.m.** -- Open Meeting
Department of Health Professions, 6603 West Broad Street,
5th Floor, Conference Room 2, Richmond, Virginia. 

A general business meeting, including consideration of regulatory, legislative, and disciplinary matters as may be presented on the agenda. Public comment will be received at the beginning of the meeting following adoption of the agenda.

Contact: Elizabeth Scott Russell, RPh, Executive Director, Board of Pharmacy, Alcoa Bldg., 6603 W. Broad St., 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-9911, FAX (804) 662-9313, (804) 662-7197/TTY , e-mail scottirussell@dhp.state.va.us.


VIRGINIA PORT AUTHORITY

† **January 28, 2003 - 9:30 a.m.** -- Open Meeting
Virginia Port Authority, 600 World Trade Center, Norfolk,
Virginia.  (Interpreter for the deaf provided upon request)

The meeting will begin at 9:30 a.m. and the board will immediately enter into a closed session conducted pursuant to Virginia law. At 11 a.m. the board will reconvene in open session. Public comment, if any, will be received at the open session toward the end of the meeting.

Contact: Robert R. Merhige, III, Deputy Executive Director and General Counsel, Virginia Port Authority, 600 World Trade Center, Norfolk, VA 23510, telephone (757) 683-8000, FAX (757) 683-2166, toll-free (800) 446-8098, e-mail dmcnulty@portofvirginia.com.


VIRGINIA PUBLIC BROADCASTING BOARD

† **January 7, 2003 - 10 a.m.** -- Open Meeting
State Capitol, House Room 2, Richmond, Virginia. 
(Interpreter for the deaf provided upon request)


A regular meeting.

Contact: James Roberts, Deputy Secretary of Administration, Virginia Public Broadcasting Board, 202 N. 9th St., Richmond, VA 23219, telephone (804) 786-1201, FAX (804) 371-0038, e-mail jroberts@gov.state.va.us.


REAL ESTATE APPRAISER BOARD

† **February 18, 2003 - 10 a.m.** -- Open Meeting
Department of Professional and Occupational Regulation,
3600 West Broad Street, Richmond, Virginia. 


A meeting to conduct board business.


Contact: Christine Martine, Assistant Director, Real Estate Appraiser Board, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8552, FAX (804) 367-2475, (804) 367-9753/TTY , e-mail reappraisers@dpor.state.va.us.

REAL ESTATE BOARD


† **January 9, 2003 - 9 a.m.** -- Open Meeting
Department of Professional and Occupational Regulation,
3600 West Broad Street, Richmond, Virginia. 

A meeting to review Requests for Proposals relating to the Common Interest Community Management Information Fund.


Contact: Christine Martine, Assistant Director, Real Estate Board, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8552, FAX (804) 367-2475, (804) 367-9753/TTY , e-mail reboard@dpor.state.va.us.

† **January 15, 2003 - 9 a.m.** -- Open Meeting
Department of Professional and Occupational Regulation,
3600 West Broad Street, Richmond, Virginia. 


A meeting to conduct Fair Housing and Enforcement Training.


Contact: Christine Martine, Assistant Director, Real Estate Board, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8552, FAX (804) 367-2475, (804) 367-9753/TTY , e-mail REBoard@dpor.state.va.us.

Calendar of Events


† **January 15, 2003 - 4 p.m.** -- Open Meeting
Department of Professional and Occupational Regulation,
3600 West Broad Street, Richmond, Virginia. 


A meeting of the Education Committee to review education applications.

Contact: Christine Martine, Assistant Director, Real Estate Board, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8552, FAX (804) 367-2475, (804) 367-9753/TTY , e-mail REBoard@dpor.state.va.us.


† **January 16, 2003 - 8:30 a.m.** -- Open Meeting
Department of Professional and Occupational Regulation,
3600 West Broad Street, Richmond, Virginia. 

A meeting to review fair housing cases.


Contact: Christine Martine, Assistant Director, Real Estate Board, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8552, FAX (804) 367-2475, (804) 367-9753/TTY , e-mail REBoard@dpor.state.va.us.

† **January 16, 2003 - 9 a.m.** -- Open Meeting
Department of Professional and Occupational Regulation,
3600 West Broad Street, Richmond, Virginia. 


A meeting to conduct board business.

Contact: Christine Martine, Assistant Director, Real Estate Board, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8552, FAX (804) 367-2475, (804) 367-9753/TTY , e-mail REBoard@dpor.state.va.us.

February 19, 2003 - 9 a.m. -- Open Meeting

February 20, 2003 - 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 meeting to conduct informal fact finding conferences. 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: Debbie Amaker, Legal Assistant, Real Estate Board, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8582, FAX (804) 367-0194, (804) 367-9753/TTY , e-mail amaker@dpor.state.va.us.

BOARD OF REHABILITATIVE SERVICES

January 23, 2003 - 10 a.m. -- Open Meeting
Department of Rehabilitative Services, 8004 Franklin Farms Drive, Richmond, Virginia.  (Interpreter for the deaf provided upon request)


A meeting to conduct quarterly business of the board.

Contact: Barbara G. Tyson, Administrative Staff Specialist, Department of Rehabilitative Services, 8004 Franklin Farms Dr., Richmond, VA 23288, telephone (804) 662-7010, FAX (804) 662-7644, toll-free (800) 552-5019, (804) 464-9950/TTY , e-mail tysonbg@drs.state.va.us.

VIRGINIA RESOURCES AUTHORITY

NOTE: CHANGE IN MEETING TIME

January 14, 2003 - 9 a.m. -- Open Meeting

† **February 11, 2003 - 9 a.m.** -- Open Meeting
Virginia Resources Authority, 707 East Main Street, 2nd Floor Conference Room, Richmond, Virginia. 

A regular meeting of the Board of Directors to (i) review and, if appropriate, approve the minutes from the most recent monthly meeting; (ii) review the authority's operations for the prior month; (iii) review applications for loans submitted to the authority for approval; (iv) consider loan commitments for approval and ratification under its various programs; (v) approve the issuance of bonds; (vi) review the results of bond sales; and (vii) consider such other matters and take such other actions as it may deem appropriate. Various committees of the Board of Directors may also meet immediately before or after the regular meeting and consider matters within their purview. The planned agenda of the meeting and any committee meetings will be available at the offices of the authority one week prior to the date of the meeting. Any person who needs any accommodation in order to participate in the meeting should contact the authority at least 10 days before the meeting so that suitable arrangements can be made.

Contact: Bonnie R. C. McRae, Executive Assistant, Virginia Resources Authority, 707 E. Main St., Richmond, VA 23219, telephone (804) 644-3100, FAX (804) 644-3109, e-mail bmcrac@vra.state.va.us.

STATE BOARD OF SOCIAL SERVICES

January 31, 2003 - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the State Board of Social Services intends to consider repealing regulations entitled: **22 VAC 40-220. Agency Placement Adoptions-Guiding Principles.** The purpose of the proposed action is to repeal the regulation as the state and federal laws reflected in the regulation are no longer in effect.

Statutory Authority: §§ 63.1-25 and 63.1-56 of the Code of Virginia.


Contact: Karin Clark, Adoption Program Consultant, Department of Social Services, 730 E. Broad St., Richmond, VA 23219, telephone (804) 692-1251, FAX (804) 692-1284, or e-mail kac900@dss.state.va.us.

DEPARTMENT OF SOCIAL SERVICES

† **January 17, 2003 - 10 a.m.** -- Open Meeting
Piper Rudnick, 1775 Wiehle Avenue, Suite 400, Reston, Virginia


A meeting of the Virginia Commission on National and Community Services to discuss issues regarding the commission's federal mandate from the Governor, the Corporation for National and Community Service, and the Commission Chair.

Contact: Felicia Jones, Administrative Assistant, Department of Social Services, 730 E. Broad St., 8th Floor, Richmond, VA 23219, telephone (804) 692-1998, FAX (804) 692-1999, toll-free (800) 638-3839.

† **March 20, 2003 - 1:30 p.m.** -- Open Meeting
Department of Social Services, 730 East Broad Street, Richmond, Virginia. 

New board member orientation for the Family and Children's Trust Fund Board.


Contact: Nan McKenney, Executive Director, Department of Social Services, 760 E. Broad St., 8th Floor, Richmond, VA 23219, telephone (804) 692-1823, FAX (804) 692-1869, e-mail fct900@dss.state.va.us.

† **March 21, 2003 - 10 a.m.** -- Open Meeting
Department of Social Services, 730 East Broad Street, Richmond, Virginia. 


A regular meeting of the Family and Children's Trust Fund Board.

Contact: Nan McKenney, Executive Director, Department of Social Services, 760 E. Broad Street, 8th Floor, Richmond, VA 23219, telephone (804) 692-1823, FAX (804) 692-1869, e-mail fct900@dss.state.va.us.

BOARD FOR PROFESSIONAL SOIL SCIENTISTS AND WETLAND PROFESSIONALS

† **January 8, 2003 - 10 a.m.** -- Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia. 

A meeting to conduct board business.

Contact: Mark N. Courtney, Assistant Director, Board for Professional Soil Scientists and Wetland Professionals, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8514, FAX (804) 367-2475, (804) 367-9753/TTY , e-mail soilscientist@dpor.state.va.us.

DEPARTMENT OF TECHNOLOGY PLANNING

Virginia Research and Technology Advisory Commission


March 10, 2003 - 2 p.m. -- Open Meeting
Washington, DC; location to be determined.

A quarterly meeting to coincide with the Virginia Biotechnology Summit.

Contact: K. C. Das, Department of Technology Planning, 110 S. 7th Street, Suite 135, Richmond, VA 23219, telephone (804) 371-5599, FAX (804) 371-2795, e-mail kcdas@dit.state.va.us.

Virginia Geographic Information Network Advisory Board

January 2, 2003 - 1:30 p.m. -- Open Meeting

March 6, 2003 - 1:30 p.m. -- Open Meeting
Richmond Plaza Building, 110 South 7th Street, 3rd Floor Training Room, Richmond, Virginia. 

A regular meeting.

Contact: Bill Shinar, VGIN Coordinator, Department of Technology Planning, 110 S. 7th St., Suite 135, Richmond, VA 23219, telephone (804) 786-8175, FAX (804) 371-2795, e-mail bshinar@vgin.state.va.us.

COMMONWEALTH TRANSPORTATION BOARD


January 17, 2003 - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Commonwealth Transportation Board intends to amend regulations entitled: **24 VAC 30-71. Minimum Standards of Entrances to State Highways.** The purpose of the proposed action is to update regulatory content and documents referenced, and incorporate suggested changes pursuant to the most recent periodic review.


Statutory Authority: §§ 33.1-12, 33.1-197 and 33.1-198 of the Code of Virginia.

Contact: Steve D. Edwards, Transportation Engineer Senior, Mobility Engineer Senior, Department of Transportation, 1100 Bank St., Richmond, VA 23219, telephone (804) 786-0121, FAX (804) 225-2448 or e-mail Steve.Edwards@VirginiaDOT.org.


VIRGINIA WAR MEMORIAL FOUNDATION

January 7, 2003 - Noon -- Open Meeting
Virginia War Memorial, 621 South Belvidere Street, Richmond, Virginia.  (Interpreter for the deaf provided upon request)

A regular meeting of the Board of Trustees. Public comments will be heard.

Contact: Sandra H. Williams, Associate Director, Virginia War Memorial Foundation, 621 S. Belvidere St., Richmond, VA 23220, telephone (804) 786-2060, FAX (804) 786-6652, (804) 786-6152/TTY , e-mail swilliams@vawarmemorial.state.va.us.


STATE WATER CONTROL BOARD

January 7, 2003 - 7:30 p.m. -- Public Hearing
Department of Environmental Quality, Tidewater Regional Office, 5636 Southern Boulevard, Virginia Beach, Virginia. 

A public hearing to receive comments on the proposed modification of the Newport News Shipbuilding VPDES permit. The public comment period on the proposed modification closes on January 31, 2003.

Calendar of Events

Contact: Mark F. Bushing, State Water Control Board, 5636 Southern Blvd., Virginia Beach, VA 23462, telephone (757) 518-2148, e-mail mfbushing@deq.state.va.us.

January 22, 2003 - 1 p.m. -- Open Meeting
Department of Environmental Quality, Tidewater Regional Office, 5636 Southern Boulevard, Virginia Beach, Virginia. 

A meeting to receive comments on the State Water Control Board's notice of intended regulatory action to adopt a regulation concerning financial assurance of tidal dredging project mitigation.

Contact: Ellen Gilinsky, State Water Control Board, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4375, e-mail egilinsky@deq.state.va.us.

INDEPENDENT

STATE LOTTERY BOARD

February 14, 2003 - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the State Lottery Board intends to amend regulations entitled: **11 VAC 5-10. Guidelines for Public Participation in Regulation Development and Promulgation.** The purpose of the proposed action is to delete nonessential language, to simplify the regulation, and to add a section regarding the periodic review of the regulations.

Statutory Authority: §§ 2.2-4007 and 58.1-4007 of the Code of Virginia

Public comments may be submitted until 5 p.m. on February 14, 2003.

Contact: Barbara L. Robertson, Board, Legislative and Regulatory Coordinator, State Lottery Department, 900 E. Main St., Richmond, VA 23219, telephone (804) 692-7105, FAX (804) 692-7775, or e-mail: brobertson@valottery.state.va.us.

February 14, 2003 - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the State Lottery Board intends to amend regulations entitled: **11 VAC 5-20. Administration Regulations.** The purpose of the proposed action is to simplify and clarify the regulations and eliminate redundant and unnecessary language. Amendments under consideration include, but are not limited to (i) clarifying definitions, (ii) providing for winner participation in press conferences; (iii) clarifying licensing appeal procedures; (iv) transferring specific, detailed procurement procedures from regulations to department manuals which will be incorporated by reference; and (v) reducing unnecessary or duplicative regulations regarding board and department

operations, specifically, committee membership, election of officers, percentage allocation of lottery revenue, audit schedules and depositories for ticket transfer.

Statutory Authority: § 58.1-4007 of the Code of Virginia

Public comments may be submitted until 5 p.m. on February 14, 2003.

Contact: Barbara L. Robertson, Board, Legislative and Regulatory Coordinator, State Lottery Department, 900 E. Main St., Richmond, VA 23219, telephone (804) 692-7105, FAX (804) 692-7775, or e-mail: brobertson@valottery.state.va.us.

February 14, 2003 - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the State Lottery Board intends to repeal regulations entitled: **11 VAC 5-30. Instant Game Regulations.** The purpose of the proposed action is to reorganize current lottery regulations by combining instant licensing and game provisions with those for on-line games and incorporate all in new licensing and lottery game regulations.

Statutory Authority: § 58.1-4007 of the Code of Virginia

Public comments may be submitted until 5 p.m. on February 14, 2003.

Contact: Barbara L. Robertson, Board, Legislative and Regulatory Coordinator, State Lottery Department, 900 E. Main St., Richmond, VA 23219, telephone (804) 692-7105, FAX (804) 692-7775, or e-mail: brobertson@valottery.state.va.us.

March 5, 2003 - 9:30 a.m. -- Public Hearing
Lottery Headquarters, 900 East Main Street, Richmond, Virginia.

February 14, 2003 - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the State Lottery Board intends to adopt regulations entitled: **11 VAC 5-31. Licensing Regulations.** The purpose of the proposed action is to create a chapter containing lottery retailer licensing requirements, including eligibility requirements, application procedure, bonding and bank account requirements, licensing terms and fees, retailer compensation, retailer standards of conduct, license denial or revocation, and audit of records.

Statutory Authority: § 58.1-4007 of the Code of Virginia

Public comments may be submitted until 5 p.m. on February 14, 2003.

Contact: Barbara L. Robertson, Board, Legislative and Regulatory Coordinator, State Lottery Department, 900 E.

Main St., Richmond, VA 23219, telephone (804) 692-7105,
FAX (804) 692-7775, or e-mail
brobertson@valottery.state.va.us.

February 14, 2003 - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the State Lottery Board intends to repeal regulations entitled: **11 VAC 5-40. On-Line Game Regulations**. The purpose of the proposed action is to reorganize current lottery regulations by combining on-line licensing and game provisions with those for instant games and incorporate all in new licensing and lottery game regulations.

Statutory Authority: § 58.1-4007 of the Code of Virginia

Public comments may be submitted until 5 p.m. on February 14, 2003.

Contact: Barbara L. Robertson, Board, Legislative and Regulatory Coordinator, State Lottery Department, 900 E. Main St., Richmond, VA 23219, telephone (804) 692-7105, FAX (804) 692-7775, or e-mail: brobertson@valottery.state.va.us.

February 14, 2003 - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the State Lottery Board intends to adopt regulations entitled: **11 VAC 5-41. Lottery Game Regulations**. The purpose of the proposed action is to create a new chapter containing procedures specifically related to all types of lottery games, including operational parameters for the conduct of games, validation requirements and payment of prizes.

Statutory Authority: § 58.1-4007 of the Code of Virginia


Public comments may be submitted until 5 p.m. on February 14, 2003.

Contact: Barbara L. Robertson, Board, Legislative and Regulatory Coordinator, State Lottery Department, 900 E. Main St., Richmond, VA 23219, telephone (804) 692-7105, FAX (804) 692-7775, or e-mail: brobertson@valottery.state.va.us.

VIRGINIA RETIREMENT SYSTEM

January 23, 2003 - 12:15 p.m. -- Open Meeting

February 20, 2003 - 12:15 p.m. -- Open Meeting

VRS Investment Department, Bank of America Building, 1111 East Main Street, 4th Floor, Richmond, Virginia. 


A regular meeting of the Corporate Governance Task Force.

Contact: Phyllis Henderson, Investment Department Administrative Assistant, Virginia Retirement System, 1111 E.


Main St., Richmond, VA 23219, telephone (804) 697-6675,
FAX (804) 786-1541, toll-free (888) 827-3847, e-mail
phenderson@vrs.state.va.us.

February 19, 2003 - 11 a.m. -- Open Meeting


† **March 19, 2003 - 11 a.m.** -- Open Meeting

Bank of America Building, 1111 East Main Street, 4th Floor Conference Room, Richmond, Virginia. 

A regular meeting of the Investment Advisory Committee. No public comment will be received at the meeting.

Contact: Phyllis Henderson, Virginia Retirement System, 1111 E. Main St., Richmond, VA 23219, telephone (804) 649-8059, FAX (804) 786-1541, toll-free (888) 827-3847, (804) 344-3190/TTY , e-mail phenderson@vrs.state.va.us.

February 19, 2003 - 2:30 p.m. -- Open Meeting


VRS Headquarters, 1200 East Main Street, Richmond, Virginia. 

The following committees will meet:

2:30 p.m. - Administration and Personnel Committee


3 p.m. - Benefits and Actuarial Committee

4 p.m. - Audit and Compliance


Contact: Darla K. Glazier, Office Manager, Virginia Retirement System, P.O. Box 2500, Richmond, VA 23218, telephone (804) 649-8059, FAX (804) 786-1541, toll-free (888) 827-3847, (804) 344-3190/TTY , e-mail dkestner@vrs.state.va.us.

February 20, 2003 - 9 a.m. -- Open Meeting

† **March 20, 2003 - 9 a.m.** -- Open Meeting

VRS Headquarters, 1200 East Main Street, Richmond, Virginia. 


A regular meeting of the Board of Trustees. No public comment will be received.

Contact: Darla K. Glazier, Office Manager, Virginia Retirement System, P.O. Box 2500, Richmond, VA 23218, telephone (804) 649-8059, FAX (804) 786-1541, toll-free (888) 827-3847, (804) 344-3190/TTY , e-mail dkestner@vrs.state.va.us.

LEGISLATIVE

LEGISLATIVE TRANSITION TASK FORCE OF THE VIRGINIA ELECTRICAL UTILITY RESTRUCTURING ACT

† **January 7, 2003 - 1 p.m.** -- Open Meeting

General Assembly Building, 9th and Broad Streets, Senate Room A, Richmond, Virginia. 

A regular meeting. Individuals requiring interpreter services should contact Senate Committee Operations. Questions regarding the meeting should be referred to Frank Munyan or Maureen Stinger, Staff Attorneys, Division of Legislative Services, at (804) 786-3591.

Calendar of Events

Contact: Thomas C. Gilman, Senate Committee Operations,
P.O. Box 396, Richmond, VA 23218, telephone (804) 698-
7450.

CHRONOLOGICAL LIST

OPEN MEETINGS

December 30

- † Mental Health, Mental Retardation and Substance Abuse Services, Department of

January 2, 2003

- Technology Planning, Department of
- Virginia Geographical Information Network Advisory Board

January 6

- Education, Board of

January 7

- † Compensation Board
- † Electrical Utilities Restructuring Act, Legislative Transition Task Force of the Virginia
- Environmental Quality, Department of
- Ground Water Protection Steering Committee
- † Medicine, Board of
- Advisory Board on Athletic Training
- Mental Health, Mental Retardation and Substance Abuse Services, Department of
- Museum of Fine Arts, Virginia
- Executive Committee
- † Public Broadcasting Board, Virginia
- War Memorial Foundation, Virginia

January 8

- Accountancy, Board of
- † Juvenile Justice, State Board of
- † Medicine, Board of
- Advisory Board on Acupuncture
- † Soil Scientists and Wetland Professionals, Board for

January 9

- Agriculture and Consumer Services, Department of
- Virginia Charity Food Assistance Advisory Board
- † Auctioneers Board
- † Child Day-Care Council
- † Conservation and Recreation, Department of
- Falls of the James Scenic River Advisory Board
- † Dentistry, Board of
- Education, Board of
- State Special Education Advisory Committee
- † Mental Health, Mental Retardation and Substance Abuse Services, Department of
- † Pharmacy, Board of
- Special Conference Committee
- † Real Estate Board
- Common Interest Community Management Fund Committee

January 10

- † Agriculture and Consumer Services, Department of
- Virginia Sheep Industry Board
- Air Pollution Board, State
- † Child Fatality Review Team, State
- † Dentistry, Board of

- Education, Board of
- State Special Education Advisory Committee
- † Mental Health, Mental Retardation and Substance Abuse Services, Department of
- † Opticians, Board for

January 13

- Local Government, Commission on
- † Motor Vehicle Dealer Board
- Advertising Committee
- Dealer Practices Committee
- Licensing Committee
- Transaction Recovery Fund Committee

January 14

- † Corrections, Board of
- Correctional Services Committee
- Liaison Committee
- Resources Authority, Virginia

January 15

- † Aging, Commonwealth Council on
- † Corrections, Board of
- Administration Committee
- † Higher Education for Virginia, State Council of
- Medicine, Board of
- Informal Conference Committee
- † Nursing Home Administrators, Board of
- † Real Estate Board
- Education Committee

January 16

- † Agriculture and Consumer Services, Department of
- Pesticide Control Board
- † Manufactured Housing Board, Virginia
- † Real Estate Board

January 17

- † Dentistry, Board of
- Special Conference Committee
- Library Board, State
- Archival and Information Services Committee
- Collection Management Services Committee
- Legislative and Finance Committee
- Publications and Education Services Committee
- Public Library Development Committee
- Records Management Committee
- † Social Services, Department of
- Virginia Commission on National and Community Service

January 21

- † Compensation Board
- Housing and Community Development, Board of

January 22

- Contractors, Board for
- Medicine, Board of
- Informal Conference Committee
- Water Control Board, State

January 23

- Rehabilitative Services, Board of
- Retirement System, Virginia
- Corporate Governance Task Force

January 24

- † Pharmacy, Board of
- Special Conference Committee

January 27

- Education, Board of

- Advisory Board for Teacher Education and Licensure
- † Environmental Quality, Department of Nursing, Board of

January 28

- † Environmental Quality, Department of
- † Funeral Directors and Embalmers, Board of
- † Marine Resources Commission
- † Nursing, Board of
- † Port Authority, Virginia
 - Board of Commissioners

January 29

- † Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects, Board for
 - Architects Section
- † Community Colleges, State Board for
 - Academic and Student Affairs Committee
 - Audit Committee
 - Budget and Finance Committee
 - Executive Committee
 - Facilities and Personnel Committee
- Medicine, Board of
 - Informal Conference Committee
- Nursing, Board of

January 30

- † Community Colleges, State Board for George Mason University
 - Board of Visitors
- Medicine, Board of
 - Informal Conference Committee
- Nursing, Board of

January 31

- † Dentistry, Board of
 - Special Conference Committee
- Health, State Board of

February 4

- † Agriculture and Consumer Services, Department of
 - Virginia Horse Industry Board
- Museum of Fine Arts, Virginia
 - Executive Committee

February 7

- † Health, Department of
 - State Emergency Medical Services Advisory Board

February 10

- † Pharmacy, Board of

February 11

- † Resources Authority, Virginia
 - Board of Directors

February 12

- † Milk Commission, State

February 13

- † Conservation and Recreation, Department of
 - Falls of the James Scenic River Advisory Board

February 18

- † Real Estate Appraiser Board

February 19

- Real Estate Board
- Retirement System, Virginia
 - Administration and Personnel Committee
 - Audit and Compliance Committee
 - Benefits and Actuarial Committee
 - Investment Advisory Committee

February 20

- Real Estate Board
- Retirement System, Virginia
 - Board of Trustees
 - Corporate Governance Task Force

February 21

- Health Professions, Department of
 - Intervention Program Committee

February 22

- † Conservation and Recreation, Department of
 - Virginia Cave Board

February 25

- † Marine Resources Commission

February 26

- † Cemetery Board
- Education, Board of

February 27

- Medicine, Board of
 - Informal Conference Committee

March 6

- Technology Planning, Department of
 - Virginia Geographical Information Network Advisory Board

March 10

- † Agriculture and Consumer Services, Department of
 - Virginia Cotton Board
- Technology Planning, Department of
 - Virginia Research and Technology Advisory Commission

March 17

- † Education, Board of
 - Advisory Board for Teacher Education and Licensure
- † Nursing, Board of

March 19

- † Nursing, Board of
- Retirement System, Virginia
 - Investment Advisory Committee

March 20

- † Nursing, Board of
- † Retirement System, Virginia
 - Board of Trustees
- † Social Services, Department of
 - Family and Children's Trust Fund Board

March 21

- † Social Services, Department of
 - Family and Children's Trust Fund Board

March 26

- † Education, Board of

PUBLIC HEARINGS

January 7, 2003

- † Health Professions, Department of
- Water Control Board, State

January 8

- † Juvenile Justice, State Board of
- Medicine, Board of

January 9

- † Air Pollution Control Board, State

January 10

- † Dentistry, Board of

Calendar of Events

January 15

Nursing Home Administrators, Board of

January 21

† Funeral Directors and Embalmers, Board of

January 24

Counseling, Board of

† Optometry, Board of

January 28

† Nursing, Board of

February 4

† Funeral Directors and Embalmers, Board of

February 6

† Medicine, Board of

February 10

† Pharmacy, Board of

March 5

Lottery Board, State

March 13

Agriculture and Consumer Services, State Board of